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BILL OF COMPLAINT.

Filed October 19, 1926.

In Chancery of New Jersey

To the Honorable Edwin Robert Walker, Chan- 10
cellor of the State of New Jersey:

The complainant the Elizabeth Heights Realty Company, a corporation duly incorporated under the laws of the State of New Jersey, with its principal office at number 921 Bergen avenue, in the City of Jersey City, County of Hudson and State of New Jersey, respectfully shows, that:

1. On June 1, 1916, by its instrument of conveyance duly executed and sealed the Modern Homes Realty Company, a corporation organized and existing under the laws of the State of New Jersey, granted and conveyed to the complainant, among other lands and premises, the lands and premises more particularly described as follows: 20

ALL those certain lots, tracts and parcels of lands and premises situate, lying and being in the City of Elizabeth, in the County of Union and State of New Jersey, which on a certain map entitled "Map of Elmora Manor, Elizabeth, N. J." are known and designated as lots numbered 23 and 24, 34 and 35, 41 and 42, in Block 2, also lots numbered 37 and 38 in Block 1; which deed having been duly proven according to law, was on June 14, 1916, duly recorded in the office of the Register of the County of Union, in Book 683 of Deeds for said County at pages 423 etc.; that said lots are also known as and by the City of Elizabeth assessed for the purpose of taxation, as lots 181 and 183, 190 and 192, 203 30
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Bill of Complaint.

and 205, 217 and 219, William avenue, Elizabeth, N. J.

10 2. On November 9, 1916, Dennis F. Collins as Comptroller of the said City of Elizabeth and in order to collect and enforce the payment of taxes for the year 1915, sold said Lots 37 and 38 in Block 1, on the Map aforesaid, being assessed as Lots 190 and 192, William Avenue, under and by virtue of the provisions of an act entitled "An Act for the Assessment and Collection of Taxes" approved April 8, 1903, to Karl Schaffer for an amount of money unknown to complainant but for a sum sufficient to pay the amount of unpaid taxes assessed against said lots for the year 1915, together with accrued interest and costs thereon, and on November 12, 20 1917, the said Dennis F. Collins as Comptroller as aforesaid again sold said Lots 37 and 38 in Block 1, on the Map aforesaid and assessed as Lots 190 and 192, William Avenue under and by virtue of the provisions of an act aforementioned to the said Karl Schaffer, for an amount unknown to complainant but for a sum sufficient to pay the unpaid taxes for the year 1916, together with accrued interest and costs thereon, and thereafter, so the complainant is informed and verily 30 believes, the said Dennis F. Collins as Comptroller as aforesaid, executed under his hand and seal and duly acknowledged certificates of tax sale for each of the sales aforesaid to the said Karl Schaffer who has retained the same but has never recorded or indexed the same as mortgages as permitted by statute and has not perfected or attempted to perfect any title thereunder.

40 3. On November 12, 1917, Dennis F. Collins as Comptroller of the said City of Elizabeth and in order to collect and enforce the payment of

Bill of Complaint.

taxes for the year 1916, sold said lots 23 and 24 in Block 2, on the map entitled "Map of Elmore Manor, Elizabeth, N. J." being assessed as lots 181 and 183, William Avenue, under and by virtue of the provisions of an act entitled "An Act for the Assessment and Collection of Taxes," approved April 8, 1903, to Karl Schaffer, for \$5.77, that being the amount of unpaid taxes, together with accrued interest and costs thereon, and on November 22, 1917, executed under his hand and seal, duly acknowledged a certificate of said tax sale to the said Karl Schaffer; and on the same day and year last aforesaid the said Dennis F. Collins, as Comptroller as aforesaid, also sold Lots 34 and 35 in said Block 2, on the map aforesaid and assessed as Lots 203 and 205, William Avenue, and also sold Lots 41 and 42, in said Block 2, on the map aforesaid and assessed as Lots 217 and 219, William Avenue, under and by virtue of the provisions of an act entitled "An Act for the Assessment and Collection of Taxes," approved April 8, 1903, to Karl Schaffer, each parcel being sold for \$5.77, aggregating the total sum of \$17.31, that being the amount of unpaid taxes, together with accrued interest and costs thereon and on November 22, 1917, executed, under his hand and seal duly acknowledged certificates of said tax sales to the said Karl Schaffer.

4. That the said Karl Schaffer did not, as he was by law entitled to do, record his said last mentioned tax sale certificates as mortgages, but on April 6, 1926, recorded in the said Register's Office of Union County, the said last mentioned tax sale certificates and certain papers annexed thereto, purporting to be notices to redeem and affidavits which purported to prove the service

Bill of Complaint.

of said notices to redeem, which tax sale certificates, pretended notices and affidavits were respectively recorded in the said Register's Office of Union County, the first being recorded in Book 1040 of Deeds for said County at page 487; the second being recorded in Book 1040 of Deeds for said County at page 490; the third being recorded in Book 1040 of Deeds for said County at page 484.

5. That said affidavits purported to show that a notice to redeem was served upon the complainant in divers manners but this complainant charges the fact to be that said notices were not served and mailed in the manner set forth in said affidavits or in any other manner and that service of a notice to redeem upon this complainant was not made in any manner directed by statute and that the said Karl Schaffer purchaser of the said tax sale certificates has not in any manner directed by statute cut off the right of this complainant to redeem the hereinbefore described lands and premises.

6. Complainant through one of its officers and agents being informed that Karl Schaffer claimed some interest in complainant's lands and premises hereinbefore described, in the month of October, 1919, called upon and demanded that the said Karl Schaffer disclose to complainant what, if any interest, the said Schaffer had or claimed to have in complainant's said lands; said Karl Schaffer claimed to have bought the fee simple title in and to the said lands and premises under various tax sales and informed complainant through its said officer and agent that complainant no longer had any right, title or estate in said lands, but that he, the said Schaffer, would give the complainant a trivial

Bill of Complaint.

sum for a quit-claim deed from complainant; the said Schaffer was informed by the said officer and agent of this complainant that the complainant wished to redeem the said lands and premises from the aforesaid tax sales and requested to be informed by the said Schaffer the amount necessary to be paid to redeem from said sales, the amount of which was unknown to complainant at the time and still remains unknown to it; that the said Schaffer became infuriated at the insistence of the officer and agent of complainant and by threats and menaces forced him to leave the presence of the said Schaffer without obtaining the necessary information; that thereafter through the efforts of the officers and agents of the complainant, and attorneys and counselors of this Court especially engaged for the purpose, complainant endeavored on several occasions to effect redemption of the said lands and premises from the said Karl Schaffer but he and they were unable to do so because the said Karl Schaffer refused to inform the complainant or its officers, agents and attorneys of the amount necessary to make redemption and it became impossible through acts and efforts of the said defendant, Schaffer, to make redemption of the said lands and premises from him.

7. That subsequently complainant has made numerous efforts through its agents and officers, attorneys and counselors of this Court to redeem the said lands and premises from said tax sales, and did on March 20, 1926, tender in legal tender moneys sufficient to redeem the said lands and premises, to the Collector of Taxes of the City of Elizabeth in the City Hall in said City, but the said Collector of Taxes informed complainant that he, the said Collector, had no au-

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Bill of Complaint.

thority to accept said tender and issue any certificates of redemption, all of which complainant charges to be contrary to the law in such cases made and provided.

10 8. The said Karl Schaffer although frequently applied to by the said complainant and others in its behalf refused to accept any sum of money tendered to him by the complainant and refused to surrender to the complainant the said tax sale certificates so that complainant might cancel and efface the same from the records in the Register's office of the County of Union to the irreparable damage of the complainant in that the cloud of said tax sale certificates encumbers the fee simple title of complainant.

20 9. Complainant is and has at all times since said day of October, 1919, been ready and willing to pay \$17.31 that being the amount remaining unpaid on the three last mentioned tax sale certificates together with interest thereon from November 12, 1917 at and after the rate permitted by statute in such cases made and provided together with the costs and expenses to which by law the said Karl Schaffer may be entitled and is and has at all times since said day of October, 1919, been ready and willing
30 to pay such sums as may be due for principal and interest according to law, from November 6, 1916 and November 12, 1917 at and after the rate permitted by statute in such cases made and provided, upon the two sales to the said Karl Schaffer, the amount of which as hereinbefore alleged is unknown to the complainant, and stands ready to abide by and pay whatever sum or sums this Court may adjudge to be the amount which
40 it should pay into this Court in order to satisfy

Bill of Complaint.

and discharge all of the said tax sale certificates above mentioned.

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

a. That Karl Schaffer who is the defendant to this suit may answer this bill of complaint and each statement therein made; 10

b. That complainant may be decreed to be entitled to redeem the said lands and premises from the said tax sales and the tax sale certificates thereof;

c. That an account may be had of all the moneys if any be due, and payable to the defendant Karl Schaffer under and by virtue of the two tax sales and the two tax sale certificates thereon for Lots numbered 37 and 38 in Block 1, on the map entitled "Map of Elmora Manor, Elizabeth, N. J." and assessed as Lots 190 and 192, William Avenue, Elizabeth aforesaid, which may be necessary to redeem the said lands and premises from the said tax sales and tax sales certificates; 20

d. That the said defendant Karl Schaffer may be decreed, upon payment or tender to him by complainant of whatever amount is decreed to be equitably due to said defendant on his said tax sale certificates, to deliver up and surrender to the complainant the said tax sale certificates after having first duly endorsed the same for cancellation; 30

e. That it may be decreed that the said pretended proceedings of tax sale, consisting of the certificates of tax sale, notice to redeem and affidavits of service be cancelled and that the 40

Bill of Complaint.

record of said proceedings, including the said tax sale certificates, notice to redeem and affidavits of service, be cancelled, effaced and decreed to be of no force or effect upon the lands and premises hereinabove described;

- 10 f. That a writ of subpoena may issue commanding said defendant Karl Schaffer to answer this bill of complaint and to abide by such decree as this Court may make in the premises.

ADOLF L. ENGELKE,
Solicitor for and of Counsel
with Complainant.

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**ORDER GRANTING LEAVE TO FILE
SUPPLEMENTAL BILL.**

Filed Sept. 6, 1927.

IN CHANCERY OF NEW JERSEY.

Between

ELIZABETH HEIGHTS REALTY
COMPANY, a corporation,
Complainant,

and

KARL SCHAFFER,

Defendant.

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A petition having been filed in this cause, 20
whereby it appears that Elizabeth Heights
Realty Company, a corporation of this State,
duly filed its bill of complaint herein, for the
purpose of redeeming certain lands and premises
in said bill of complaint more particularly de-
scribed, and it further appearing that subsequent
to the filing of the said bill of complaint, certain
tax sale proceedings from which redemption was
sought by the complainant, have been mutilated
by having added thereto an affidavit purporting 30
to be an affidavit of the defendant, which mu-
tilation occurred on or about June 16, 1927 and
after the filing of the bill of complaint in this
cause;

It is, on this 6th day of September, A. D. 1927,
ORDERED that the said complainant, Elizabeth
Heights Realty Company, a corporation of this
State, be and it is hereby permitted to file a
Supplemental Bill of Complaint in this cause, set-
ting forth the above facts, within two days from 40

Order Granting Leave to File Supplemental Bill.

the date hereof, and it is further ordered that a copy of this Order and of said Supplemental Bill of Complaint be served on the solicitor of the defendant, Karl Schaffer, within two days from the date hereof.

10 And it is further ordered that the said defendant, Karl Schaffer, answer the Supplemental Bill of Complaint within twenty days from the date of service of a copy of this Order and of the said Supplemental Bill upon him, as provided in this Order.

E. R. WALKER,
C.

Respectfully advised,

20 JNO. J. FALLON,
V.-C.

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SUPPLEMENTAL BILL.

Filed September 6, 1927.

IN CHANCERY OF NEW JERSEY.

Between

ELIZABETH HEIGHTS REALTY
COMPANY, a corporation,
Complainant,

and

KARL SCHAFFER,

Defendant.

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

20

The complainant, Elizabeth Heights Realty Company, a corporation of New Jersey, having its principal office at No. 921 Bergen avenue, Jersey City, this State, respectfully shows:

1. On or about October 19, 1926, this complainant filed its original bill of complaint in this court against Karl Schaffer, the defendant herein named, praying the right to redeem from certain tax sale proceedings relating to divers parcels of land, including Lots 34 and 35 and 41 and 42 in Block 2 on the "Map of El Mora Manor, Property of Elizabeth Heights Realty Company," which parcels of land are also known as Lots Nos. 203 and 205 and 217 and 219 William avenue, Elizabeth, New Jersey, which it is in said bill of complaint alleged, were sold to the defendant for delinquent taxes, and which the defendant had refused to permit the complainant to redeem upon payment of the amount due to the

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Supplemental Bill.

said defendant as fixed by the statutes in such case made and provided, and complainant therein prayed that upon the payment of such sums as might be found to be due to the said Karl Schaffer upon said tax sale certificates, they be cancelled and decreed to be of no force or effect upon
10 the lands and premises aforesaid;

2. The said Karl Schaffer being served with process of subpoena, answered this complainant's said bill, partially admitting and partially denying the allegations of the said bill, and asserting that the defendant had good and valid title to the premises described in the bill of complaint and that any equity of redemption the complainant might have had in the lands was debarred and cut off by the statutory proceedings of the defendant taken pursuant to the laws relating to tax
20 sale certificate;

3. This complainant has replied to said answer, and witnesses have been examined on both sides and the proofs have been closed; including those relating to the facts hereinafter alleged;

4. By way of supplement to its said bill of complaint, this complainant, by leave of this Court first obtained, respectfully shows that:

30 1. Since the filing of its bill of complaint, and on June 16, 1927, the said defendant, Karl Schaffer removed from the files in the office of the Register of the County of Union, the said tax sale proceedings relating to Lot 34 and 35 and 41 and 42, in Block 2 on the Map of El Mora Manor Property of Elizabeth Heights Realty Company, in the City of Elizabeth, this State, which are also known as Lots Numbers 203 and 205 and 217 and 219 William avenue, Elizabeth, aforesaid, which
40 proceedings had been filed and recorded in said

Supplemental Bill.

Register's office on April 6, 1926, in Book 1040 of Deeds, at pages 490 and 484, respectively, and are the proceedings and liens particularly in the bill of complaint referred to, and added or caused to be added to each of said tax proceedings, a paper purporting to be an affidavit, subscribed and sworn to June 16, 1927, in which the said defendant Karl Schaffer, as deponent, among other things says that the affidavit is made for the purpose of re-recording and re-filing the same with the certificates of sale relating to said lots, and to take the place of the affidavit filed and recorded by him on April 6, 1926, in which the premises are erroneously described, and thereupon caused each of said two proceedings of tax sale, together with the affidavit added to each, to be re-recorded on June 16, 1927, in Book 1113 of Deeds for Union County, at pages 32 and 34 respectively; and thereby the said defendant, Karl Schaffer mutilated, altered and defaced the file of the said tax sale proceedings, the subject of complainant's original bill of complaint, which is contrary to law, equity and good conscience;

2. By reason of said mutilation, alteration and defacement of said tax sale proceedings, filed and recorded on April 6, 1926, as aforesaid, said proceedings have lost any force and effect they might have had and are void and of no effect and that said re-recording and re-filing of said tax sale proceedings on June 16, 1927, and after the filing of complainant's bill to redeem, is of no force or effect to bind complainant, or foreclose the equity of redemption of the complainant in said lands and premises, and the said complainant's equity has not, thereby been debarred or foreclosed, and complainant ought in equity and good conscience to be permitted to redeem from said tax sales,

Supplemental Bill.

upon the payment of such sums as to this Honorable Court shall seem to be justly due.

Complainant therefore prays:

10 (a) That Karl Schaffer, who is the defendant to this supplemental bill, may answer this supplemental bill and each statement therein made;

(b) That this complainant may have the same relief against the said Karl Schaffer as he might have had if the facts hereinbefore stated by way of supplement, had been stated in this complainant's original bill of complaint;

20 (c) That a writ of subpoena may issue, commanding the said Karl Schaffer to answer this supplemental bill of complaint, and to abide by such decree as this Court may make in the premises.

ADOLF L. ENGELKE,
Solicitor for and of Counsel
with Complainant.

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ANSWER.

Filed November 16, 1926.

IN CHANCERY OF NEW JERSEY.

Between

ELIZABETH HEIGHTS REALTY
COMPANY, a corporation,
Complainant,

and

KARL SCHAFFER,

Defendant.

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The answer of the defendant, Karl Schaffer,
of the Borough of Roselle, County of Union and
State of New Jersey. 20

This defendant answering the bill of complaint
says that:

1. Paragraph 1 is admitted, subject to the
defense hereinafter set forth.

2. Paragraph 2 is admitted with the excep-
tion that the defendant denies that he has not
perfected title to the premises mentioned in said
paragraph, and denies that he did not record
the tax certificates mentioned in the said para-
graph. 30

3. Paragraph 3 is admitted.

4. The defendant admits the recording of the
tax sale certificates mentioned in paragraph 4
in the books of deeds for Union County re-
spectively mentioned therein, and says that the
said tax sale certificates, with the notices and
affidavits thereto attached, constituted valid deeds
to defendant for the premises therein mentioned. 40

Answer.

5. Paragraph 5 is denied.

6. Paragraph 6 is denied.

7. Paragraph 7 is denied with respect to all the allegations therein concerning this defendant, and with respect to allegations made regarding the Collector of Taxes of the City of Elizabeth, this defendant has no knowledge.

8. Paragraph 8 is denied.

9. Paragraph 9 is denied.

The defendant further answering the complainant's complaint says:

(a) That defendant has good and valid title to the premises described in the bill of complaint; that any equity which complainant may have had in said premises is effectually debarred and cut off by statutory proceedings of this defendant, pursuant to the laws relating to the tax sale certificates mentioned in the bill of complaint, and that complainant has no right or equity of redemption in and to said premises.

(b) The alleged deed to complainant from the Modern Homes Realty Company mentioned in the bill of complaint was given without consideration and in bad faith, with intent to defraud creditors and judgment creditors of the said Modern Homes Realty Company; that said complainant was a party thereto and joined with the said Modern Homes Realty Company to defeat and defraud creditors of the said Modern Homes Realty Company in the collection of their just debts, and that the complainant is not entitled to the equitable aid or intervention of this Court.

CHARLES WAGNER,
Solicitor of Defendant.

ANSWER TO SUPPLEMENTAL BILL.

Filed November 16, 1926.

IN CHANCERY OF NEW JERSEY.

Between

ELIZABETH HEIGHTS REALTY
 COMPANY, a corporation,
Complainant,

and

KARL SCHAFFER,

Defendant.

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The defendant, Karl Schaffer, of the City of
 Elizabeth, County of Union and State of New
 Jersey, answering complainant's supplemental
 bill, with respect to the specific paragraphs there-
 of, says:

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1. The defendant admits complainant filed a
 bill of complaint as therein alleged, but denies
 that the defendant refused redemption as fixed
 by the statute, and says that complainant was not
 entitled to redemption.

2. Paragraph two (2) is admitted.

3. Paragraph three (3) is admitted.

30

4. Paragraph four (4) subdivision one (1)
 is denied, except that defendant says he filed
 with the Register of Union County two affidavits
 explaining an error in the said certificates re-
 corded as deeds, and left them with the Register
 of Union County for recording.

Paragraph four (4) subdivision two (2) is
 denied.

CHARLES WAGNER,
 Solicitor and Counsel for Defendant.

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REPLICATION.

Filed November 25, 1926.

IN CHANCERY OF NEW JERSEY.

| | |
|----|--|
| 10 | ELIZBETH HEIGHTS REALTY COM- PANY, a corporation, <i>Complainant,</i> <i>and</i> KARL SCHAFFER, <i>Defendant.</i> |
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In reply to the defenses stated in the answer of the defendant, and not anticipated in the bill of complaint, complainant, by leave of Court, says:

1. In reply to paragraph 4 of the answer complainant says that the certificate of tax sale with the papers thereto annexed, pretended to be recorded, do not constitute a good and valid deed for the premises, to the defendant;

2. Answering the separate defenses of the said defendant, this complainant says:

(a) Paragraph (a) is denied.

30 (b) This complainant hereby gives notice that on the hearing of this cause, it will object to and move to strike out paragraph (b) of the said separate defense, on the ground that no fact or facts therein stated constitute any defense or defenses to the complainant's cause of action, set out in its bill of complaint.

Complainant joins issue upon the remainder of the answer.

ADOLF L. ENGELKE,
 Solicitor of Complainant.

ORDER OF REFERENCE.

IN CHANCERY OF NEW JERSEY.

Between

ELIZABETH HEIGHTS REALTY
COMPANY, a corporation,
Complainant,

and

KARL SCHAFFER,
Defendant.

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This matter being opened to the Court by Adolf L. Engelke, solicitor of the complainant, and it appearing that Charles Wagner, solicitor for the defendant has consented hereto;

20

It is, on this 4th day of January, nineteen hundred and twenty-seven, on motion of Adolf L. Engelke, solicitor of the complainant, ORDERED that the above-entitled cause be referred to Hon. John Griffin one of the Vice-Chancellors of this Court, to hear the same for the Chancellor, and to report thereon to him and to advise what order or decree should be made therein.

E. R. WALKER,

30

C.

I hereby consent to the making of the foregoing Order.

CHARLES WAGNER,
Solicitor of Defendant.

Note: Upon the death of Hon. John Griffin, the above matter was referred by the Chancellor to the Hon. John J. Fallon, Vice-Chancellor.

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CONCLUSIONS.

Filed October 21, 1929.

IN CHANCERY OF NEW JERSEY.

10 *Between*

ELIZABETH HEIGHTS REALTY
COMPANY, a corporation,
Complainant,

and

KARL SCHAFFER,

Defendant.

FALLON, V.-C.

20 This is a suit to redeem certificates of tax sales made November 12, 1917, under the authority of the tax act of 1903. P. L. 1903 p. 394. Notwithstanding the allegations of the bill of complaint, and proofs thereunder, the solicitor of the defendant after the hearing made known to the Court that he controverted only the complainant's right to redeem certificate of tax sale relating to the premises Nos. 190 and 192 William avenue. He conceded complainant's right

30 to redeem certificates of tax sales relating to other properties mentioned in the complainant's bill. The proofs manifest that the defendant did not strictly comply with essential statutory requisites in his endeavor to perfect title to the property in question. The notice of redemption alleged to have been served was not legally served upon the complainant. Notice to redeem claimed to have been mailed to or served upon an *incorporator* is of no legal effect. Service upon an

40 *incorporator* is not service upon a corporation.

Conclusions.

Section 59 of P. L. 1903 p. 394 provides for service of notice to redeem on "all persons interested in the land of their right to redeem." Personal service is required on persons interested who reside in the taxing district. Persons interested who reside out of the taxing district may be served personally or by mailing to their post office address if it can be ascertained, and by posting on the premises sold, if it cannot be ascertained. Service of notice to redeem on the complainant is alleged to have been made upon a person described as an *incorporator*. The proofs show that the corporate franchise of complainant, because of failure to pay franchise tax, was revoked by proclamation of the Governor. P. L. 1918 p. 1235. The notice to redeem is claimed to have thereafter been served upon the complainant. The corporate franchise was reinstated in 1926. The proofs show that Charles L. Bauer, Jr., as agent of the defendant, on October 22, 1919, served a notice to redeem on "Elizabeth Heights Realty Company, by leaving the same with William J. Shearer, Incorporator, at his home No. 1100 Anna Street, Elizabeth, N. J." and that the defendant mailed duplicate notices to redeem to complainant, one "in care of Mr. Charles S. Wood, Incorporator, 510 West 135th Street, New York," and the other "in care of A. W. Possell, Incorporator, 435 East 66th Street, New York." An *incorporator* like a *shareholder* of a corporation is not to be regarded in privity with the corporation, and even though a notice be served upon him affecting the interests of the corporation, he is not under a special duty of communicating such notice to the corporation, and such service is not notice to the corporation. 10 Cyc. 1061. A court of

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Conclusions.

equity will seize upon the slightest flaw of substance in tax sales to restore property to the owner. *Welles v. Schaffer*, 98 N. J. Eq. 31, at p. 35; *McCandless v. Schaffer*, 142 Atl. Rep. 566. In *Harrington v. Horster*, 89 N. J. Eq. 271, this court held—"The sale of land for non-payment

10 of taxes is such an extreme interference with private property that the law guards the rights of the owner with the utmost care * * *." No intendment will be made in favor of the legality of tax sale proceedings; the burden of showing compliance with the law is cast upon the purchaser. *State, Baxter v. Jersey City*, 36 N. J. L. 188, at p. 192. Notice and default are indispensable conditions to the divestiture of title under a tax sale. *Nugent v. Lindsley*, 100 N. J.

20 Eq. 87, at p. 90. It is a well established rule that every requirement of the law relating to the sale of land for the non-payment of taxes, prescribing the procedure which tends to the security of the property owner, or for his benefit, must be strictly conformed to. The action of the defendant in endeavoring to perfect the affidavits filed by him with the Register of Deeds of Union County years after they were filed, and the action of said Register in permitting the

30 papers filed with him, of which such affidavits formed a part, to be taken from his files and mutilated, and in permitting affidavits attached to certificates of sale to be detached therefrom, and in permitting an additional affidavit (referred to in the testimony of the Register as *explanatory*) to be attached to the papers originally filed, in an endeavor to perfect imperfections in the affidavits originally filed, is not only reprehensible, but clearly illegal. The Register himself would be unauthorized to make the

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Conclusions.

changes in the instruments filed with him which he permitted the defendant to make. The effect of the Register permitting the defendant to mutilate the instruments filed with such officer is to invalidate such instruments. That the defendant appreciated the invalidity of his tax sale proceedings in the case *sub judice* is evidenced by the fact that shortly prior to the hearing of the case he undertook to correct the proceedings in the manner above mentioned. The affidavits relating to service of notices to redeem appear to have been taken before one Mabel Seibert, who, by such name, was commissioned a Notary Public of New Jersey. She was married on August 16, 1919. The jurat to the affidavits purporting to be proofs of service and non-redemption were signed by her as Mabel Seibert Graff, Notary Public. In the absence of statutory authority the person commissioned as notary public under the name of Mabel Seibert was unauthorized to sign her name to jurats to affidavits as "Mabel Seibert-Graff, Notary Public," and consequently the purported affidavits must be regarded as a nullity. Women may be appointed and commissioned as notaries public (3 Comp. Stat. p. 3761, Sec. 211) but they can only act as such in their name as appointed and commissioned. I am constrained to consider that if the legislature contemplated the continuance of authority of a *feme sole* appointed notary public, after her marriage, legislation would have been enacted such as relates to women appointed and commissioned as masters in chancery and/or attorneys or counsellors at law. P. L. 1923 pp. 265 and 266. The testimony of the several witnesses is conflicting. The testimony of the witnesses for the defendant impressed me, in many instances, as being quite incredible. The testi-

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Conclusions.

mony of complainant's witnesses in my judgment is more credible than the testimony of defendant's witnesses. In *Riehl v. Riehl*, 101 N. J. Eq. 15, at pp. 22, 23, Chancellor Walker indicated the settled rule of law to be that "The trier of facts is the judge of the credibility of witnesses and does not have to believe a particular witness or witnesses. * * * And the trier of the facts, whether court or jury, has the right to discredit altogether the testimony of a witness, where there is reason therefor, and to disbelieve him. The court of errors and appeals has held that the jury (and in chancery the court sits as the jury, in other words, tries the facts), are at liberty to discredit and reject certain testimony. *State v. Lanto*, 99 N. J. Law 94." The complainant is entitled to redeem the certificates of tax sales *sub judice*, and I will advise a decree accordingly. If the parties cannot agree upon the amount required to be paid by the complainant to the defendant to effectuate such redemption, the matter will be referred to a Master for computation, with direction to report to the Court as promptly as possible.

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AMENDED CONCLUSIONS.

Filed November 26, 1929.

IN CHANCERY OF NEW JERSEY.

Between

ELIZABETH HEIGHTS REALTY
COMPANY, a corporation,
Complainant,

and

KARL SCHAFFER,

Defendant.

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FALLON, V.-C.

This is a suit to redeem certificates of tax sales made November 12, 1917, under the authority of the tax act of 1903. P. L. 1903 p. 394. The solicitor of the defendant, after the hearing, made known to the Court that he did not controvert the complainant's right to redeem certificate of tax sale relating to the premises Nos. 190 and 192 William avenue. He conceded complainant's right to redeem such certificate. The proofs manifest that the defendant did not strictly comply with essential statutory requisites in his endeavor to perfect title to the property in question. The notice of redemption alleged to have been served was not legally served upon the complainant. Notice to redeem claimed to have been mailed to or served upon an *incorporator* is of no legal effect. Service upon an *incorporator* is not service upon a corporation. Section 59 of P. L. 1903 p. 394 provides for service of notice to redeem on "all persons interested in the land of their right to redeem." Personal

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Amended Conclusions.

service is required on persons interested who reside in the taxing district. Persons interested who reside out of the taxing district may be served personally or by mailing to their post office address if it can be ascertained, and by posting on the premises sold, if it cannot be ascertained. Service of notice to redeem on the complainant is alleged to have been made upon a person described as an *incorporator*. The proofs show that the corporate franchise of complainant, because of failure to pay franchise tax, was revoked by proclamation of the Governor. P. L. 1918 p. 1235. The notice to redeem is claimed to have thereafter been served upon the complainant. The corporate franchise was reinstated in 1926. The proofs show that Charles L. Bauer, Jr., as agent of the defendant, on October 22, 1919, served a notice to redeem on "Elizabeth Heights Realty Company, by leaving the same with William J. Shearer, Incorporator, at his home No. 1100 Anna Street, Elizabeth, N. J.," and that the defendant mailed duplicate notices to redeem to complainant, one "in care of Mr. Charles S. Wood, Incorporator, 510 West 135th Street, New York," and the other "in care of A. W. Possell, Incorporator, 435 East 66th Street, New York." An *incorporator* like a *shareholder* of a corporation is not to be regarded in privity with the corporation, and even though a notice be served upon him affecting the interests of the corporation, he is not under a special duty of communicating such notice to the corporation, and such service is not notice to the corporation. 10 Cyc. 1061. A court of equity will seize upon the slightest flaw of substance in tax sales to restore property to the owner. *Welles v. Schaffer*, 98 N. J. Eq. 31, at p. 35;

Amended Conclusions.

McCandless v. Schaffer, 142 Atl. Rep. 566. In *Harrington v. Horster*, 89 N. J. Eq. 271, this court held—"The sale of land for non-payment of taxes is such an extreme interference with private property that the law guards the rights of the owner with the utmost care * * *." No intendment will be made in favor of the legality of tax sale proceedings; the burden of showing compliance with the law is cast upon the purchaser. *State, Baxter v. Jersey City*, 36 N. J. L. 188, at p. 192. Notice and default are indispensable conditions to the divestiture of title under a tax sale. *Nugent v. Lindsley*, 100 N. J. Eq. 87, at p. 90. It is a well established rule that every requirement of the law relating to the sale of land for the non-payment of taxes, prescribing the procedure which tends to the security of the property owner, or for his benefit, must be strictly conformed to. The action of the defendant in endeavoring to perfect the affidavits filed by him with the Register of Deeds of Union County years after they were filed, and the action of said Register in permitting the papers filed with him, of which such affidavits formed a part, to be taken from his files and mutilated, and in permitting affidavits attached to certificates of sale to be detached therefrom, and in permitting an additional affidavit (referred to in the testimony of the Register as *explanatory*) to be attached to the papers originally filed, in an endeavor to perfect imperfections in the affidavits originally filed, is not only reprehensible, but clearly illegal. The Register himself would be unauthorized to make the changes in the instruments filed with him which he permitted the defendant to make. The effect of the Register permitting the defendant to mutilate the instru-

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Amended Conclusions.

ments filed with such officer is to invalidate such instruments. That the defendant appreciated the invalidity of his tax sale proceedings in the case *sub judice* is evidenced by the fact that shortly prior to the hearing of the case he undertook to correct the proceedings in the manner above mentioned. The affidavits relating to service of notices to redeem appear to have been taken before one Mabel Seibert, who, by such name, was commissioned a Notary Public of New Jersey. She was married on August 16, 1919. The jurat to the affidavits purporting to be proofs of service and non-redemption were signed by her as Mabel Seibert-Graff, Notary Public. In the absence of statutory authority the person commissioned as notary public under the name of Mabel Seibert was unauthorized to sign her name to jurats to affidavits as "Mabel Seibert-Graff, Notary Public," and consequently the purported affidavits must be regarded as a nullity. Women may be appointed and commissioned as notaries public (3 Comp. Stat. p. 3761, Sec. 211) but they can only act as such in their name as appointed and commissioned. I am constrained to consider that if the legislature contemplated the continuance of authority of a *feme sole* appointed notary public, after her marriage, legislation would have been enacted such as relates to women appointed and commissioned as masters in chancery and/or attorneys or counsellors at law. P. L. 1923 pp. 265 and 266. The testimony of the several witnesses is conflicting. The testimony of the witness for the defendant impressed me, in many instances, as being quite incredible. The testimony of complainant's witnesses in my judgment is more credible than the testimony of defendant's witnesses. In *Riehl v. Riehl*, 101 N. J. Eq.

Amended Conclusions.

15, at pp. 22, 23, Chancellor Walker indicated the settled rule of law to be that "The trier of facts is the judge of the credibility of witnesses and does not have to believe a particular witness or witnesses. * * * And the trier of the facts, whether court or jury, has the right to discredit altogether the testimony of a witness, where there is reason therefor, and to disbelieve him. The court of errors and appeals has held that the jury (and in chancery the court sits as the jury, in other words, tries the facts), are at liberty to discredit and reject certain testimony. *State v. Lanto*, 99 N. J. Law 94." The complainant is entitled to redeem the certificates of tax sales *sub judice*, and I will advise a decree accordingly. If the parties cannot agree upon the amount required to be paid by the complainant to the defendant to effectuate such redemption, the matter will be referred to a Master for computation, with direction to report to the Court as promptly as possible.

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ORDER.

Filed November 20, 1929.

IN CHANCERY OF NEW JERSEY.

10 *Between*

ELIZABETH HEIGHTS REALTY
 COMPANY, a corporation,
Complainant,

and

KARL SCHAFFER,
Defendant.

20 The Court being of opinion that the prayer of
 the above named complainant should be granted,
 and that the complainant should have and exer-
 cise the right to redeem the lands and premises
 particularly described in the bill of complaint, but
 before making final decree in this matter, the
 same should be referred to a Master to ascertain
 what sum or sums should be paid by the com-
 plainant to the defendant in redemption of said
 lands and premises and after hearing and con-
 sidering the arguments of the respective counsel
 30 herein;

It is, on this 20th day of November, A. D. 1929,
 ORDERED that the above-entitled cause be re-
 ferred to Aloysius McMahon one of the Masters
 of this Court, to ascertain and compute the sum
 or sums of money to be paid by the complainant
 to the defendant in redemption of Lots 37 and 38
 in Block 1 and Lots 23 and 24, 34 and 35, 41 and
 42 in Block 2 as the same are laid down and
 designated on a certain map entitled "Map of
 40 Elmora Manor Property of Elizabeth Heights

Order.

Realty Company," from the certificates of tax sales held on the same by the defendant, and to report the same with all convenient speed;

And it is further Ordered that until the coming in of said report, all other equities be reserved.

E. R. WALKER,
C.

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Respectfully advised,

JNO. J. FALLON,
V.-C.

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FINAL DECREE.

Filed June 16, 1930.

IN CHANCERY OF NEW JERSEY.

10 *Between*

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|--------------------------------------|---|
| ELIZABETH HEIGHTS REALTY COMPANY, | } |
| <i>Complainant,</i> | |
| <i>and</i> | |
| KARL SCHAFFER, | } |
| <i>Defendant.</i> | |

20 This cause coming on to be heard in the pres-
 ence of Adolf L. Engelke, of counsel with the
 complainant, Elizabeth Heights Realty Company,
 and Charles Wagner, of counsel with the defend-
 ant, Karl Schaffer, and the Court having exam-
 ined the pleadings and taken the proofs of the
 respective parties in open court, and having con-
 sidered the arguments of the respective counsel
 thereon, and it appearing to the satisfaction of
 the Court that complainant is entitled to the re-
 lief prayed for by it in its said bill of complaint,
 30 and the parties being in dispute as to the amount
 payable, the Court referred the matter to
 Aloysius McMahon, one of the Masters of this
 Court, to ascertain and compute the sum or sums
 of money to be paid by the complainant to the
 defendant in redemption of the lands hereinafter
 described, and said Master having heretofore
 filed his report that there is due to the defendant
 the sum of \$90.08;

40 It is, on this 16th day of June, A. D. 1930, by
 Edwin Robert Walker, Chancellor of the State of

Final Decree.

New Jersey, ORDERED, ADJUDGED and DECREED and the said Chancellor doth, by virtue of the power and authority of this Court, hereby order, adjudge and decree that the said complainant, Elizabeth Heights Realty Company, is entitled to redeem the several lots, known and distinguished on the Assessment Map of the City of Elizabeth, aforesaid, as Lots numbers 181-183, 190-192, 203-205 and 217-219 William avenue, in the City of Elizabeth, aforesaid, and also known on a map entitled "Map of Elmora Manor Property of Elizabeth Heights Realty Company" as lots numbers 37 and 38 in Block 1 and lots 23 and 24, 34 and 35, 41 and 42 in Block 2, in the City of Elizabeth, Union County, this State, from the tax sales thereof, for taxes delinquent for the years 1915 and 1916, held respectively on November 9, 1916, and November 12, 1917, and the certificates thereof made by the Comptroller of the said City of Elizabeth to the defendant, Karl Schaffer, upon the payment of the sum of \$90.08;

And it is further ORDERED, ADJUDGED and DECREED that the proceedings recorded as deeds in the Union County Register's office in Book 1040 of Deeds for said County, at pages 487, 490 and 484, and in Book 1113 of Deeds for said County, at pages 32 and 34 respectively, are invalid and ineffectual and the Register of Union County be and he is hereby required and directed on the filing with him of a duly certified copy of this Decree, to record the same in the record of deeds for said County and to note in the margin of the record of said proceedings in the books and at the pages aforesaid, the place of record of this Decree;

And it is further ORDERED, ADJUDGED and DECREED that the complainant recover of the de-

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Final Decree.

defendant the costs of this suit to be taxed, and the Clerk of this Court is directed to and shall tax in said costs, moneys paid by the complainant for a transcript of the testimony for the use of the Court, as well as a counsel fee of two hundred and fifty dollars;

10 And it is further ORDERED, ADJUDGED and DECREED, that the complainant serve a copy of this Decree, together with a copy of the taxed bill of costs, upon the defendant, Karl Schaffer, or his solicitor, within ten days from the date hereof, and that the said complainant pay to the said defendant, Karl Schaffer, or to his solicitor, the aforesaid sum of \$90.08 unless the amount of the taxed bill of costs shall exceed that sum, in
 20 which event said sum of \$90.08 shall be offset, credited and allowed by the complainant against the taxed bill of costs, and the said defendant shall forthwith pay the said complainant the taxed bill of costs reduced by crediting thereon the sum of \$90.08 as aforesaid;

And it is further ORDERED, ADJUDGED and DECREED that if payment by the defendant to the complainant of the several sums, reduced by the credits as hereinbefore provided, be not made
 30 within 30 days after the service upon him of a true copy of this Decree and complainant's taxed costs, a writ of *feri facias de bonis et terris* shall issue out of this Court to make the sum of money aforesaid, in accordance with the rules and practice of this Court.

E. R. WALKER,

C.

Respectfully advised,

JNO. J. FALLON,
 V.-C.

NOTICE OF APPEAL.

Filed June 27, 1930.

IN CHANCERY OF NEW JERSEY.

Between

ELIZABETH HEIGHTS REALTY
COMPANY, a corporation,
Complainant,

and

KARL SCHAFFER,

Defendant.

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The defendant, Karl Schaffer, hereby appeals
from the final decree made in the above-entitled
cause on the sixteenth day of June, 1930, by the
Chancellor, on the advice of Vice-Chancellor
John J. Fallon, wherein the Court adjudges that
the complainant is entitled to the redemption of
the premises described on the Assessment Map
of the City of Elizabeth as Lots numbers 181-
183, 190-192, 203-205 and 217-219 William avenue,
in the City of Elizabeth, New Jersey, and also
known on a Map entitled "Map of Elmora Manor
Property of Elizabeth Heights Realty Com-
pany," as lots numbers 37 and 38 in Block 1 and
Lots 23 and 24, 34 and 35, 41 and 42 in Block 2,
in the City of Elizabeth, Union County, New
Jersey, from the tax sales thereof, and wherein
the Court adjudges that upon filing said Decree
with the Register of Union County, the said
Register shall note in the margin of the record
of the books wherein said tax sales are recorded
as deeds, the place of record of this Decree, and
wherein the Court adjudges that the complainant

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Notice of Appeal.

10 recover of the defendant the costs of suit to be taxed, and to have a writ of *feri facias de bonis et terris* to make up said sums, less credits allowed in said Decree, and the defendant appeals from the whole and every part of said Decree to the Court of Errors and Appeals in the last resort in all causes.

CHARLES WAGNER,
Solicitor and of Counsel with the Defendant.

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

CHARLES WAGNER,
Of Counsel with the Defendant.

A true copy.
20 CHARLES WAGNER,
Solicitor and of Counsel with the Defendant.

Service of a true copy of the within Notice of Appeal is acknowledged this 26th day of June, 1930.

ADOLF L. ENGELKE,
Solicitor of Complainant.

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PETITION OF APPEAL.

Filed June 27, 1930.

NEW JERSEY COURT OF ERRORS AND
APPEALS.

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| <p><i>Between</i></p> <p style="text-align: center;">ELIZABETH HEIGHTS REALTY COMPANY, a corporation, <i>Complainant-Appellee,</i></p> <p style="text-align: center;"><i>and</i></p> <p style="text-align: center;">KARL SCHAFFER, <i>Defendant-Appellant.</i></p> | 10 |
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To the Honorable the Court of Errors and Appeals in the last resort in all causes: 20

The petition of Karl Schaffer, appellant in the above-entitled cause, respectfully shows that:

1. Your petitioner finds himself aggrieved by a final decree made in the Court of Chancery by his Honor, Edwin Robert Walker, Chancellor of the State of New Jersey, on the advice of his Honor, John J. Fallon, Vice-Chancellor, which decree bears date the sixteenth day of June, 1930, in a certain cause in the said Court of Chancery wherein Elizabeth Heights Realty Company, a corporation, was complainant and Karl Schaffer, the petitioner, was defendant, and your petitioner finds himself aggrieved in these respects, to wit, that: 30

The said Decree adjudges that the complainant is entitled to redeem the several lots known and distinguished on the Assessment Map of the City of Elizabeth, as Lots numbers 181-183, 190- 40

Petition of Appeal.

192, 203-205 and 217-219 William avenue, in the City of Elizabeth, New Jersey, and also known on a Map entitled "Map of Elmora Manor Property of Elizabeth Heights Realty Company," as lots numbers 37 and 38 in block 1 and Lots 23 and 24, 34 and 35, 41 and 42 in Block 2, in the City of Elizabeth, Union County, New Jersey, from the tax sales thereof, for taxes delinquent for the years 1915 and 1916, held respectively on November 9, 1916, and November 12, 1917, upon payment of the sum of ninety dollars and eight cents (\$90.08), and does further order, adjudge and decree that the proceedings recorded as deeds in the Union County Register's Office in Book 1040 of Deeds for said County at pages 487, 490 and 484, and in Book 1113 of Deeds for said County at pages 32 and 34 respectively, are invalid and ineffectual, and that upon filing with the Register of a duly certified copy of said Decree that the Register note in the margin of the record of said proceedings in the books and at the pages aforesaid, the place of record of this decree, and said decree does further adjudge that if payment by the defendant to the complainant of said taxed costs reduced by the credits as provided in said decree, be not made within thirty (30) days after service of a true copy of the Decree and taxed costs, a writ of *feri facias de bonis et terris* shall issue to make up the sum of money aforesaid.

And your petitioner humbly appeals from the portions of the Decree of the Chancellor which adjudge adversely to the defendant as aforesaid, upon the ground that the same are erroneous in that:

1. The evidence does not justify a Decree that the complainant is entitled to redemption with

Petition of Appeal.

respect to the premises described as Lots 37 and 38 in Block 1, and known as Nos. 190-192 on the North side of William avenue, Elizabeth, New Jersey, for the reason that the defendant, at the trial of the cause, did not resist redemption as to said premises, and offered to accept redemption, and has always been willing and is now willing to accept redemption for the same. 10

2. The evidence does not justify the decree that the complainant is entitled to redemption of the remainder of the premises described in said Decree, to wit, Lots 23 and 24, 34 and 35, 41 and 42 in Block 2, as laid down on the aforesaid Map, and does not justify the award of costs to the complainant.

3. The proof submitted by complainant was not so clear and convincing as to justify a Decree that the complainant was entitled to redemption. 20

4. The proof submitted by the defendant was sufficient to justify a dismissal of complainant's bill.

5. The proof submitted by the defendant was sufficient to justify a finding that due and legal service of a notice to redeem the said premises was made by defendant upon the complainant, and that the complainant failed to redeem the said premises from the lien of the respective tax certificates of the defendant within the statutory time, and that all right, title and interest of the complainant in said premises was thereby cut off. 30

6. The decree is contrary to the weight of evidence.

7. The decree is contrary to the principles of equity and law applicable to said cause. 40

Petition of Appeal.

8. The decree is based upon evidence and findings of fact which occurred after the time for redemption had expired, and after all right, title and interest of the complainant in said premises was cut off.

10 9. The Court should have ordered, adjudged and decreed that the complainant did not meet the burden of proof necessary for the complainant to prevail, and that the defendant's proofs justified a finding that the complainant's right, title and interest in said premises had been duly and legally cut off, and the said bill of complainant should have been dismissed, with costs to the defendant to be taxed.

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

CHARLES WAGNER,
Solicitor and of Counsel with
Defendant-Appellant.

30 Service of a true copy of the within Petition of Appeal is hereby acknowledged this 26th day of June, 1930.

ADOLF L. ENGELKE,
Solicitor of Complainant-Appellee.

STIPULATION.

IN CHANCERY OF NEW JERSEY.

Between

ELIZABETH HEIGHTS REALTY
COMPANY, a corporation,
Complainant,

and

KARL SCHAFFER,

Defendant.

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The complainant and defendant stipulate by their respective counsel as follows:

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1. The appeal now filed by the defendant in the Court of Errors and Appeals in the last resort in all causes, from the final decree in said cause, shall be considered to be inclusive of the appeal heretofore filed from the Order of the Chancellor, on the advice of Vice-Chancellor John J. Fallon, dated November 20, 1929, and shall be considered in substitution of said former appeal, so as to embrace all the issues in said cause on appeal.

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2. The deposit of one hundred (\$100) dollars heretofore made in the Court of Chancery in connection with the appeal from said Order, and deposited in accordance with the rules, shall be considered as the requisite deposit in the appeal from the final decree in said cause, and it is hereby stipulated that the deposit of one hundred (\$100) dollars requisite upon the filing of the

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Stipulation.

appeal from the final decree is hereby considered to have been made.

ADOLF L. ENGELKE,
Solicitor of Complainant.

Dated June 26, 1930.

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CHARLES WAGNER,
Solicitor of Defendant.

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ANSWER TO PETITION OF APPEAL.

Filed July 1, 1930.

**NEW JERSEY COURT OF ERRORS AND
APPEALS.***Between*

ELIZABETH HEIGHTS REALTY
COMPANY, a corporation,
Complainant-Appellee,

and

KARL SCHAFFER,
Defendant-Appellant.

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The answer of Elizabeth Heights Realty Com-
pany, a corporation duly organized and existing
under the laws of the State of New Jersey, the
above named appellee, to the petition of appeal
of Karl Schaffer, the above named appellant.

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This appellee, not admitting the truth of all or
any of the matters in the said petition of appeal
contained, for answer thereto, nevertheless, ad-
mits that a Decree was on June 16, 1930, made
and entered in the Court of Chancery of New
Jersey in the above-entitled cause, for the pur-
poses in said petition mentioned, and as therein
set forth; but as to the substance and form of
said Decree, this appellee begs leave to refer
thereto when the same shall be produced.

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This appellee is advised and believes that the
said Decree is agreeable to equity and it prays
that the same may be affirmed, with costs to be
taxed in favor of this appellee.

ADOLF L. ENGELKE,
Solicitor for and of Counsel with Appellee.

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TESTIMONY.

IN CHANCERY OF NEW JERSEY.

| | | |
|----|----------------|----------------------------------|
| | <i>Between</i> | |
| 10 | | ELIZABETH HEIGHTS REALTY Co., |
| | | <i>Complainant,</i> |
| | <i>and</i> | |
| | | KARL SCHAFFER, |
| | | <i>Defendant.</i> |

Appearances :

Adolf L. Engelke, Esq., for the complainant.
20 Charles Wagner, Esq., for the defendant.

Before Hon. Jno. J. Fallon, Vice-Chancellor.

Chancery Chambers, Jersey City, N. J.,

June 22, 1927.

THE CASE FOR THE COMPLAINANT.

Mr. Engelke: I offer in evidence, first, certified
copy of a deed from The Modern Homes Realty
30 Company to Elizabeth Heights Realty Company,
dated June 1, 1916, and recorded June 14, 1916,
in Book 683 of Deeds for Union County, on pages
423, etc.; whereby the grantor conveys to the
grantee Lots 37 and 38 in Block 1; Lots 82 and
83, 60 and 61, 23 and 24, 34 and 35, 41 and 42,
all in Block 2 on Map of El Mora Manor, and
other lots.

Mr. Wagner: Before that is offered, I think
we are entitled to an explanation as to why the
40 original deeds cannot be produced.

James J. O'Brien, for complainant, direct.

The Vice-Chancellor: You mean, instead of a certified copy?

Mr. Wagner: Yes, sir.

The Vice-Chancellor: Well, under the rules of evidence, it is admissible. I do not know why it is offered.

Mr. Engelke: We have searched for the original deed, high and low, and cannot find it. That is the answer. 10

The Vice-Chancellor: Well, let it be marked. (The paper is marked Exhibit C. 1.)

JAMES J. O'BRIEN, sworn.

Direct examination by Mr. Engelke.

Q Mr. O'Brien, you are connected with the Register's Office in Union County? A Yes, sir. 20

Q And you have been subpoenaed to produce the original tax sale proceeding and attached notice, and purported affidavits, recorded in Book 1040 of Deeds for Union County, at page 484—have you that paper with you? A Page 487?

Q I want 487 and 484 and 494? A Yes, here is 484 (producing same).

Mr. Engelke: I wish to offer this; and I offer a certified copy to be marked. 30

The Vice-Chancellor: Offer them in the order that you wish to offer them. I see the originals have certain markings on them—you had better look at the originals and give certain notations from them, as you think you want to.

Q Will you give me the one recorded in Book 484? A (The witness complied.) 40

James J. O'Brien, for complainant, direct.

10 Mr. Engelke: I wish to offer in evidence the original tax sale proceedings, consisting of a certificate of tax sale, No. 2493, wherein the Comptroller of the City of Elizabeth sold to Karl Schaffer Lots 217, 219 William avenue, for \$5.77, for the arrears of taxes for the year 1916, bearing date November 22, 1917, to which is attached a purported notice to Elizabeth Heights Realty Co., Morris Steinberg, Ralph L. Shearer and Mrs. Ralph L. Shearer, and purported affidavits endorsed on the back thereof, together with what purports to be an affidavit by Karl Schaffer, dated April 5, 1926; and another paper which purports to be an affidavit of Karl Schaffer, dated June 16, 1927 (part of the papers), and, on the back of the purported affidavit dated April 5, 1926, there is stamped—"Received in the Register's Office of the County of Union, N. J., on the 16th of April, 1926, at 1:30 o'clock in the afternoon, and recorded in Book 1040 of Deeds for said County on page 484, etc.," and, in red ink at the top of the endorsement, the number "48892." On the side, and adjoining the endorsement above referred to, there is stamped, in blue ink, "Received Union County Register's Office, April 6, 1:30 P. M., 1926. Elizabeth, N. J. Edward Bauer, Register," which is scratched out by lead pencil. Above the effaced stamp there is another stamp, in blue ink, containing the following:

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40 "Received
Union County
Register's Office
June 16, 2:07 P. M., 1927
Elizabeth, N. J.
Edward Bauer, Register.";

James J. O'Brien, for complainant, direct.

attached, as a last sheet of the exhibit offered is another certificate, which says, "Received in the Register's Office of the County of Union, N. J., on the 16th day of June, A. D. 1927, at 2:07 o'clock in the afternoon, and recorded in Book—of Deeds for said County on pages—." Above this endorsement there is, in lead pencil, first the number "48892," followed by the number "1010-484." 10

The Vice-Chancellor: I notice, from the filing endorsement on the bill of complaint in this case, that the bill of complaint was filed October, 1926.

Mr. Engelke: Yes, sir. I wish your Honor to take particular notice of this paper: Your Honor will observe that it was originally fastened by three brass fasteners—three through some, and two through some others—and then the last sheet is fastened by wire brass. 20

The Vice-Chancellor: The brass fasteners are not of the same size, I note.

Mr. Engelke: I did not notice that.

Mr. Wagner: I will explain that.

The Vice-Chancellor: Wait until he finishes his case. 30

Mr. Engelke: I am stating the facts. I ask that the exhibit offered be admitted in evidence, and a certified copy thereof marked.

Mr. Wagner: I have not any certified copy of that; I do not know anything about it, at all, your Honor. The original is produced here.

The Vice-Chancellor: Well, you can have a certified copy made. 40

James J. O'Brien, for complainant, direct.

Mr. Engelke: Well, I would like to offer the certified copy of what the Register offered to me, and which he certified to me on June 7, 1926.

10 The Vice-Chancellor: Whoever made this certified copy was not very particular about close attention to the writing of the name "Mabel Seibert Graff" attached to the Bauer affidavit.

Mr. Engelke: Your Honor sees that it is essential, sometimes, to produce the original document.

20 The Vice-Chancellor: I observe that the "eibert" is written up over the "S," as if it was written in after the former "S" was written; and the same appears in the other purported affidavit of Karl Schaffer—the "eibert" was written in after the name was originally written.

Mr. Wagner: "Seibert" is written in, your Honor.

30 The Vice-Chancellor: Yes; it appears to be signed as "Mabel S. Graff," and then, as an afterthought, this "eibert" is written in, and written up above because it could not be written across. Look at it.

Mr. Wagner: Yes; there is no doubt about that.

The Vice-Chancellor: Well, I would like to have a transcript of these papers as they are, and not as the transcriber has given it to you already.

Mr. Wagner: I will, if your Honor will permit me, have a photoscopic copy made.

40 The Vice-Chancellor: You may do that; and, under the statute, passed this year,

James J. O'Brien, for complainant, direct.

photoscopic copies can be admitted in evidence.

Mr. Engelke: How can we mark this in evidence now?

The Vice-Chancellor: Well, it is simply referred to on the record as identified here.

Mr. Engelke: I offer in evidence Tax Sale proceeding based upon a tax sale certificate No. 2490, from the City of Elizabeth, by the Comptroller of the City of Elizabeth, to Karl Schaffer, of Lots 203 and 205 William avenue, for \$5.77, for the delinquent taxes of 1916, and dated November 22, 1917, and is endorsed on the back with the number "48891," to which is attached what purports to be a notice to redeem, directed to Elizabeth Heights Realty Company, Morris Steinberg, Ralph L. Shearer, Mrs. Ralph L. Shearer, on the back of which is endorsed what purport to be two affidavits, purporting to be made, the first by Charles L. Bauer, Jr., and the second by Karl Schaffer, to which is further attached a paper purporting to be an affidavit by Karl Schaffer, sworn to, or purporting to be sworn to, July 5, 1926, on the back of which there is this endorsement, reading from the top down: "Deed," in red letters "30415," scratched out in lead pencil, and the word underneath, in lead pencil, "Re-record." Below are these words stamped, as follows: "Received in the Register's Office of the County of Union, N. J., on the 6th day of April, A. D. 1926, at 1:32 o'clock in the afternoon and recorded in Book 1040 of Deeds for said County, on pages 490, &c. Edward Bauer, Register." Adjoining,

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James J. O'Brien, for complainant, direct.

and to the left of the endorsement, on top,
the words, in blue ink,

“Received
Union County
Register’s Office
Jun. 16, 2:05 P. M., 1927
Elizabeth, N. J.
Edward Bauer, Register”;

10

and then, to which is further attached what
purports to be an affidavit by Karl Schaffer,
purporting to be sworn to June 16, 1927;
on the back of which is this further endorse-
ment, in lead pencil: “1040-490. Filed,” and
then these words, stamped “Received in the
Register’s Office of the County of Union,
N. J. on the 16th day of June, A. D. 1927, at
2:05 o’clock in the afternoon, and recorded
in Book—of Deeds for said County, on pages
—.” I offer that instrument in evidence. I

20

offer, further, in evidence, Tax Sale pro-
ceeding founded on tax sale certificate No.
2488, of the City of Elizabeth, made by the
Comptroller of the said City to Karl Schaffer
for the sale of Lots 181, 183 William avenue,
for \$5.77, which certificate bears date No-
vember 22, 1917, to which is attached a no-
tice purporting to be a notice to redeem di-
rected to the Elizabeth Heights Realty Com-
pany, Morris Steinberg, Ralph L. Shearer,
Mrs. Ralph L. Shearer, on the back of
which are what purport to be two affidavits,
the first by Charles L. Bauer, and the second
by Karl Schaffer, both purporting to be
sworn to October 23, 1919, to which is at-
tached another paper purporting to be an
affidavit by Karl Schaffer, and dated April
5, 1926, on the back of which is endorsed

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Mrs. Mabel Seibert Graff, for complainant, direct.

Serial Number "30,412"; there is stamped the word "Filed," and the following language, "Received in the Register's Office of the County of Union, N. J. on the 6th day of April, A. D., 1926, at 1:31 o'clock in the afternoon, and recorded in Book 1040 of Deeds, for said County, on pages 487, &c. Edward Bauer, Register." 10

(The papers are admitted in evidence.)

Mr. Engelke: That is all I will ask of this gentleman.

The Vice-Chancellor: Well, you are going to photograph these papers?

Mr. Engelke: Yes, I am, your Honor. I would like to recall Mrs. Graff, to identify her signature. 20

MRS. MABEL SEIBERT GRAFF, sworn.

Direct examination by Mr. Engelke.

Q I show you a paper writing which is attached to Certificate of Tax Sale No. 2490, and direct your attention to the writing "Mabel Seibert Graff"—is that your signature? A 30
That is my signature.

Q I again direct your attention to the words written in a purported affidavit of Mr. Schaffer, and lower, on the same sheet, to the name "Mabel Seibert Graff"—is that your signature? A
That is my signature.

Q And I direct your attention to a paper attached to Tax Sale Certificate, No. 2493, which purports to contain two affidavits, to the first of which there seems to have been written "Mabel 40

Mrs. Mabel Seibert Graff, for complainant, direct.

S. Graff," and then something after the letter "S"—is that your signature? A That is my signature.

Q Who wrote the letters "eibert" after the letter S in the middle of that name? A That is my writing.

10 Q I call your attention to the name "Mabel Seibert Graff," written lower down on the same sheet, to what purports to be an affidavit of Karl Schaffer—is that your signature? A That is my signature.

Q Did you write it? A Yes, sir.

By the Vice-Chancellor.

Q When did you write "eibert" after the letter S? A Well, at the same time.

20 Q Well, hardly at the same time, did you, because didn't you first write the name "Mabel S. Graff"? A Yes, first I wrote "Mabel S. Graff."

Q When did you write the "eibert"? A Right after that.

Q Why didn't you write it at first? A Well, because I recollected I got my commission under the name of "Mabel Seibert."

30 Q Well, did somebody suggest to you to put the "eibert" there before you did it? A No; on second thought I did it myself.

Q When did that "second thought" come to you—how long after you wrote the name down? A After I had stamped the name "Notary Public of New Jersey."

Q Did you stamp the words "Notary Public of New Jersey" immediately after writing "Mabel S. Graff"? A Yes.

40 Q Now, how long after that did you write the word in there "eibert"? A The next instant.

Mrs. Mabel Seibert Graff, for complainant, direct.

Q How do you know you wrote it the next instant—what refreshes your recollection as to that? A Because I got my commission under the name of “Mabel Seibert.”

Q I know, but as long as you got your commission under the name “Mabel Seibert,” why didn’t you write your name originally “Mabel Seibert Graff”? A Well, in signing letters I might have wrote my name “Mabel S. Graff,” but, as Notary Public, I know it was right to write “Mabel Seibert Graff.” 10

Q But you knew you were swearing somebody in making an oath before you, didn’t you? A Yes.

Q And you knew that you were acting as a Notary Public at the time? A Yes, sir.

Q And you knew you should write your name “Mabel Seibert Graff,” didn’t you? A Yes. 20

Q But you did not write it that way? A Not at first.

Q Now, that “eibert” you wrote after Mr. Bauer wrote his name, didn’t you? A Yes, sir.

By Mr. Engelke.

Q If that be so, Mrs. Graff, why didn’t you change that one, and make that one correspond to “Mabel Seibert Graff” instead of “Mabel S. Graff” (referring to the signature to the purported affidavit of Karl Schaffer bearing date April 5, 1926)? A Well, then I had a new commission, under “Mabel S. Graff.” The other commission was under “Mabel Seibert,” in 1919. 30

Q I call your attention, Mrs. Graff, to a paper attached to Tax Sale Certificate No. 2486, and purporting to be an affidavit of Charles L. Bauer, to which the name of “Mabel Seibert Graff” is written, is that your signature? A Yes, sir. 40

Harry B. Brockhurst, for defendant, direct.

Q Under the affidavit just referred to there is another purported affidavit bearing the signature "Mabel Seibert Graff"—is that also your signature? A That is my signature, too.

Cross examination by Mr. Wagner.

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Q Mrs. Graff, at the time you were taking the affidavits, did you communicate with the Secretary of State on the subject of how you should sign your name?

Mr. Engelke: I object; that is not material.

20

The Vice-Chancellor: Well, she can say whether she communicated, or not; there is nothing harmful about that.

A I did.

Q And did you receive a reply from him?

A I did.

Mr. Wagner: That is all.

(At this point, for the convenience of the witness, and by consent of counsel, Mr. Harry B. Brockhurst was sworn on behalf of the defendant.)

30

HARRY B. BROCKHURST, Esq., sworn.

Direct examination by Mr. Wagner.

Q You are a Counselor-at-Law of this State?

40

A I am.

Harry B. Brockhurst, for defendant, direct.

Q And you acted for Elizabeth Heights Realty Company for reinstatement of their charter, after it had been forfeited for non-payment or taxes?

The Vice-Chancellor: Aren't you assuming something that may or may not be a fact? 10

Mr. Wagner: I will put it in the form of a question.

The Vice-Chancellor: Is it conceded that the charter of Elizabeth Heights Realty Company was forfeited, at one time, for non-payment of tax, and was reinstated thereafter?

Mr. Engelke: Yes, sir.

The Vice-Chancellor: All right—go ahead. 20

Q You acted as attorney in that matter?

A I understand my name was used; I didn't know it at that time.

The Vice-Chancellor: You were asked whether you acted as attorney?

The Witness: No, I did not act as attorney, knowingly. 30

Q It was done in your name by somebody? A You told me so, yes.

Q You did not object? A No, I hadn't any objection, at all.

Q You are the registered agent of Elizabeth Heights Realty Company? A So I am informed.

Q And you were appointed originally as agent, without your knowledge? A Yes; I knew nothing of it. 40

Harry B. Brockhurst, for defendant, direct.

Q You were served with a subpoena to produce a copy of the Articles of Incorporation of the Elizabeth Heights Realty Company; the minutes of the first meeting of the incorporators; the minutes of the first meeting of the stockholders; the minutes of the first meeting of directors; all subsequent minutes of meetings of stockholders; all subsequent minutes of meetings of the Board of Directors of said company; also the stock book; transfer book; also the by-laws of the said company; also all copies of any annual report filed by said company with the Secretary of State of New Jersey; also any other minutes, records, books, documents and data of said real estate company from its incorporation up to June 16, 1927—have you any such papers. A I have been informed that all the papers and books of the company—

Q You are asked whether you have them?

A I never had them.

Q Have you any such papers? A I have not.

Q You never had, and have not now? A I never had, and I have not now.

Q Did you ever see any of the papers to which I have drawn your attention? A I do not recall ever seeing them.

Q Did you ever see any date at all relating to the organization or the life or proceedings—

The Vice-Chancellor: What is the object of this? What you have asked him is as to whether his name was used as an attorney in effecting the reinstatement of this company; then you asked him if it was brought to his attention that he was the registered agent of the company—now, do you think he ought to have all these papers?

Arthur E. Lenox, for complainant, direct.

The Witness: They are in court, I believe.

Q But they are not in your possession? A
No, I never had them; I don't know anything about them.

10

No cross examination.

Mr. Engelke: I would like to offer in this suit this certificate of the Secretary of State.

Mr. Wagner: I shall object to it now.

The Vice-Chancellor: Well, I will admit it, subject to your objection.

(The certificate is marked Exhibit C. 2.)

20

ARTHUR E. LENOX, sworn.

Direct examination by Mr. Engelke.

Mr. Engelke: I wonder whether I could ask Mr. Wagner whether all the testimony this witness has given with reference to the visit of Mr. Shearer and Mr. Seligman to the office, and the conversations had there with reference to the tender, as given in the other case (*Shearer v. Schaffer*) can be considered as testimony in this case, and then I shall confine myself merely to the particular lots in this case?

30

Mr. Wagner: I consent that whatever was said in the *Schaffer* case as to the visit of March 19th, 1926, shall be considered as evidence in this case.

40

Arthur E. Lenox, for complainant, direct.

The Vice-Chancellor (to the witness):
Your records show that it was March 19th?

10 The Witness: My records show March 19th. The confusion is caused by the fact that on March 20th Mr. Shearer and Mr. Seligman came in and paid the taxes which we allowed them to pay, cleaning up all interest excepting the two certificates that Mr. Schaffer had.

The Vice-Chancellor: And that is where you think the confusion arises between "March 19th" and "March 20th"?

The Witness: Yes, sir—the tender was actually made on March 19th, and payment was made on the others on March 20th.

20 Q Will you refer to your books, Mr. Lenox, with reference to the properties on William avenue? A What sale?

Q The sale for the year 1917, relating to Lots 181 and 183 William avenue? A November 12, 1917, sale; sold for unpaid taxes of 1916; and was sold to Karl Schaffer, in fee; certificate No. 2488; for taxes of the year 1916.

30 Q And is there any notation there showing whether or not Mr. Schaffer filed any proofs of disbursements? A An affidavit of disbursements was filed, No. 4102; the date is not given.

Q Now, refer to the Lots 203 and 205 William avenue? A The same sale?

Q Yes. A 203 and 205 were sold to Karl Schaffer, in fee; certificate 2490; and affidavit 4104 was filed.

40 Q I make the same inquiry with respect to Lots 217 and 219 William avenue? A 217 and 219, at the same sale, were sold to Karl Schaffer,

Arthur E. Lenox, for complainant, direct.

in fee; certificate 2497; affidavit No. 4107 was filed; affidavit of expenses.

No cross examination.

The Vice-Chancellor: Is there any other witness?

Mr. Engelke: There is Mr. Seligman. 10

Mr. Wagner: I will admit that Mr. Seligman's testimony given in the previous case (*Shearer v. Schaffer*) concerning the subject-matter of the occurrence of March 19th, at the City Hall in Elizabeth, may apply in this case as given there.

The Vice-Chancellor: Will that satisfy you, Mr. Engelke?

Mr. Engelke: I do not see any reason for calling him. 20

The Vice-Chancellor: All right; that will be the order—that the testimony of Mr. Seligman, given in the other case (*Shearer v. Schaffer*) shall be the testimony in this case as to that particular visitation.

Mr. Wagner: With the understanding that the visit of Mr. Shearer and Mr. Seligman, on March 19th, to the City Hall concerned all the properties which are the subject-matter of these two suits. 30

Mr. Engelke: Yes, that is true.

The Vice-Chancellor: He says that is true, Mr. Wagner, so that ought to suffice.

Recess until Thursday, June 23rd, 1927, at two o'clock P. M.

Discussion.

Chancery Chambers, Jersey City, N. J.,
June 23rd, 1927.

Hearing of the cause resumed at 2 o'clock
P. M., in the presence of the counsel of the re-
spective parties.

10

The Vice-Chancellor: I see, in this case
of the Elizabeth Heights Realty Company
v. Schaffer, the sales were made under the
Act of 1903?

Mr. Wagner: All sales which are the
subject-matter of this case were made under
the 1903 Act.

20

The Vice-Chancellor: In that case it
differs with the case of *Shearer v. Schaffer*,
because, in that case, one sale was made
under the 1903 Act, and the other sales
under the 1918 Act.

Mr. Wagner: As to the other sales, they
are not decisive in this present issue, be-
cause they are now held by Mrs. Tova.

The Vice-Chancellor: All of them?

Mr. Wagner: Yes, sir.

30

The Vice-Chancellor: Do you mean all
of the certificates of sale in the other case
are held by Mrs. Tova?

Mr. Wagner: All of those that come
under the Act of 1918; and, as to the other
one, I told Mr. Engelke, now that we are
both interested in having an early disposi-
sition, that I will have Mr. Schaffer, who
knows her, communicate with her and ask
her if she will not permit me to acknowledge
service for her, or, in the alternative, to let
me know her stand on it, so that if she does

40

Discussion.

not want title we may give Mr. Shearer opportunity to redeem as to them, because we would like to narrow the issue as much as possible; and, in the Shearer case, I feel quite certain it will be left to a determination of whether or not Mr. Schaffer is entitled to the property under his certificate, where sale was made under the Act of 1903, and with respect to which he recorded his certificate and various papers. 10

The Vice-Chancellor: All right.

Mr. Engelke: Vice-Chancellor, I observe, while we are waiting, that I made an error in reading from my diagram of lot numbers, and I think your Honor will appreciate the reason for it—

The Vice-Chancellor: I do not care what the reason was, but you were quarrelling with Mr. Wagner about the lot numbers, so get it on record straight so we will know. 20

Mr. Engelke: Well, I read "27"—it ought to be "2"—that should be Lot 2.

Mr. Wagner: "Lot 2 and 4 on the Bellevue map?"

Mr. Engelke: Yes.

Mr. Wagner: Where the word "27" is used, it should be "2"; and that will not matter, your Honor, because they come under these certificates which we think will not be part of the case. 30

The Vice-Chancellor: All right.

William J. Shearer, Jr., for complainant, direct.

WILLIAM J. SHEARER, JR., sworn.

Direct examination by Mr. Engelke.

Q Mr. Shearer, did you, at any time, about
the year 1919, speak to Mr. Schaffer in reference
10 to any of the properties of the Elizabeth Heights
Realty Company, which he had purchased at a
tax sale, or which had been assigned to him at
a tax sale?

The Vice-Chancellor: Is this testimony
you seek to elicit now relating to the same
conversation he had with respect to the other
property?

Mr. Engelke: Yes.

20 The Vice-Chancellor: Cannot you counsel
agree on that—that the testimony of this
witness, as well as the testimony of Mr.
Schaffer and Mr. Seligman, will stand in
this case as given in the other case?

Mr. Engelke: This is with reference to
the Elizabeth Heights property.

30 The Vice-Chancellor: Well, my recollec-
tion of the testimony of both Mr. Seligman
and Mr. Shearer was that this conversation
that they had at the Tax Office, related to
all the properties.

Mr. Engelke: That is true.

40 The Vice-Chancellor: And my recollection
is, too, that Mr. Shearer's testimony with
respect to his visitation to Mr. Schaffer in
1919 was with respect to all the properties,
and I recall now that he testified with refer-
ence to the West Grand street and Pen-
nington street properties.

William J. Shearer, Jr., for complainant, direct.

Mr. Engelke: Yes, sir; that is right.

The Vice-Chancellor: Well, I do not want to suggest how you should shorten your testimony, or case, but if you can avoid repetition, I wish you would do it.

Mr. Wagner: I am willing to admit that the testimony of Mr. Shearer, relating to his conversation with Mr. Schaffer in October of 1919, as given in the case of *Shearer v. Schaffer*, shall be considered as evidence in this present case, so far as it applies to this case. 10

Mr. Engelke: Yes; because some of the testimony does not apply to this case, at all.

The Vice-Chancellor: Well, in so far as it is applicable? 20

Mr. Engelke: Yes.

The Vice-Chancellor: Now, do you say, in that conversation of 1919, that Mr. Shearer talked with Mr. Schaffer about the Elizabeth Heights Company?

Mr. Engelke: Yes, he did, your Honor, but the ones he talked about were eliminated by their concession—that is the reason I did not bring that out.

The Vice-Chancellor: Well, you concede that this witness' testimony shall be considered in this present case as it was given in the other case, in so far as it may be applicable to this case? 30

Mr. Wagner: I am very willing to add, also, that the offer to redeem at that time (considering it as an offer, for what your Honor may find it to be worth) applies in the same way to the property that is the subject-matter of this suit. 40

William J. Shearer, Jr., for complainant, direct.

The Vice-Chancellor: Now, that disposes of the 1919 incident between Schaffer and Shearer?

Mr. Wagner: Yes, sir.

10 The Vice-Chancellor: Now, what about this visit of Shearer to the Tax Office?

20 Mr. Wagner: I am willing to concede that the testimony of Mr. Shearer relating to his visit, with Mr. Seligman, at the office of the City Treasurer, and his conversation with the other various officers at the City Hall in Elizabeth (I do not recall the date, but I believe it was March 19th, as they give it, and as March 20th, as Mr. Schaffer gives it, applies also to this case, and that the same offers that are alleged to have been made by him with respect to the property in the Shearer-Schaffer case were made, by his testimony, in the Elizabeth Heights property case.

The Vice-Chancellor: Now, what about the testimony of Seligman—shall that also apply to this case? Mr. Seligman, as I understand, accompanied Mr. Shearer.

30 Mr. Wagner: Well, I will concede that the testimony which Mr. Seligman gave concerning the property in the Shearer-Schaffer suit shall be considered to have had, as the subject-matter of the conversations there related, the property described in the present suit.

The Vice-Chancellor: What about the testimony of Mr. Lenox?

40 Mr. Engelke: Well, that went in last night.

William J. Shearer, Jr., for complainant, direct.

The Vice-Chancellor: What about the testimony of Mr. Schaffer, about 1919?

Mr. Engelke: Well, there is one thing more—Wolfskeil's and Simon's testimony ought to go in—all they testified to.

The Vice-Chancellor: I suppose you both want that in—I suppose Mr. Wagner wants that in. 10

Mr. Wagner: I will concede that the testimony of Mr. Simon, and the testimony of Mr. Wolfskiel, given in the Shearer-Schaffer case shall be considered as having been given in and applying to the present case, and as intending to include, in the conversations and discussions, the property which is the subject-matter of this suit. 20

The Vice-Chancellor: And to be given the same effect as if testified to in this case?

Mr. Wagner: And that all these admissions of testimony, without the calling of witnesses in person, shall be given the same effect as though they had given such testimony in person.

The Vice-Chancellor: Now, what about the testimony of Mr. Schaffer, that was given—would you want to concede that that would be the same in this case? 30

Mr. Engelke: Well, I do not think we can. As far as it has gone, I am perfectly willing to have Mr. Schaffer's stand; but I think there is a difference here.

The Vice-Chancellor: Do you think there is a difference?

Mr. Engelke: Yes. 40

William J. Shearer, Jr., for complainant, direct.

The Vice-Chancellor: Well, if you think there is a difference, I do not want to shut you out from proving any difference.

10 Mr. Engelke: Well, there may be a difference from Mr. Wagner's point of view. He is going to call Mr. Schaffer for further testimony as to it.

The Vice-Chancellor: Oh, he is going to call him.

Mr. Wagner: Well, I reserve the right to ask Mr. Schaffer some questions as applying to this particular property.

The Vice-Chancellor: Certainly.

20 Mr. Engelke: Now, I would like to ask these questions with reference to the Shearer case tried yesterday, as well as in the present case, because it is evidence we only unearthed today.

The Vice-Chancellor: Well, try to get it in some order for me when it is being written up, so I will not have to look at one case to find testimony relating to another.

Mr. Engelke: I think we can fix it up in the briefs, so your Honor will not have any trouble with it.

30 *By Mr. Engelke.*

Q Mr. Shearer, yesterday you testified to having written to Mr. Schaffer a certain letter, marked in evidence Exhibit D. 1, which I show you, and ask you to read and refresh your memory? A (The witness examined the letter.)

40 Q And I now show you a letter purporting to be written on the letter-head of Karl F. Schaffer, 215 Broad street, Elizabeth, N. J., dated March 16, 1925, and an envelope containing the name

William J. Shearer, Jr., for complainant, direct.

of Karl F. Schaffer, and the same address, addressed to Mr. William J. Shearer, 1100 Anna street, and city-postmarked "Elizabeth, N. J.," and ask you whether or not you received that letter in reply to the letter shown you as Exhibit D. 1? A Correct.

10

The Vice-Chancellor: Let me ask you, before you proceed further—you stated that his father died—now, have we the date of the death on the record? (To the witness): When did your father die?

The Witness: 12/30/24.

Q December 30, 1924? A December 30, 1924.

Mr. Engelke: Of course I can only have these marked for identification, because I don't know whether it is his signature.

20

Mr. Schaffer (the defendant): It is my evidence that it is my writing.

Mr. Wagner: We admit it as evidence.

Mr. Engelke: I ask that they (referring to the letter and envelope identified by the witness) be marked in both cases.

(The envelope was thereupon marked Exhibit C. 3, and the letter, Exhibit C. 4.)

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Q Mr. Shearer, does this letter, Exhibit C. 4, help to refresh your memory as to whether or not you called on Mr. Schaffer in 1925, or not? A It certainly does.

Q And in what way does it refresh your recollection? A Why, it simply answers, or, rather, it confirms the statement I made yesterday in the matter of the letter that was shown that purported to be the one that I was instructed

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William J. Shearer, Jr., for complainant, direct.

by Mr. Schaffer to send him. This is the answer to my letter.

By the Vice-Chancellor.

10 Q I understood you to say that you did not see him after 1919, and that thereafter you had your attorneys see him? A That is correct.

Q And he says he did not see you in 1919, but he did see you in 1925? A That is his statement, but this ties up the other matter. I believe Mr. Schaffer claimed that I went to see him, and then he asked me to write him a letter, and that that was the letter he had received in answer to my call. This is the letter I received in answer to my letter, which he has included in the exhibit.

20

By Mr. Engelke.

Q And your letter to him is marked Exhibit D. 1, and this is Exhibit C. 4—is that right? A I don't know; I did not notice the marking.

Q Mr. Shearer, in the year 1919, on October 22d, did you, or did you not receive a notice to redeem lots 217, 219 William avenue, in behalf of the Elizabeth Heights Realty Company? A I did not.

30

The Vice-Chancellor: What does the notice to which you refer purport to show?

Mr. Engelke: It is attached to Certificate of Tax Sale No. 2493. We referred to it by those numbers.

Mr. Wagner: May I say, to save time, that there is no contention on our part to indicate that there was ever any service made on this young man. We served his father as to these pieces.

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William J. Shearer, Jr., for complainant, direct.

Mr. Engelke: Oh, well, that is due to the similarity of names.

The Vice-Chancellor: They point out to you now that they do not pretend to have served this witness.

Mr. Wagner: This man's name is "William J. Shearer, Jr.;" we have numerous documents in which both names appear in the documents—one is the father and the other is the son.

10

The Vice-Chancellor: Your contention is that you served the father?

Mr. Wagner: We served the father, as the president of the company.

Mr. Engelke: One minute—Mr. Wagner has probably misspoken himself when he says he served him as president of the company. I think your Honor will be bound by the affidavit, and the affidavit which I am reading now says that he served it upon "William Shearer, Incorporator, at his home, No. 1100 Anna street, Elizabeth, New Jersey."

20

Mr. Wagner: Well, that is a matter of proof.

Mr. Engelke: I know, but it might appear in the evidence that this man (referring to the witness) Shearer, was president. We do not concede that, and there is nothing here to prove it.

30

The Vice-Chancellor: That is the reason I asked you what the purported notice was—in other words, who was said to have been served, and under what circumstances?

Mr. Engelke: Well, I guess I am probably to blame for it, but I misunderstood the names, or the identity of the persons.

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William J. Shearer, Jr., for complainant, cross.

By the Vice-Chancellor.

Q This letter that was just offered in evidence today, Exhibit C. 4, was that a letter received by you—or it must have been received by you, because your father was dead at that time? A That is correct.

By Mr. Engelke.

Q Mr. Shearer, when did your father become ill? A Why, in 1912.

Q Was he residing at 1100 Anna street in October of 1919? A He was.

Q Was he about, attending to his business, at that time? A He was, partly.

20 The Vice-Chancellor: My recollection is that this witness says that his father, in his behalf, had been having some negotiations with Mr. Schaffer about that time?

Mr. Engelke: Yes, that is true. I think that is all.

The Vice-Chancellor: Now, this statement you made, Mr. Wagner, as to the service upon Shearer, Sr.—does that apply to all these notices we have here in this case?

30 Mr. Wagner: Yes, sir; the services were all made on this gentleman's father; and as to the sufficiency of it, we will leave that to your Honor, of course.

Cross examination by Mr. Wagner.

Q You testified yesterday, in the other case, that the only time you saw Schaffer was in 1919? A Right.

40 Q That is correct? A There is this difference—I had seen him in the tax office in Eliza-

William J. Shearer, Jr., for complainant, cross.

beth, but I had never been in his presence; there is that qualification that I had better make. I did see him in the tax office, simply at a distance, but not in any way was I concerned in any manner of conversation with him.

By the Vice-Chancellor.

10

Q I suppose counsel wants to know if you met him and talked to him? A No, sir.

By Mr. Wagner.

Q Did you, at your conversation in 1919 there, discuss all the matters at issue between you? A No, I did not; I could not; I tried to.

Q But he would not let you? A He would not let me.

Q But you were there to redeem Elizabeth Heights property? A I was there only to redeem, at that time, the West Grand street property; at that time the other property had not been sold, and it was simply the West Grand street property that was involved.

20

Q And the Elizabeth Heights property was not yet involved? A As I recollect, it was not involved, to the extent that there had been any notices served on either myself or any member of the family, or any of the officers, that I know of.

30

Q Then this admission that we have made on the record, and that you heard, is qualified to this extent—that in October of 1919, you made no offer to redeem the Elizabeth Heights property? A I did not.

Q Did you ever make any offer to redeem the Elizabeth Heights property to Mr. Schaffer? A I did not.

Q The only offer that you made to redeem this property—the Elizabeth Heights property, which

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William J. Shearer, Jr., for complainant, cross.

is the subject-matter of this suit—then, was in March of 1925, when you went with Mr. Seligman to the office of the City Treasurer—is that correct? A Except through my attorneys there was that effort made; I did not do that personally.

10

By the Vice-Chancellor.

Q Well, what effort was your father making—was that relative to the Elizabeth Heights property? A Yes, it was; I am wrong there, I am wrong. I, individually, however, did not do that.

By Mr. Wagner.

Q Did you accompany your father on any effort that he made? A I did not.

20

Q Do you know, of your own knowledge, of any interview of your father with Mr. Schaffer for the purpose of attempting to redeem the Elizabeth Heights property? A I did not accompany him on any of the attempts—

Q You can answer that, yes, or no—do you, of your own knowledge, know of any effort on the part of your father to redeem from Mr. Schaffer, the property which is the subject-

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matter of this suit? A I never saw him, no, sir. Q Cannot you answer that question “Yes” or No.?”

The Vice-Chancellor (to cross examining counsel): It seems to me that if you ask that on his knowledge, aside from the way he answers, he might try to inject some information imparted to him by his father—he may think that was within his knowledge.

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Mr. Wagner: I see.

William J. Shearer, Jr., for complainant, cross.

The Witness: That is a question I could not determine.

Q Of your own knowledge, am I correct in saying that there is none, but that you may have some knowledge as told you by your father?

A That is correct.

10

Q So far, however, as to any effort to which you are able to testify, the effort to redeem the premises that are the subject-matter of this suit consisted in the conversations testified to by Mr. Wolfskiel, by Mr. Simon, and by your own visit to the City Hall in March of 1926—is that correct? A Plus the attempts of my father—that is correct.

Q Well, I mean, excluding any attempts of your father (of which you have no knowledge), what I have stated is a correct recital of all the attempts made to redeem this property—is that correct? A That is correct; right.

20

Q And there are no other details, or offers, or dates, or tenders, excepting those that are included in that statement—is that correct? A I know of no others.

Q You know of no others? A That is right.

By the Vice-Chancellor.

30

Q Does that statement you have just made include any correspondence that passed between you and Mr. Schaffer? A No, that was exclusive of that.

By Mr. Wagner.

Q The letter which is marked D. 1, you wrote in 1925? A Right.

Q And you have it undated, but you identify the date by the response that you received from

40

William J. Shearer, Jr., for complainant, cross.

Mr. Schaffer? A Plus the items that I received from Wiltsie and Harrington, which were sent out in the same mail.

Q Well, that is not any correspondence between you and Mr. Schaffer, is it? A No, sir.

10 Q Now, the correspondence between you and Mr. Schaffer consists of this letter, D. 1, plus his reply, which is C. 4, in this case? A That is correct.

Mr. Wagner: This letter was in the other case, your Honor.

The Vice-Chancellor: Well, when you gentlemen come to write up your memorandums, you can straighten this thing out.

20 Q When I say, "D. 1," I am referring to the letter D. 1, which was an exhibit in the Shearer-Schaffer case? A That is true.

Q You understood that, Mr. Shearer? A Yes, sir.

Q Now, that concludes the correspondence, and sums up all of the correspondence that there was between you and Mr. Schaffer in the controversy between you and him, both in the Shearer case and in the Elizabeth Heights case
30 —am I correct? A I believe so; that is right.

Q Is there any that you have forgotten? A Why, of course I couldn't say that, but I do not believe that I have.

Q You think your recollection is fairly accurate on that? A I do.

Q And that there is no other correspondence? A I feel that way.

40 Q And that these two letters, therefore, D. 1, of the Shearer case, and C. 4 of the present case, constitute all the writings that ever passed

William J. Shearer, Jr., for complainant, cross.

between you and Mr. Schaffer from the initiation of the controversies between you respecting both the West Grand street property and the Elizabeth Heights property, touching any angle of the controversy? A To the best of my knowledge and belief. It has been an awful long time; I cannot judge. 10

Q Mr. Shearer, you made no other offer to redeem, nor did anyone else make any offer to redeem from Mr. Schaffer, or from the Comptroller of Elizabeth, of the premises that were the subject-matter of this litigation, excepting those that you have already testified to and are in evidence? A To the best of my knowledge and belief.

Q Mr. Shearer, you were asked to bring with you records of the Elizabeth Heights Realty Company, were you not? A Right. 20

Q Have you brought them? A I have.

Q Will you tell me what records you have brought? A The stock book, the transfer book and the minute book.

Q And you have them here? A Right.

Mr. Wagner: May I see them, Mr. Engelke?

Mr. Engelke: I do not see what the object of the inspection of these books can be; I cannot conceive of its relevancy or materiality. While we have produced them according to the request of the subpoena, and also according to the demand of the notice, I object to them being offered in evidence, because they are not competent, relevant or material to any issue in this cause. 30

The Vice-Chancellor: Wherein do you consider they are material or relevant? 40

William J. Shearer, Jr., for complainant, cross.

Mr. Wagner: In this wise, your Honor—I may be pardoned if I interpolate a fact—

The Vice-Chancellor: Go ahead; I want to know what your reasons are.

10 Mr. Wagner: There was a sale by the City of property which was held in the name of the Elizabeth Heights Realty Company; at that time, however, it was owned by the Elizabeth Heights Realty Company, but it was assessed on the books of the City of Elizabeth as against the Modern Homes Realty Company. The Modern Homes Realty Company was a corporation with liabilities against it, and conveyed this property to the Elizabeth Heights Realty Company. The law requires that if we desire to perfect our title, we shall ascertain who the owners are—

20 The Vice-Chancellor: And all parties in interest.

30 Mr. Wagner: —and serve the parties in interest, yes, sir; for that purpose we examined the records, and we applied to the Secretary of State to find out, by their annual report, who were the directors, and who were the persons in control of the Elizabeth Heights Realty Company, and we are informed that they never filed any annual statement from the time of the incorporation to the period of their non-payment of taxes and to the period of their reinstatement. We find only one report, and that a report made recently of the fact of reinstatement, to give them a standing in court at the present time; and, therefore, we are without the information which, by law, they should have given us in order to proceed

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William J. Shearer, Jr., for complainant, cross.

under our rights by purchase of these certificates. We asked them, therefore, to bring their records. If we were wrong, and the Secretary of State was wrong, and if there was information available to us, let them show it; if they cannot show it, we are entitled to rely upon such information as, in a meagre way, was made possible by their dereliction of duty. 10

The Vice-Chancellor: That is your offer, is it—that is your reason for the request for these books?

Mr. Wagner: That is the reason we want the books in this case.

The Vice-Chancellor: Now, Mr. Engelke, evidently what they are seeking is confirmatory evidence as to whether these books will indicate that the person that they considered to be the officer of the corporation on whom they might and should serve a notice was the person that they really did serve the notice upon, in other words, William J. Shearer; I presume that is the one they served, is it not? 20

Mr. Wagner: Yes, sir.

The Vice-Chancellor: What objection can you have to that? Of course, I appreciate that, in a tax sale, you are not obliged to furnish information to the purchaser; the purchaser at a tax sale has the difficult matter cast upon him of ascertaining on whom it is his duty to serve notice; it is his duty to serve notice upon all parties in interest, as well as the owner of record. Now, of course, how he gets the information is a difficult matter. 30 40

William J. Shearer, Jr., for complainant, cross.

10 Mr. Engelke: My answer is a complete answer to the contention. The proofs, I think Mr. Wagner will agree with me, are that the notices were served on the Elizabeth Heights Realty Company, if served at all, by mailing to the various "incorporators," so named. Now, I presume the names were obtained from the corporation; I don't know. Now, there is a statute, if your Honor please, just intended to cover that situation.

The Vice-Chancellor: The 1921 Act, is it?

20 Mr. Engelke: Oh, no; Comp. Stat., Vol. 2, p. 1626, sec. 43a, which is a statute adopted in 1900, p. 314. Now, I will summarize that statute—it is quite a lengthy statute. It is a statute which provides that if a corporation is derelict (as our friend claims that the Elizabeth Heights Realty Company was) in not filing its report and showing the names of their officers and directors, there is a method pointed out for the service of process, or any other paper, by serving it on the Secretary of State.

30 The Vice-Chancellor: I was going to say that you would not consider a notice of that kind "process," would you?

40 Mr. Engelke: Oh, no; it says "process or other paper," if you will look up at the top. That is my recollection of it. And I feel, under these circumstances, that if our records were produced and did show that the various persons named as incorporators were incorporators, it would be immaterial, because that is not the method whereby they should serve this corporation. There is the

William J. Shearer, Jr., for complainant, cross.

method pointed out (referring to the statute just cited by counsel).

The Vice-Chancellor: You say that that act was in force and operative at the time of the sale in question, notwithstanding the enactment of the tax act of 1903, and the procedure therein prescribed?

10

Mr. Engelke: Yes, sir; that act continued in operation down to date, and has not been amended, and I can refer your Honor to three cases where three of the courts of this State have decided that that act is constitutional, and service in that manner is good service.

The Vice-Chancellor (after further discussion): Well, he is asking for the production of these papers.

20

Mr. Engelke: Well, I resist it on this ground, that we do not care to have our books examined to find out who are our stockholders and who are not. I do not think it is necessary.

The Vice-Chancellor (to Mr. Wagner): What is it you wish to ascertain from these books?

Mr. Wagner: I want to ascertain, at the time we served them, who their officers were.

30

The Vice-Chancellor: What objection could there be to that?

Mr. Engelke: I say it is objectionable in this case—

The Vice-Chancellor: You are in a court of equity, and you are seeking equity, and you are not to be governed by the strict rules of law. If you are seeking equity, you must do equity. Now, you claim that

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William J. Shearer, Jr., for complainant, cross.

they did not serve you; they say they did; now, if they did not, the production of your books ought to help you; and if they did serve you, the production of your books may help them.

10 Mr. Engelke: Their proof is not, as I have indicated, that they served the president, but that they served "William J. Shearer, Incorporator," and, again, "Mr. Charles S. Woods, Incorporator."

The Vice-Chancellor: Don't they say "by delivering a copy thereof to somebody?"

Mr. Engelke: No, sir—"by leaving the same with William J. Shearer, Incorporator."

20 The Vice-Chancellor: "Incorporator?"

Mr. Engelke: "Incorporator." Now, I say they cannot come into court now and say "We are going to prove he is president." They have simply served an "incorporator." If Mr. Wagner wants us to admit he was an incorporator, we will certainly admit it. I will admit that the other people named were incorporators; but I say it is not material whether they were presidents, or vice presidents, or who they were.

30 The Vice-Chancellor: If you claim that they did not serve Mr. Shearer as president, and he, in fact, was president at that time, what harm can it do you?

40 Mr. Engelke: Why, this is the reason I urge it, that it is not material. What materiality can there be to it, if he was president; if their proofs show that he was an incorporator, that is as far as they can go, your Honor; they cannot go beyond that.

William J. Shearer, Jr., for complainant, cross.

Or what help is it to them if they do go beyond it? Your Honor is powerless to amend these affidavits now, and say they served the president.

The Vice-Chancellor: The purchaser has got to stand or fall upon the facts, whatever they are; he cannot correct any omissions at this late day; that is one of the burdens that is imposed upon a purchaser at a tax sale; there is a lot of difficulty put in his way to ascertain the names of the parties that he must serve; sometimes it is deemed quite impossible to do it; but there is one case that holds that, no matter how impracticable it may be, that is a duty that devolves upon him, and if he finds he is not able to do it, that is his misfortune. But I had in mind that there is no materiality to the books in question, and I am somewhat of the same opinion yet; tho', on the other hand, I cannot see why you want to conceal the fact as to who these officers were at that time.

Mr. Engelke: I have no desire to conceal it, whatever, your Honor, but it is not material to the case here.

The Vice-Chancellor: Well, if it can do you any harm, then I suppose you would like to keep it out.

Mr. Engelke: Well, it is hard to presage what harm it may do; I am not a prophet, I cannot see how far it may reach.

The Vice-Chancellor: Well, you have worked out your case, and have evidently had this in mind; so you ought to know what the legal effect of it ought to be, or have some idea of it, anyhow.

William J. Shearer, Jr., for complainant, cross.

Mr. Engelke: I worked it up on this theory—that their proofs show that they have served it on incorporators, and I am willing to admit that these people were incorporators; now, they cannot ask us to go further than that.

10 The Vice-Chancellor: On the semblance of the thing, as you read it—merely that they served the notice on “John Jones, an incorporator”—it is practically meaningless in law; they will have to show some person in that corporation upon whom they served it for and in behalf of the corporation. I think you had better defer the production of these books until you complete the rest of your case, Mr. Wagner.

20 Mr. Wagner: Well, we have not started our case, your Honor.

Mr. Engelke: May I add this, your Honor: If the books were produced they would not show who the officers were at that time, because those minutes are lost; so that answers that, as far as the books are concerned.

30 The Vice-Chancellor: Well, if that be so, why not produce the books and save ourselves the trouble of passing on this question?

Mr. Engelke: Well, the books do not show anything.

40 The Vice-Chancellor: Well, if they do not show it, they cannot get any benefit. I will not permit counsel to go delving into the books to ascertain anything but that which he seeks at this particular time. Now, if you think they are going to pry into your books, I will say now he will not be

William J. Shearer, Jr., for complainant, cross.

permitted to; but he seeks information as to a particular time; you say it is not available to him.

Mr. Engelke: We have only the minutes in 1926. That is the only book we have which will show the officers.

The Vice-Chancellor: Well, why not let him look at the books, and save all of this controversy? 10

Mr. Engelke: If your Honor will rule that the matter of the stock book, and stock ledger, is not material—

The Vice-Chancellor: I will say this now: that my impression is that he has no right to pry into the affairs of your corporation to bolster up his own case, and for the purpose of ascertaining whether or not he served the proper persons; but, on the other hand, as I have said, you are in a court of equity now, not a court of law, and the fact that you have the books in court and will not produce them may have some impression on me later. 20

Mr. Engelke: Well, what book do you call for?

Mr. Wagner: I ask for any and all books, papers or records— 30

The Vice-Chancellor: Well, that is too general.

Mr. Wagner: All right; I ask for the records which will show the names of the officers and directors of the Elizabeth Heights Realty Company from the time of its incorporation up to the time that we served them.

The Vice-Chancellor: I will refuse that. 40

William J. Shearer, Jr., for complainant, cross.

Mr. Wagner: I will amend that, and ask that they be shown to indicate who the officers or directors were at the time of the service upon them of this notice.

10 The Vice-Chancellor: Well, you had better put the date in, because they are disputing the service.

Mr. Engelke: I object to it, because we do not admit that he served them.

Mr. Wagner: October 22d, 1919.

Mr. Engelke: My answer is that I have no book that will show that; no record that will show that.

The Vice-Chancellor: Well, you have a book—

20 Mr. Engelke: I am perfectly willing to show it to your Honor, and have your Honor decide whether or not there is anything in it. There is the book, and it is all we have. Your Honor will find that it has merely to do with the incorporation, that is all. (Handing a book to the Court.)

30 The Vice-Chancellor (after examining the book): I think you ought to show that to counsel, because that indicates that the minutes in this book which you produce are of the meeting of September 21, 1926, and that appears to be the only minute in the book. Now, I think you might show counsel that, and then satisfy him that you are not withholding any admission from him, as far as that book is concerned; but I should say, Mr. Wagner, you ought not to read these minutes, as long as they are in 1926.

William J. Shearer, Jr., for complainant, cross.

Mr. Wagner: No, I do not intend to familiarize myself with them; they are of no import to me.

By Mr. Wagner.

Q I show you a book, marked on the outside of it, "Elizabeth Heights Realty Company," and which contains printed matter therein, and type-written matter, and ask you if that book will show the names of the officers and directors of Elizabeth Heights Realty Company as of October 22, 1919? A It will not. 10

Q I ask you if you have, or if the Elizabeth Heights Realty Company has, any book or any record which will show the names of the officers and directors, as of October 22, 1919? 20

Mr. Engelke: I object to the question, on the ground that it is immaterial.

The Vice-Chancellor: I will admit it. He is asked if he has any record of the kind.

A No.

Q Your answer is that you have not? A That is right.

By the Vice-Chancellor. 30

Q And you are the secretary of this corporation, are you? A That is right; I am president now; I was, at that time, secretary and treasurer.

By Mr. Wagner.

Q At the time that you were the secretary, was not your father the president?

Mr. Engelke: I object to the question, because it is not involved in the case. 40

William J. Shearer, Jr., for complainant, cross.

The Vice-Chancellor: I do not think I ought to permit that; there is other evidence that you could produce of that, I presume.

10 Mr. Wagner: Well, yes; we have admissions of Mr. William J. Shearer, himself; so far as the records are concerned, they never kept any; they never left any with the Secretary of State; the thing is barren, not only as to the Elizabeth Heights Realty Company, but the Modern Homes Realty Company. All the records we could find were judgments.

Mr. Engelke: I think that speech is very pretty, but it is not necessary.

20 The Vice-Chancellor: Following up what you are saying, if you followed it up with the proceedings in which these judgments were entered, would it not have indicated upon whom service of process was made in those cases?

Mr. Wagner: On William J. Shearer, your Honor.

The Vice-Chancellor: I say, would it not have indicated upon whom service of process was made?

30 Mr. Wagner: Well, these judgments ranged in an unbroken series from 1912 down to the death of Mr. Shearer.

The Vice-Chancellor: I think I will permit counsel to ask that question, Mr. Engelke; I do not see any particular harm from it, and I think he ought to know who the officers of the corporation were in 1919. I will permit that, over your objection.

40 Q (Last question repeated.) A He was president.

William J. Shearer, Jr., for complainant, cross.

Q Your father, William J. Shearer, was president? A Right.

Q And your father was the president from the time of the incorporation down to the date of his death?

The Vice-Chancellor: Well, now, that certainly is capable of better proof than his statement in that respect. I will overrule that question. 10

Mr. Wagner: If your Honor please, he was the secretary all the time.

The Vice-Chancellor: I know he was, but he may not have attended the meetings at which the directors elected the officers.

Mr. Wagner: They never had a meeting. 20

The Vice-Chancellor: Well, you say that, but we do not know that, as matter of fact.

Mr. Wagner: His testimony is that there are no records of any meetings of any kind.

The Vice-Chancellor: Well, there may not be a record of them, but that does not show that there were no meetings.

Mr. Wagner: I want to show the date of all of these notices. October 22 is the date of the service of all of them. I will confine myself to that single date. 30

The Vice-Chancellor: I have in mind, too, Mr. Wagner, that you allege that the service was made in October, 1919, upon William J. Shearer, as president of this corporation, the purpose of which was to cut off the right of redemption of the corporation as to this property.

Mr. Wagner: Yes, sir. 40

William J. Shearer, Jr., for complainant, cross.

10 The Vice-Chancellor: Now, no action was taken by you people thereafter by way of foreclosing the equity of redemption, nor was any other proceeding taken. It appears that Shearer died in December, 1924. What I am giving a little thought to at this moment is whether or not you may not come within those principles of law which are applicable in equity that a court of equity looks somewhat askance upon an endeavor to give testimony attributable to one who is long since dead, and against whom proofs might have been readily produced during his lifetime, when he had a chance to speak. I am only calling that to your attention, so that when you are preparing the memorandum of this 20 you will give some thought to it. I do not see, off-hand, any good reason why that should be strictly applicable to this case, but I am calling your attention to it for whatever benefit there might be in it.

30 Mr. Wagner: Except that I point out that service was made on October 22, 1919, and that Mr. Shearer had from 1919 until now to avail himself of the legal remedies; that the only evidence of effort to redeem as to this property, which is at all cognizable in law, is the effort made to redeem in March of 1926.

The Vice-Chancellor: No, this witness testifies that in 1919—no, did he testify as to 1919 with respect to this corporation?

Mr. Wagner: No; as to this property, he said he made no tender to redeem, because that was not yet a matter of controversy.

40 The Vice-Chancellor: All right; I had in mind the 1919 incident.

William J. Shearer, Jr., for complainant, re-direct.

Mr. Wagner: And if they withhold records, and if they die, the thing is for them to initiate proceedings. If there was anything for us to do, and we slept on our rights, I think your Honor's comment would be very applicable.

The Vice-Chancellor: Well, you have elicited, anyhow, now, just what you wanted to elicit, so far as these records are concerned, in so far as you have elicited it—in other words, the records are quite negative. 10

Mr. Wagner: There are no records; the president is dead. The secretary of the corporation at that time is here under oath, and says he was the president.

The Vice-Chancellor: But your affidavit does not say that you served it upon him as president. That you may have to deal with hereafter. 20

Mr. Wagner: Yes; that is for your Honor to determine hereafter.

The Vice-Chancellor: I am only advert-
ing to that because counsel adverted to it.
Is there anything else?

Mr. Wagner: That is all, your Honor.

Re-direct examination by Mr. Engelke. 30

Q You were asked, Mr. Shearer, whether or not your father attempted to make any redemption of this property of the Elizabeth Heights Realty Company between 1919 and the time you took the matter up in 1926 with the collector of taxes, and I direct your attention to a letter dated December 22, 1919, to Mr. Morris Steinberg, in care of Judge Abe David, and a letter from Mr. Karl F. Schaffer to William J. Shearer, 40

William J. Shearer, Jr., for complainant, re-direct.

dated January 5, 1920, and ask you if those two letters are not the ones which were written, first by your father, and the reply by Mr. Schaffer to him, relating to the Elizabeth Heights property?

10 The Vice-Chancellor: Well, from that concession Mr. Wagner made, that all of that testimony is in this case, this testimony that you are now eliciting is in the other case.

 Mr. Engelke: Yes, but the exhibits are not marked in this case; that is the purpose of my question.

 The Vice-Chancellor: Oh, all right.

20 A That is correct.

 Mr. Engelke: I would like to have these marked in this case.

 (The two papers referred to were there-upon admitted and marked, respectively, Exhibit C. 5 and Exhibit C. 6.)

30 The Vice-Chancellor: And the testimony given by this witness on direct, cross and re-direct examination, if any, in the Schaffer-Shearer case stands in this case as it did in the other—that is right, is it not?

 Mr. Wagner: Yes, sir.

 Mr. Engelke: I also want to offer in evidence in this case the letters from Charles H. Wiltsie and Harrington Company to William J. Shearer; they have both been marked in the other case.

 Mr. Wagner: Are they in the other case?

40 Mr. Engelke: They are.

Armwell W. Lasell, for complainant, direct.

Mr. Wagner: May I see them, Mr. Engelke?

(The letters referred to were thereupon handed to Mr. Wagner for his inspection.)

Mr. Wagner: No objection to them.

(The two letters were thereupon admitted and marked, respectively, Exhibit C. 7 and Exhibit C. 8.) 10

Mr. Engelke: I also desire to offer in evidence in this case the comptroller's searches on the William avenue property, made for Mr. Simon and marked in the other case.

Mr. Wagner: No objection.

(Admitted and marked, respectively, Exhibit C. 9 and Exhibit C. 10.)

Q Do you know where your brother, Ralph L. Shearer, resided on March 23, 1919? A Generally, yes—in Newark; I cannot remember, at the present moment, the address. 20

Mr. Engelke: That is all, with reference to Mr. Shearer.

ARMWELL W. LASELL, sworn. 30

Direct examination by Mr. Engelke.

Q Where do you reside at the present time?
A Brooklyn—920 East Tenth street.

Q Were you an incorporator of the Elizabeth Heights Realty Company? A I was.

Q Where did you reside on October 23rd, 1919? A On October 23rd, 1919—304 East Seventieth street. 40

Armwell W. Lasell, for complainant, direct.

By the Vice-Chancellor.

Q Where is that? A New York City.

By Mr. Engelke.

Q Did you, on October 23rd, 1919, reside at
10 435 East Sixty-sixth street, New York City? A
I think so.

Q Well, I do not want what you "think," I
want to have the best recollection you have—
did you reside there, according to the best
recollection you have? A Well, I did live there
at one time.

Q Do you know when you moved away from
there? A Well, it has been fifteen years—
fourteen or fifteen years.

Q Since you resided at that address? A
20 At that address—at 435 East Sixty-sixth.

Q Did you ever, at any time, receive a notice
to redeem property known as 203-205 William
avenue? A No, I never did.

Q Did you ever receive notice to redeem Lots
217 to 219 William avenue? A No, I never did.

Q Did you ever receive notice to redeem
Lots 181 to 183 William avenue? A Never did.

Q When you removed from 435 East Sixty-
30 sixth street, New York City, where did you move
to? A I moved to Elmhurst, Long Island.

Q Did you leave any forwarding address at
the time you moved? A With the post office
I left a forwarding address.

Q Was any mail forwarded, coming to that
address? A Well, I have received mail from
there, yes.

Q But you, at no time, received a notice to
redeem the various parcels that I have just
40 mentioned, directed to the Elizabeth Heights

Armwell W. Lasell, for complainant, cross.

Realty Company, or to yourself as incorporator, did you? A No, I did not.

Cross examination by Mr. Wagner.

Q Are you related to any of the Shearers?

A I am.

10

Q What relationship? A Why, Mr. Shearer is my brother-in-law.

Q Which Mr. Shearer—William J. Shearer, Jr.? A William J. Shearer, Esq.

Q Are you a brother-in-law of this young man (referring to the previous witness, William J. Shearer, Jr.)? A No.

Q You are a brother-in-law of his father?

A His father.

Q Who is now dead? A He is dead now.

20

Q And you are the Mr. Lasell who was an incorporator of the Elizabeth Heights Realty Company? A I am.

Q Did you have any connection with the company beyond being an incorporator? A That is all; I was one of the incorporators.

Q You lent your money to your brother-in-law for use in the organization of the company?

A I had some stock in that company.

Q Were you an officer of the company? A

30

I was a director.

Q A director? A Yes.

Q Were you a director in October 22, 1919?

Mr. Engelke: I object to the question.

The Vice-Chancellor: I will admit it; I don't think you ought to bring out part of it, and not the rest of it; I will admit it.

A No.

40

Armwell W. Lasell, for complainant, cross.

Q When did you cease to be a director?

Mr. Engelke: I object to the question, as not being material.

10 The Vice-Chancellor: Well, how is it material, if he was not a director at that time?

Q Were you in any way interested in the Company in October, 1919?

Mr. Engelke: I object to the question.

The Vice-Chancellor: I will admit it.

A No.

Q What is your answer? A No.

20 Q You were not? A No.

Q At the time of the incorporation you gave your address as 435 East Sixty-sixth street, New York? A That is correct.

Q And that was the correct address, was it not? A That was the correct address.

The Vice-Chancellor: What was the date of the incorporation?

30 Mr. Wagner: The date of the incorporation was 1911, your Honor.

Mr. Engelke: Cannot we have the exact date, Mr. Wagner—I don't know it myself.

Mr. Wagner: April 19, 1911, is the date on the copy of the certificate.

The Vice-Chancellor: What is the date of the filing of the certificate, if you have it there?

40 Mr. Wagner: Filed and recorded April 22rd, 1911.

Armwell W. Lasell, for complainant, cross.

Q You had no cause for complaint on account of inability to have mail forwarded to you?

A No, I did not, only I received everything that was forwarded to me, as far as I know; but I did not receive any mail from the Elizabeth Heights Realty Company, or in regards to that.

Q Where did you live on October 23rd, 1919? 10

A 304 East Seventieth street.

Q Where did you live fifteen years ago? A Well, to the best of my knowledge, it was 435 East Sixty-sixth—wait a minute— 435 East Sixty-sixth.

Q When did you move from there? A Well, it was in the spring; I cannot recollect what year it was.

Q You don't know what year you moved? A Well, I don't know now. 20

Q What did you say? A I don't, at the present; but of course I can find that out easy enough.

Q And what you state as to the time that you moved is somewhat of a vague recollection, is it not? A It is; it was about then.

By the Vice-Chancellor.

Q But you said "fourteen or fifteen years ago?" A Fourteen or fifteen years ago. 30

Q Is that a vague recollection, or is that fairly accurate? A That is fairly accurate.

By Mr. Wagner.

Q Well, how are you able to say—you tell me is it a vague recollection, and you tell the Court it is fairly accurate—cannot you fix something in your mind which justifies you as to the accuracy? A Well, not exactly; I lived 40

Mrs. Mabel S. Graff, (recalled) for defendant, direct.

where I am now a year then I lived in Seventieth street eleven years, and I lived in Elmhurst nearly three years.

By the Vice-Chancellor.

10 Q And those residences were all subsequent to the time that you lived in this address to which your attention has been directed by counsel? A They were, your Honor.

The Vice-Chancellor: That seems to make fifteen years, that he has accounted for, Mr. Wagner.

Mr. Wagner: Yes, sir; I think the witness is trying to tell the truth.

20

THE COMPLAINANT RESTS.

THE CASE FOR THE DEFENDANT.

MRS. MABEL S. GRAFF, recalled.

Direct examination by Mr. Wagner.

30 Mr. Wagner: I offer in evidence, your Honor, the certificate of the Secretary of State, setting forth the various appointments of Mabel Seibert as a notary public, from the Secretary of State at Trenton (handing the same to Mr. Engelke for his inspection).

Mr. Engelke: No objection.

(Admitted, and marked Exhibit D. A. 1.)

40 Mr. Wagner: I offer in evidence certificate of the County Clerk of Union County, showing the qualification of Mabel Seibert, on April 22, 1909, as notary public.

Mrs. Mabel S. Graff, (recalled) for defendant, direct.

The Vice-Chancellor: Do you mean to say that she qualified on April 22, 1909?

Mr. Wagner: I have three of them, and I presume I have the wrong one.

The Vice-Chancellor: I mean that one you just read, because this certificate only indicated that the commission was dated on the 22nd, and I was wondering how it got to her so quickly. 10

Mr. Wagner: That is what it says, that she qualified on the 22nd.

The Vice-Chancellor: All right.

Mr. Engelke: No objection.

(Admitted, and marked Exhibit D. A. 2.)

Mr. Wagner: I offer in evidence certificate of the County Clerk of Union County, showing the qualification of Mabel Seibert (with the words after it "nee Graff") on June 19, 1919. 20

Mr. Engelke: If the Court please, to this certificate I certainly do object. This is just in line with the proofs we have. It says—"This is to certify that Mabel Seibert (in parenthesis, after it, 'nee Graff') has been duly commissioned a Notary Public by commission dated June 19, 1919." Now, that is the second one, I take it, that is mentioned there. Now, if the Court please, Mabel Seibert Graff— 30

The Vice-Chancellor: That is the third one.

Mr. Engelke: Well, that is not a qualification for Mabel Seibert Graff, it is a qualification for Mabel Seibert.

The Vice-Chancellor: That remains to be seen. I will admit that, subject to your 40

Mrs. Mabel S. Graff, (recalled) for defendant, direct.

objection. (The paper is marked Exhibit D. A. 3.)

By the Vice-Chancellor.

10 Q When were you married? A August 16, 1919.

The Vice-Chancellor: Well, how could that be, Mr. Wagner?

Mr. Wagner: I can explain that, your Honor; and if Mr. Engelke puts me to it, I will have to bring the County Clerk's force up here.

20 The Vice-Chancellor: Well, what I want to direct your attention to now is that the lady says she was married in August, 1919, and you offer in evidence a certificate bearing date June, 1919, which indicates on its face that her name was "Seibert, nee Graff."

Mr. Wagner: Well, that is what I want to point out, your Honor. Now, if your Honor puts me to it—

30 The Vice-Chancellor: I am not "putting you to it," I am just calling your attention to it. I do not know what significance it is going to have, but you counsel had better bear it in mind.

40 Mr. Wagner: Mr. Engelke is putting me to it. I tried to shorten this as much as possible. The signature in the books of the County Clerk are "Mabel Seibert," her signature; the record of the appointment is "Mabel Seibert," and then afterwards, after Miss Seibert became married, she went to the County Clerk and showed him the correspondence between her and the Secretary

Mrs. Mabel S. Graff, (recalled) for defendant, direct.

of State, as to how she should continue to sign her name; and these words, "nee Graff," are written in lead pencil after the record of her name; they are not written in ink, they are written in lead pencil.

The Vice-Chancellor: You mean in lead pencil, in the record of the County Clerk's office? 10

Mr. Wagner: Yes, sir. The regular record is "Mabel Seibert," in ink. I asked the clerk to certify that to me, and I asked to bring the book along; that was refused me, and he said, "The only way I can certify to it now is as to the ink."

The Vice-Chancellor: If you gentlemen think there is any particular significance in that, you had better have a photographic copy of that made. 20

Mr. Engelke: I will have a photoscopic copy made.

Mr. Wagner: I will show your Honor that there are three cases (with which your Honor is, no doubt, familiar) which hold that the substance of an affidavit is the thing which counts, that the manner of the acknowledging officer as to her signature, or mistakes, have no bearing on the efficacy of the affidavit; that the affidavit is issued not as to a name, but is issued as to a person, and the person does not lose her identity through marriage. I offer in evidence, to show the continuity of this same witness acting as a notary from 1909 continuously to date, a certificate of the County Clerk, showing here appointment under her married name as "Mabel S. Graff" on June 26, 1924, and her qualification as of that time. 30 40

Mrs. Mabel S. Graff, (recalled) for defendant, direct.

The Vice-Chancellor: I call your attention to the fact that you are in error in stating "continuously," because it appears now that the certificate issued April 22, 1914, expired April 22, 1919, and the next commission was dated June 26, 1919; so there was a lapse of some months.

10 Mr. Wagner: Oh, well, there was a long hiatus in it.

Mr. Engelke: I have no objection to it.

(The paper was thereupon marked Exhibit D. A. 4.)

20 Q I show you a paper, which is already an exhibit in this case, and relates to premises 181, 183 William avenue, to which is attached a notice addressed to Elizabeth Heights Realty Company, Morris Steinberg, Ralph L. Shearer and Mrs. Ralph L. Shearer, and on the back of which are what appear to be two affidavits, one by Charles L. Bauer, Jr., and one by Karl Schaffer, both dated October 23, 1919, and which bear, on the left, the name of "Mabel Seibert Graff," and ask you if you are the person therein mentioned? A I am.

30 Q I ask you when that paper was signed by the two respective parties? A On the day it was dated—on the 23rd of October.

Q And I ask you whether they signed it in your presence? A In my presence.

Q You know one by the signature of Charles Bauer? A Yes, sir.

Q And the other by that of Karl Schaffer? A Yes, sir.

40 Q Now, I show you papers that are already in evidence, relating to premises that are described as 203, 205 William avenue, to which

Mrs. Mabel S. Graff, (recalled) for defendant, direct.

is attached a notice addressed to Elizabeth Heights Realty Company, Morris Steinberg, Ralph L. Shearer, and Mrs. Ralph L. Shearer, on the back of which are what appear to be two affidavits, one in the name of Charles L. Bauer, Jr., and one in the name of Karl Schaffer, dated October 23, 1919, to both of which the name "Mabel Seibert Graff" is subscribed as the notary public, and ask you if you are that person therein mentioned as "Mabel Seibert Graff"? 10
 A I am.

Q I ask you if the persons therein mentioned, Charles L. Bauer and Karl Schaffer, signed those papers before you? A They did.

Q And on what day? A On the day they are dated.

Q I show you also a series of papers that are already in evidence, relating to the premises 217, 219 William avenue, and which contain a notice addressed to Elizabeth Heights Land Company, Morris Steinberg, Ralph L. Shearer, and Mrs. Ralph L. Shearer, and on the back of which notice there appear to be two affidavits, one of Charles L. Bauer, Jr., and one of Karl Schaffer, both dated October 23, 1919, and both appear to be subscribed to by a "Mabel Seibert Graff," and ask you if you are the person designated as "Mabel Seibert Graff"? 20
 A I am. 30

Q And if that is your signature, in both instances? A Yes.

Q And if the two respective parties appeared before you? A Yes.

Q And signed in your presence? A Yes.

Q On what day? A On the 23rd day of October, 1919. 40

Mrs. Mabel S. Graff, (recalled) for defendant, direct.

By the Vice-Chancellor.

Q That is the day they bear date, is it? A Yes, sir.

By Mr. Wagner.

10 Q I point out to you that the word "Seibert" is squeezed in between the word "Mabel" and the word "Graff," and that it appears to have been added on to the "S"—will you explain to me how that occurred? A Well, I was used to writing my name "Mabel S. Graff—

Q That is, from the time of your marriage? A From the time of my marriage—and then, knowing it was a legal paper, I wrote in "Seibert", in full.

20 Q Had you written "Mabel S. Graff" first? A First it was "Mabel S. Graff."

Q And then as an afterthought, you added the other? A On a second thought, I put in the additional letters.

Q At the same time? A At the same time.

Q Had there been some confusion in your mind at some time as to whether you should use the "Mabel S. Graff," or the Mabel Seibert Graff? A No, never as a notary.

30 Q When you were married there was some correspondence with the State as to how you should write your name, was there not?

Mr. Engelke: I object to the question.

The Vice-Chancellor: I will sustain the objection; I do not think it is material. In other words, you are adverting, I suppose, again, to the correspondence with the Secretary of State?

Charles L. Bauer, Jr., for defendant, direct.

Mr. Wagner: Yes. Well, I would like to bring it in for this case—or your Honor as already brought out the date of her marriage.

The Vice-Chancellor: Yes, I have. I was going to say that if you think it is significant, you can ask that question, and I can rule on it, and then you will have the benefit of the record. 10

Mr. Wagner: Oh, no.

The Vice-Chancellor: I do not think there can be any doubt, at all, that that correspondence she had with the Secretary of State cannot be regarded as any evidence in law.

Mr. Wagner: I agree with you. 20

The Vice-Chancellor: It was certainly informative for the notary, I think, and it was a good thing for her to do.

Mr. Wagner: Yes, sir; and I think your Honor's position cannot be controverted, that whatever the Secretary of State said would not make law; that her position is determined by the legality of the circumstances.

No cross examination. 30

CHARLES L. BAUER, JR., sworn.

Direct examination by Mr. Wagner.

Q Mr. Bauer, you are a title searcher? A Yes, sir; title searcher and real estate agent.

Q And have been for how many years past? A About twenty-two years, searching titles. 40

Charles L. Bauer, Jr., for defendant, direct.

Q You have been a title searcher for twenty-two years? A Yes, sir.

Q And have served process for Mr. Schaffer and Judge David, in their office? A Yes.

Q And you did so in 1919? A Yes, sir.

10 Q I show you a notice which is attached to an exhibit in this cause, relating to premises 181, 183 William avenue, addressed to Elizabeth Heights Realty Company, Morris Steinberg, Ralph L. Shearer and Mrs. Ralph L. Shearer, and which purports to be signed by Karl Schaffer, and on the back of which is an affidavit, or what purports to be an affidavit, made by Charles L. Bauer, on October 23, 1919, and ask you if the signature on the back is your signature? A It is.

20 Q And if that is your affidavit? A It is.

Q I ask you if you ever served any copies of this notice on anyone? A I did.

Q Upon whom did you serve a copy of this notice? A William Shearer, Sr.

Q When did you serve it? A On the date specified there.

Q That date is October 22nd, 1919? A Yes, sir.

30 Q I ask you to read over your affidavit and let me know whether the facts that you set forth therein are true?

Mr. Engelke: I object to that question.

The Vice-Chancellor: I will sustain the objection; he cannot very well characterize that.

40 Q You served on William J. Shearer? A Yes, sir—Senior.

Charles L. Bauer, Jr., for defendant, direct.

The Vice-Chancellor: Can you tell us the manner of service?

Q Where did you see Mr. Shearer? A At his home, 1000 and something Anna street, Elizabeth.

Q Well, you don't know the exact number, do you? A The exact street number, no; but I know the house very well. 10

Q Where is it? Do you know whether Mr. Shearer had lived there very long? A Oh, yes, as long as I can remember.

Q You have been there at other times? A I always knew where Mr. Shearer lived.

Q It is opposite Jefferson Park? A That is right.

Q Was anyone present when you served William J. Shearer? A I think Mrs. Shearer let me in. 20

Q Mrs. Shearer? A Yes.

Q Was anyone else present? A I don't think so.

Q Did you have any conversation with Mr. Shearer at the time you served him? A Well, I knew Mr. Shearer very well, and we sat there and talked for probably fifteen or twenty minutes.

Q Did you talk about the subject-matter of this notice? A I served this notice on Mr. Shearer; and Mr. Shearer told me— 30

Mr. Engelke: I object to what he told Mr. Bauer; this man is dead, and we cannot bring him here to contradict him. This is the rank-est kind of hearsay, I submit, especially in view of what your Honor, a moment ago, pointed out. This man is now deceased; he cannot talk; and that is one reason whereon, 40

Charles L. Bauer, Jr., for defendant, direct.

as your Honor knows, the statutory rule is founded.

The Vice-Chancellor: I will permit it, subject to your objection.

10 Q What did he tell you? A Why, Mr. Shearer told me that he was the owner and president of the Elizabeth Heights Realty Company—in fact that all of these companies were his. I knew that.

Mr. Engelke: I object.

Q You say you knew that? A I knew it.

Q How did you know it? A Because I knew Mr. Shearer very well.

20 The Vice-Chancellor: I do not think that is material; however, instead of hurting Mr. Engelke, it seems to me it helps him, because the fact is that it did not belong to that man; the fact appears to be, as it was brought out, that it belonged to the corporation. However, it stands for what it is worth.

Mr. Wagner: His phraseology was not that he was the owner of the property.

30 The Vice-Chancellor: Well, I do not think it is particularly material, but it is in now.

40 Q I show you a paper which purports to be a notice, attached to a certificate already in evidence, concerning 203, 205 William avenue, the notice being addressed to Elizabeth Heights Realty Company, Morris Steinberg, Ralph L. Shearer, and Mrs. Ralph L. Shearer, on the back of which is an affidavit by one Charles L. Bauer—purporting so to be—and ask you if the signature to that affidavit is your signature? A It is.

Charles L. Bauer, Jr., for defendant, direct.

Q And you took that affidavit? A I did.

Q I ask you if, at any time, you ever served any copy of this notice upon anyone? A On Mr. Shearer.

Q Which Shearer? A Senior.

Q William Shearer? A William J. Shearer, 10
Sr., I think it is.

Q On what day? A On the day specified in the affidavit.

Q The day specified is October 22d, 1919—did you serve it on that day? A That night.

Q That night? A Yes.

Q Where? A At his home.

Q In Elizabeth? A In Elizabeth.

Q On what street? A Anna street.

Q Was it served at the same time that you served the other notice of which you have spoken? 20
A It was.

Q I show you a paper which appears to be a notice addressed to Elizabeth Heights Realty Company, Morris Steinberg, Ralph L. Shearer and Mrs. Ralph L. Shearer, attached to what appears to be a certificate of sale for premises 217, 219 William avenue, and which paper is already in evidence in this cause, said notice being signed by a name purporting to be Karl Schaffer, on the back of which there appears 30
an affidavit bearing the name of Charles L. Bauer, Jr., and ask you if that is your signature?
A It is.

Q And I ask you if you subscribed it on the day on which it purports to be subscribed?
A I did.

Q I ask you if you ever made service of a copy of this notice upon anyone? A I did.

Q Upon whom? A William J. Shearer, at his home. 40

Charles L. Bauer, Jr., for defendant, direct.

Q When? A On the day specified in the affidavit.

Q That day is October 22, 1919? A That is right.

By the Vice-Chancellor.

10 Q You mean William J. Shearer, Sr.? A Yes, sir.

By Mr. Wagner.

Q These three to which you have testified were all served at the same time? A I think so; they so say.

Q They all bear the same date? A Well, then I served all three of them at that time.

20 Q Did you ever serve any other papers on Mr. Shearer? A I don't know; probably I did.

Mr. Engelke: I object to the question. What materiality has that?

The Vice-Chancellor: Well, there is no harm in him saying "Probably I did." That might or might not hurt you. Wait until the next question comes on.

30 Mr. Wagner: Well, it is a matter of corroborative proof, if your Honor please.

The Vice-Chancellor: Do you mean, that he knew the man?

Mr. Wagner: That he knew the man.

The Vice-Chancellor: You have enough evidence in to pretty strongly show that he knew him, it seems to me; now, it is up to the other side to controvert it.

Charles L. Bauer, Jr., for defendant, cross.

Cross examination by Mr. Engelke.

Q Mr. Bauer, you have served many notices for Mr. Schaffer, of a like character, have you not? A Quite a few, yes.

Q About how many? A I should judge, probably a hundred—seventy-five to a hundred. 10

Q And all in the City of Elizabeth? A Oh, no—Linden, Roselle and Elizabeth.

Q Confined to those three municipalities? A I think so, yes.

Q About equally divided between the three municipalities? A No, I would say more in Elizabeth than in Linden and Roselle.

Q About seventy-five in Elizabeth, and twenty-five in Roselle—is that right? A I have no idea just what they amount to, but I served a lot of notices for Mr. Schaffer. 20

Q These seventy-five to one hundred notices you served extended over a period of how many years? A Well, I haven't served any notices for Mr. Schaffer since 1920; and I should judge that, prior to that time, probably three years—two years.

Q And these notices that you served, Mr. Bauer, were upon all kinds and characters of people, were they not? A Yes. 30

Q Took you to various parts of the municipalities? A Yes.

Q Now, how is it, Mr. Bauer, that you so definitely remember the service upon Mr. William Shearer, Sr., of these notices? A Oh, I knew him very well.

Q The service, you say, was in 1919? A Yes, whatever it says there.

Q You do not say that from your recollection, but simply what you see there—is that it? A 40

Charles L. Bauer, Jr., for defendant, cross.

Well, I will tell you—I haven't served any notices since 1920; and these notices here say that I served them in 1919; that is correct.

Q You simply repeat what you see in the typewriting before you?

10 Mr. Wagner: I object to the insinuation in the question.

The Vice-Chancellor: Well, the last answer, I think, explains that. He says he cannot remember.

The Witness: I couldn't remember the exact date without looking at the papers themselves.

Q What kind of a notice did you serve on
20 Mr. William Shearer? A Why, an exact copy of that notice of sale.

Q The original typewriting, or carbon? A Just like that one—the original.

Q An original? A Yes.

Q Just like this one? A I would say just like that one.

Q Referring now to the notice attached to
30 the certificate of sale relating to 217, 219 William avenue—that is an original, is it not? A Well, they come in printed forms; I suppose that was an original, and I suppose I served an original on Mr. Shearer.

Q Well, Mr. Bauer, consider—if you served an original, and this is an original impression, then you must have had two originals, did you?
A Oh, I couldn't say that. I served the notice on Mr. Shearer; now, whether it was an original or what, I don't know, but I served it on Mr. Shearer.

Charles L. Bauer, Jr., for defendant, cross.

Q You don't know the words of the notice—you don't know the form of the notice? A I know it was a tax notice that the property had been sold for unpaid taxes.

Q You have no recollection that it was the same thing as this paper—as the certificate just referred to—do you? A Why, they were all the same; they were all notices of public sales. 10

Q You don't know a thing about the contents, do you? A No, but I did at that time, when I read them; I read them over to Mr. Shearer.

Q You read them over to him? A Certainly, before I served him.

Q You served Mr. William Shearer, Sr., didn't you? A Yes.

Q If that is so, Mr. Bauer, why didn't you, in this purported affidavit, endorsed on the back of this notice, say "William J. Shearer, Sr.," instead of just the words "William J. Shearer?" 20

A Oh, I don't know that. William J. Shearer was William J. Shearer to me, and his son, over there, was William J. Shearer, Jr.

Q When you testified in answer to Mr. Wagner's questions, you designated him as "William J. Shearer, Sr.," did you not?

The Vice-Chancellor: I think I asked that question, whether it was "William J. Shearer, Sr.," because I wanted to see whether he meant the old gentleman, or the young one. 30

Q There is no explanation you can give why you did not use the "Sr." in here, so as to designate it from the "Jr.?" A No, sir.

Q At about the time you served these notices, you testified yesterday you served Mr. William J. Shearer, Jr., didn't you? A That is right. 40

Charles L. Bauer, Jr., for defendant, cross.

The Vice-Chancellor: And he served, as I remember, Mr. Shearer, Jr., in some other matter.

Mr. Wagner: Exactly—on October 15th. But then that notice reads particularly “William J. Shearer, Jr.,” and this one is William J. Shearer.”

10

Q I call your attention to the fact that the purported affidavit endorsed on the back of this notice attached to the certificate just referred to, is in carbon—in other words, a carbon copy, and not an original impression—is not that so? A That is a carbon, yes.

Q Where is the original, if you know? A I don't know.

Q When you served the notice, Mr. Bauer, how many copies of it did you have with you? A I think I had two of each.

20

Q You are not sure on that subject, are you? A I am quite positive I served one on Mr. Shearer and brought one back with me. That was the usual form to do, or way to do it.

Q What did you do with the ones you brought back? A Turned them back to Mr. Schaffer.

Q I ask you to examine the notices that are attached to these certificates, and tell me whether you had possession of the very notices that are attached to these certificates—these very papers? A There is no marking on there for me to tell that, outside of that I signed my name to that affidavit that is all; and I suppose I had them.

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Q You do not know with certainty, and are not able to testify with certainty, that these identical papers are the ones you had in your possession, are you? A I would say they are, because I signed the affidavit on the back; when I brought

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Karl Schaffer, for defendant, direct.

these back to the office the affidavit, I think, was immediately prepared, and I signed it, and it was sworn to.

KARL SCHAFFER, sworn.

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Direct examination by Mr. Wagner.

Q Mr. Schaffer, you are the defendant in this redemption suit? A Yes, sir.

Q What is your occupation? A President of the Roselle Park Trust Company, and in the real estate business.

Q You, for a time, engaged quite considerably in the purchase of tax certificates? A I did, two years ago. 20

Q You are not engaged in that now? A Only finishing up.

Q Finishing up what you had? A Yes.

Q I show you a paper which is already in evidence in this case, and is a certificate of tax sale for premises 181, 183 William avenue, and ask you if that certificate was purchased by you from the City of Elizabeth? A Yes.

Q At the time, and for the considerations indicated in the certificate? A Yes. 30

Q I show you, attached to the certificate, a notice addressed to Elizabeth Heights Realty Company, Morris Steinberg, Ralph L. Shearer, and Mrs. Ralph L. Shearer, bearing the name at the bottom, "Karl Schaffer," and ask you if that is your signature? A Yes.

Q I ask you if you made a search, to indicate to yourself, who were the parties in interest? A I did. 40

Karl Schaffer, for defendant, direct.

Q Why did you have the name Morris Steinberg in this notice? A Because it appeared on the record that Morris Steinberg held a judgment against William Shearer; for that reason we put him in; but subsequently we found—

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The Vice-Chancellor: You see, you are asked if you made a search; now you say "we found, etc." I don't know what that means.

Q Confine your answers to things you know of your own personal knowledge, and let your answers be, therefore, in the first person. A I found that Morris Steinberg held a judgment against a William Shearer, and I wanted to make him a party to the proceeding; subsequently I found that this Shearer mentioned in the judgment was not the Shearer in question.

20

Q Did you cause Morris Steinberg to be served? A No, sir.

By the Vice-Chancellor.

Q Did you examine the record yourself, did I understand you to say? A I think I did in this case. I do my own searching sometimes, and I think, in this case, I probably did it myself.

30

Q Well, if you were assisted in it, by whom do you recall you were assisted? A Mr. Bauer many times made searches for me, as did Mr. Woelfle, and several others, whose names I cannot just recollect.

Q What records did you examine? A All the records pertaining to the title in the register's office and county clerk's office.

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Karl Schaffer, for defendant, direct.

Q What records, what books, did you look at? A Deeds, mortgages, judgments.

By Mr. Wagner.

Q Did you endeavor to perfect title in the manner indicated, by service of notice? A I did. 10

Q To whom did you entrust the subject of service of notice? A I entrusted this notice to Charles L. Bauer, Jr., to be served on William J. Shearer, Sr.

Q On the back of this notice appears to be an affidavit with the name "Karl Schaffer"—is that your name? A Yes.

Q And you signed it? A Yes, sir.

Q On what day? A On the day mentioned here. 20

Q Can you, without looking at that, recall exactly to whom you sent notices, or whether you did, or not? A No, sir.

Q Now, will you refresh your recollection from that and tell us exactly what you did yourself to secure service?

Mr. Engelke: To be consistent, I think I should object to the witness using, as a means of refreshing his memory, the paper purporting to be the affidavit whose integrity is impugned. 30

The Vice-Chancellor: If the paper turns out, in fact, to be a legitimate affidavit, what is the necessity of having him repeat anything else; and if it is not an affidavit, how can he be expected to refresh his memory from it? If he says he swore to it, I mean. It may turn out that he did, or did not, swear to it; I don't know whether he 40

Karl Schaffer, for defendant, direct.

did, or did not. I will admit it, anyhow, subject to your objection.

Q What did you do, Mr. Schaffer, in endeavoring to perfect your title under that certificate?

10 The Vice-Chancellor: I do not think I will allow that question. Your previous question was something else.

(Former question repeated.) A I mailed a notice, addressed to the Elizabeth Heights Realty Company, care of Mr. Charles S. Woods, Incorporator, 510 West One Hundred and Thirty-fifth street, New York; another one to Elizabeth Heights Realty Company, care of A. W. Lasell, Incorporator, 435 East Sixty-six street, New York; one to Mr. Ralph L. Shearer, 680 Summer avenue, Newark, N. J., and one to Mrs. Ralph L. Shearer, 680 Summer avenue, Newark, N. J.

20 Q Why did you mail the Ralph Shearer notice? A There appeared on record that after the Elizabeth Heights Company received a deed from the Modern Homes (also one of their companies, if I remember correctly) they also immediately, or at the same time, gave a deed to Ralph L. Shearer for the same property.

30 Q A subsequent deed? A I don't remember that it was the same time, but there were two deeds for the same property, one to Elizabeth Heights, and one to Ralph L. Shearer; and I thought they all ought to be notified.

Q Now, did you make any endeavor to ascertain information concerning the persons in interest of the Elizabeth Heights Realty Company? A I did.

40 Q What did you do? A Wrote to the Secretary of State, and if I am correct, I think I

Karl Schaffer, for defendant, direct.

sent over either Mr. Bauer, or somebody else, to look over their books; I couldn't get anything after I wrote; and I filed that they never filed any report—

Q No, no; you wrote; that is as far you can go on that. What else did you do? A My recollection is that I sent somebody over, I don't recollect just now. I also called up Mr. Shearer, Sr., to get the information from him.

10

By the Vice-Chancellor.

Q Well, did you get any information from him? A Yes.

Q What information did you get from him? A He said that he "is the president and the company"; that is about all I could get from him. Then I called him—

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Q (Interrupting) Why didn't you call Mr. Shearer, Jr.? A I don't know; I just called Mr. Shearer, Sr., that is about all. I don't know that I had any reason. As matter of fact, when I called I asked for Mr. Shearer, only one Mr. Shearer, and they referred me to Mr. Shearer, who said he was the senior. I knew they both lived at the same home.

Q Why didn't you then make inquiry from Mr. Lasell and these other two parties you mailed letters to? A Why, I found the record of the address of Mr. Lasell in one of the certificates of incorporation, or something, and then I couldn't find him.

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Q You found him to be an incorporator, you say? A Yes.

Q Why didn't you inquire from him who the officers were? A Because I couldn't locate him.

Q But you did locate him because you mailed a letter to him? A No, he was not there.

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Karl Schaffer, for defendant, direct.

Q Did you know he was not there when you mailed the letter? A I couldn't find him there.

Q Did you go there to see if he was there? A No; I think I looked in the directory, and sent the letter; I thought I ought to mail it to his last address.

10 Q I know, but why didn't you write a letter to him, at his last-known address, to ascertain who were the officers of the corporation? A Well, I cannot explain that.

Q Now, you were dealing with a great deal of these tax matters previously? A Yes.

Q And some of them were relating to corporations, too, weren't they? A Yes, some of them.

20 Q Well, didn't you make an effort, in the other cases, to serve the officers of the corporations? A The other officers were very easy to find.

Q You thought it was proper to serve the officers? A Yes.

Q And you knew from your practice in dealing with these cases that it might be advisable to serve the registered agent, if you could find out where he was? A Yes; but in this case there was no agent.

30 Q How did you know there was not? A Because I inquired through the Secretary of State.

Q Did you go to the County Clerk's office, and look at the record there, to see the name of the registered agent? A I did.

Q Did you find any there? A No?

Q There was certainly one in the certificate of incorporation, was there not? A As far as I can remember, there was not.

40 Q No registered agent? A As far as I remember, there was not. That may be because it

Karl Schaffer, for defendant, direct.

was the same man—the same man mentioned there.

By Mr. Wagner.

Q Now, Mr. Schaffer, I show you a certificate of tax sale for premises 203-205 William avenue, which is in evidence in this cause, to which is attached a notice addressed to Elizabeth Heights Realty Company, Morris Steinberg, Ralph L. Shearer and Mrs. Ralph L. Shearer, signed by what appears to be "Karl Schaffer," and ask you if that is your signature? A Yes, sir. 10

Q And to what appears to be an affidavit on the back of that notice, dated November 23, 1919, signed by what appears to be "Karl Schaffer," and ask you if that is your affidavit? A Yes.

Q And you made that on that day? A On the same day. 20

Q Now, to shorten things, may I ask you if the testimony that you have given with respect to that certificate, and that notice, and service, or attempted service upon the parties in interest, applies to this in the same manner as you have already testified concerning the other?

The Vice-Chancellor (To Mr. Engelke):
Are you willing to permit that question to go in that way? 30

Mr. Engelke: Yes; as far as that is concerned, his testimony in all cases is the same.

A Yes.

Q Well, I specify, first, 181 and 183 William avenue: for the second I refer to 203-205 William avenue; for the third, I refer to 217-219 William avenue, and your testimony regarding the first applies to all three in an equal extent? A The same, yes. 40

Karl Schaffer, for defendant, direct.

Q Let me ask you—in regard to any of these properties was there any redemption made by William J. Shearer? A No.

Q By the Elizabeth Heights Realty Company? A No, sir.

10 Q By any of the persons to whom notice was directed? A No, sir.

Q There was testimony given in the other case of the fact of a conversation of William J. Shearer with you—I ask you now what was the first time Mr. Shearer ever spoke to you with regard to redeeming any properties? A Will you give me those letters?

(The letters referred to by the witness were handed to him.)

20 The Vice-Chancellor: I think that testimony is in. I think you admitted that testimony, didn't you?

Mr. Engelke: Yes.

The Vice-Chancellor: He testified here before that the first time Mr. Shearer, Jr., spoke to him was in 1925, as I remember it.

Mr. Engelke: I am perfectly willing that that testimony shall stand here.

30 The Vice-Chancellor: I thought you did concede it; if you did not, get it on the record now.

Mr. Wagner: Will you concede, Mr. Engelke, that the testimony of Mr. Schaffer concerning conversations with Mr. William J. Shearer, Jr., given in the Shearer-Schaffer case, shall apply in this present case, as though repeated by him here?

Mr. Engelke: I do, in so far as it may be applicable to this case, yes.

Karl Schaffer, for defendant, direct.

Q Mr. Schaffer, I draw your attention to the fact that in two of these notices, one for 203, and one for 205 William avenue, and the other for 215 and 217 William avenue, in your affidavit of redemption, apparently the wrong numbers are used, and that, while the certificate refers to 217, 219 William avenue, in your affidavit of redemption you recite "207-205" William avenue; and in the other exhibit, relating to 203-205 William avenue (the certificate being for that number) your affidavit of redemption incorrectly uses the numbers "217-219 William avenue," instead of the correct numbers, "203-205," as they appear on the certificate; and I ask you if you can explain how that occurred? 10

Mr. Engelke: I object to that question; it cannot be material—his explanation cannot be material. 20

The Vice-Chancellor: How can that be material? Suppose there is an error in it, how can his explanation help the case any? Has he not got to stand or fall on the facts as they are? I do not see that how the "error" occurred is material—if there is an error; you refer to it as "an error." 30

Q I ask you, Mr. Schaffer, so that the record can be clear on that—after notice was served upon the persons as indicated by the testimony in this case, was any attempt made to redeem the premises 203-205 William avenue? 30

Mr. Engelke: So far as this witness knows.

Q So far as any attempt was made to you?
A No, sir, not as far as I know. 40

Karl Schaffer, for defendant, direct.

Q From the time of the service of the notices respecting 217, 219 William avenue, was any offer of redemption made by anyone to you for the redemption of those premises? A No, sir.

Q Attached to the papers relating to 203, 205 William avenue, and those relating to 217, 219 William avenue, is what appears to be an affidavit dated June 16, 1927, signed by one "Karl Schaffer,"—is that your affidavit? A Yes.

Q In each instance? A Yes, sir.

Q Will you tell us how you came to make that?

Mr. Engelke: I object to that question.

The Vice-Chancellor: I will sustain the objection; I do not see that it is material as to how he came to do it; it is there.

Q Will you tell us what you did with that affidavit?

Mr. Engelke: I object to that.

Mr. Wagner: Well, I am not asking for reasons now, I am asking what he did.

The Vice-Chancellor: Well, I don't care what he did. You have it now among the public records. What difference does it make what he did with it?

Mr. Wagner: I want to disabuse your Honor's mind of the idea of there having been any impropriety in it.

The Vice-Chancellor: I will permit it, then, over the objection.

A I turned it over to Mr. Bauer, the Register of Union County.

Karl Schaffer, for defendant, direct.

Q When? A I think on the same day that it was recorded; whenever the registry shows.

Q Did you give any directions to Mr. Bauer?

A I asked Mr. Bauer whether it was possible to attach it to the old papers, and, if possible, I asked him to do it.

Q And did you pay a fee? A Yes, sir. 10

Q What fee did you pay? A I don't remember the amount; I had to pay for the re-recording of all the papers, including this affidavit.

Q Not only this affidavit, but the certificate and all the papers thereto attached? A Yes.

Q You mean you had to pay for the re-recording of it as an entire new record? A Yes.

Q Now, then, I ask you if that which you have just stated with regard to the affidavit attached to the 203 and 205 certificate applies also to the affidavit of June 16, 1927, which was attached, and is now attached to the certificate for 217 and 219 William avenue? A That was done at the same time. 20

Q And your conversation with Mr. Bauer referred to that, also? A Referred to that, also.

Q Did you pay Mr. Bauer any fee for the re-recording of all these papers? A Yes, I paid whatever was required. 30

Q Who attached the affidavit to the old certificate and affidavits? A If I remember correctly, Mr. Bauer did it in my presence.

No cross examination.

Edward Bauer, for defendant, direct.

EDWARD BAUER, sworn.

Direct examination by Mr. Wagner.

Q You are the Register of Union County? A I am.

10 Q And have been for how many years? A Twelve, I think.

Q And before that, you were the Deputy Register? A Yes.

Q And before that, you were Clerk of the Elizabeth District Court? A Yes.

Q Your official life goes back about thirty years? A To 1904.

Q Do you know Mr. Schaffer? A I do.

20 Q I show you two certificates, which are already in evidence, one concerning premises 203, 205 William avenue, and one concerning 217, 219 William avenue, and which are produced here today by you, and ask you if, at any time within the past few weeks, you talked to Mr. Karl Schaffer about them? A I did, on the 16th day of June.

By the Vice-Chancellor.

30 Q That is 1927? A 1927.

By Mr. Wagner.

Q Now, what was the conversation? A Mr. Schaffer told me that the affidavit here which reads "203 and 205 William avenue" did not correspond with these numbers in here—

The Vice-Chancellor: Read them on the record.

40 A Did not correspond with this number in front, here.

Edward Bauer, for defendant, direct.

The Vice-Chancellor: Better let him read the numbers in front, first.

Q There is the old affidavit—217 (showing the witness the same). A The original certificate—the first two—reads as “203 and 205 William avenue.” The affidavit he had attached here refers to Lots 217 and 219 William avenue. 10

By the Vice-Chancellor.

Q That is the affidavit bearing date what? A April 5, 1926. Now, then he had another one here; the certificate refers to Lot 217 and 219 William avenue, and the affidavit refers to Lots 203 and 205 William avenue.

Q That affidavit bears date when? A The affidavit bears the same date, the 5th day of April, 1926. Then, on this day, June 16, 1927, Mr. Schaffer came in with this affidavit. 20

Q The one now that bears date what? A This bears date the 16th day of June, 1927, which shows the correction and calls attention to the error made in the former affidavit.

By Mr. Wagner.

Q What did you tell Mr. Schaffer? A I told him to attach that to the original, and re-record it. 30

By the Vice-Chancellor.

Q Did he attach it? A I did; I attached this piece with these wires to both of them (indicating).

By Mr. Wagner.

Q Were the papers at any time separated—the former papers? A No. 40

Edward Bauer, for defendant, direct.

Q In either case? A No.

Q Do the former papers, exclusive of the last affidavit represent what was recorded theretofore? A Yes.

Q And stand in the books of record theretofore? A Certainly.

10 Q And that is so in both instances? A In both instances.

Q And have you set aside a new book and new page for the two instruments, as a new record?

A These will be re-recorded, when the time comes.

Q In their entirety? A Yes, exactly as they are here now.

Q The whole business? A The whole business.

20 Q Now, I call your attention to this—on this certificate relating to 203-205 William avenue, on the back of one of the papers, the old recording date of “April 6” made by the time clock—April 6, 1926—has a lead pencil mark on it—is there any significance to that? A No; we do that.

30 Q You do that? A We do that—we cross off this number (indicating) and we mark this one (indicating), because, if we did not, there is a chance of the recorder recording this date (indicating) instead of that one (indicating). Now, this number (indicating) is crossed off because that is only the filing number used to keep track of the paper until the time we record in the books, and after that we refer to the book and page.

Q Now, I notice that on this one relating to 181-183 (which is not to be re-recorded, because there was no error made) the time-clock is not marked? A That is right.

40 Q In other words, you mark out the time-clock on the old one when it is brought back for re-record? A Yes.

Edward Bauer, for defendant, direct.

Q To prevent confusion? A To prevent the recorders confusing that date with this one.

By the Vice-Chancellor.

Q That is, the old date with the new one? A The old one with the new one. In fact, this is only a reference—just a temporary stamp until we get them filled out. 10

Q Well, you say it is temporary, but it gives you the time at which it was filed? A Yes, sir.

Q And that which you latterly pointed to is something that would be written by the scrivener, whereas the stamp is automatic, by the clock, is it not? A Yes, sir.

Q Or the clock is automatic by the stamp? A Yes. 20

By Mr. Wagner.

Q You were paid by Mr. Schaffer, and requested pay for the re-recording of the entire instruments? A Yes, the fees were paid.

Q And is the re-recording of instruments, where what is considered minor errors appear later, an unusual thing in your office?

Mr. Engelke: I object to the question; it is leading. 30

The Vice-Chancellor: I do not think it is helpful, either, because the question is whether there is any authority in law, I presume, for doing what he did. Now, if there is any authority in law for it, what he may think as to what should be the practice would be rather insignificant. The question that arose yesterday, as I recall it, was as to the right of the clerk to take an original record from his files and permit something else to be 40

Edward Bauer, for defendant, cross.

attached to it, for the purpose of re-recording. Furthermore, it was not indicated clearly yesterday by the evidence whether the County Clerk himself was the one that did this, or whether it was somebody in his office.

10 Mr. Wagner: Certainly; and I thought your Honor was entitled to have all the facts before you.

The Vice-Chancellor: Yes, that is proper.

Cross examination by Mr. Engelke.

Q Mr. Bauer, I direct your attention to the proceedings as they were originally recorded, and refer to your serial number 30411, scratched out in lead pencil, and particularly direct your attention to the word "filed"—what does that mean?

20 A That means "filed in the office."

Q That means that this group of papers, with this endorsement, and without the last sheet attached by wire brads, was on file in your office?

A Yes.

Q Is there anything on that paper to show when it was originally filed in your office? A The 6th day of April, 1926.

30 *By the Vice-Chancellor.*

Q That does not show when it was filed, does it? A The 6th day of April, 1926.

By Mr. Engelke.

Q Is there anything there to show when the original papers were actually filed—not this new one, but when the original papers were actually filed? A A paper comes in, and it is stamped on the clock; that is the stamp (indicating), and

Edward Bauer, for defendant, cross.

that is the time (indicating); and immediately it is marked "filed." It is filed from that minute.

Q Now, referring to this particular paper, which we have denominated by Serial No. 3411, what date was that paper filed with you? A June 16—wait a minute, you are giving me the one that is re-recorded. 10

Q I am not asking about that sheet, Mr. Bauer, I am referring to these papers here, which were originally left with you, and, as you say, filed? A April 6th, 1:30 P. M., 1926.

Q The figures that you have just read are on the left of the endorsement of the original proceedings, and are marked out with a lead pencil, are they not? A Yes.

Q Did you mark that out with a lead pencil? A No, I did not; one of the clerks did. 20

By the Vice-Chancellor.

Q Well, what clerk had charge of these papers in your office? The reason I ask you that is because I understood you were the one that Mr. Schaffer was dealing with, and you were the one that took the papers from him? A Only in this case.

Q Oh, you only took the affidavit from him? A That is all. One of the three or four clerks could take that paper in, and I would not know anything about it. 30

Q Oh, I understood you to say you affixed this affidavit to these papers. A To these of June 16, 1927.

Q Now, this paper (referring to the original record) was originally recorded in the office on the 6th day of April, 1926. Now, do you consider that the pencil mark that your attention has been called to, which is over the time-clock stamp of 40

Edward Bauer, for defendant, cross.

“April 6, 1926,” was marked off on June 16, 1927? A Yes.

Q By whom do you consider it was marked off? A By one of the clerks that took it in.

Q Took what in? A Took it in the window and received the paper.

10 Q Then these papers were not in your possession on that day for the purpose of either recording, or filing—in your personal possession? A No, no.

Q Mr. Schaffer, then, merely talked with you as to whether you would permit this annexation, and you told him you would? A Yes.

Q Now, then, did you have these papers in your possession at the time he talked to you? A Well, they were in the office—filed in the office.

20 Q But you received from him this affidavit of June 16, 1927? A Yes.

Q What did you do with that paper, that affidavit of June 16, 1927? A This affidavit?

Q Yes. A Pinned it on this (indicating).

30 Q I understood you to say that they were somewheres in the office—I am trying to find out whether you had them in your possession at that time, with which to pin it on. A These papers, without this last affidavit, were all filed in the Register’s Office.

Q Yes, but they were not before you at the time you talked with Mr. Schaffer? A No, no; Mr. Schaffer came in and spoke to me about these affidavits and the mistake; and then he went out, and my deputy got these out of the filing cases and brought them in to us.

Q To whom? A To me; and then Mr. Schaffer and I discussed this affidavit.

40 Q Yes. A And I don’t know whether I suggested, or whether Mr. Schaffer asked me whether

Edward Bauer, for defendant, cross.

it could be done, or not; but I said "Attach this affidavit to the original, and we will re-record it."

Q You said "Attach it," but who did the attaching? A Me.

Q I asked you before if you had in your possession those original papers, and you told me no, that they were on file in the office. A Certainly I had to have them in my possession. 10

Q That is what I am trying to find out; I understood you to say one of the clerks did it? A One of the clerks took it out of the filing case; we had a big filing case, as big as that room; he goes to the filing case and takes them out and hands them to me, and I have them in my possession.

Q That is what I am trying to find out, because first you said you did not have them in your possession. A I had to have them in my possession. 20

Q Yes, I recall that you said that afterwards. Now, then, if you made the attachment, Mr. Bauer, you claim that you attached these wire clips, or these brass clips, with which the original papers are attached? A We have not got that kind of a machine.

Q You mean, you do not use in your office any machine to fix these brass clips, such as the original papers were attached with? A No, I didn't do that. 30

Q Your office did not do that? A No; that is the way it came to the office. No, the only thing I use is this (indicating the clip holding the last affidavit attached to the exhibit).

Q One of these Bostitch (I think it is) machines? A Yes, sir; we don't use these, at all; that is the way it came to the office.

Edward Bauer, for defendant, cross.

By Mr. Wagner.

Q Continuing with the Court's thought: When you had fastened this affidavit which Mr. Schaffer had consulted you about, and which is dated June 16, 1927, what did you do with these
10 papers—did you hand them back to Mr. Schaffer? A I think I did; Mr. Schaffer took them out to the girl and re-recorded them right away.

By the Vice-Chancellor.

Q You stated to Mr. Engelke that any paper that comes into the office is marked filed? A Yes.

Q You do not mean that with respect to all papers? A Oh, no; there are only certain papers that must be filed. The law says these papers must be filed, and marked filed.
20

By Mr. Engelke.

Q What you have told us, Mr. Bauer, with respect to the affidavit relating to 217-219 William avenue, applies with equal force to this set of papers which refer to 203 and 205 William avenue—is that so? A That is right.

Q The two papers were in your hands at the
30 same time? A Yes.

The Vice-Chancellor: I do not think there is any doubt about the explanation as made by Mr. Bauer. Now, he did it; and if you feel that he had no right to do it, in law, that is a matter for you to question hereafter. It is apparent from what Mr. Bauer says now, that he did it; if he did not have the right to do it, that is a matter for future questioning.

Edward Bauer, for defendant, cross.

Q Both of these papers, after you had fastened on this last affidavit, dated in June of this year, were handed by you to Mr. Schaffer, and he took them into the recording room and recorded them—is that right? A Yes; just walked from that room into the other room there, and handed them to the clerk.

10

Q He went out of your eyesight, though, didn't he? A Yes.

By the Vice-Chancellor.

Q Well, did you consider the impropriety of allowing any of your official files being entrusted to somebody other than an employee of your office? A You mean, by allowing him to walk from my desk to the other room with them?

Q Yes—did you consider the impropriety, at the time you did it? A No, because he was in the sight of the whole office force all the time.

20

Q But you did not pretend to watch him? A Oh, no.

Q I am just asking the question as to just what the general policy of the office would be; I think you appreciate, do you not, Mr. Bauer, that as a custodian of records, it is up to you to see to their security? A Oh, I know that.

Q That is what I have in mind by the implication I suggested. A I know that.

30

Q You had confidence in the man you gave it to—is that it? A Yes; and he was an honest man.

By Mr. Engelke.

Q You are not a friend of Mr. Schaffer's, are you? A Yes, I am friendly with anybody that comes into the office. I am friendly with you, too.

40

Offer of Documentary Evidence.

Mr. Wagner: I offer in evidence, so that the record may be clear, a certified copy of the Articles of Incorporation of the Elizabeth Heights Realty Company.

Mr. Engelke: No objection.

(Admitted and marked Exhibit D. 5.)

10

Mr. Wagner: I offer in evidence record of the forfeiture of the charter of the Elizabeth Heights Realty Company for non-payment of taxes, and the application, of recent date, for reinstatement, as one paper, under the certificate of the Secretary of State.

Mr. Engelke: May I see it?

20

Mr. Wagner: Yes, sir (handing the paper to Mr. Engelke). Well, I do not think that indicates the forfeiture; the application sets forth the forfeiture. The forfeiture is included in the proclamation of the Governor, under the statute of 1918, I believe.

Mr. Engelke: This is the reinstatement.

30

Mr. Wagner: I desire to draw attention, as matter of record, to the fact that the charter of this Company was forfeited by proclamation of the Governor in 1918, as appears in the Pamphlet Laws of 1918, p. 1235. It is dated January 28, 1918.

The Vice-Chancellor: What is the date of the reinstatement, under the application for reinstatement?

Mr. Wagner: The reinstatement is October 21, 1926.

The Vice-Chancellor: So, that between 1918 and 1926, this corporation was, we will say, non-existent?

40

Mr. Wagner: Yes; between 1915 and 1926 it did not pay its taxes.

Offer of Documentary Evidence.

The Vice-Chancellor: And yet you say that Mr. Schaffer, in 1919, served notice on the incorporators of a corporation that was proclaimed to have no existence—I mean, that is what your proofs show?

Mr. Wagner: Now, if the sufficiency of that is going to be a matter of argument before your Honor— 10

The Vice-Chancellor: I mean, that is the fact, is it not—you say now that the corporation was claimed to be non-existent in 1918?

Mr. Wagner: Yes, sir.

The Vice-Chancellor: And in 1919 Mr. Schaffer served these notices, and mailed these letters to the incorporators, and whoever else he served them upon? 20

Mr. Wagner: Well, he served them upon certain persons. We will argue before your Honor that when we served a man, if he had a certain identity, it does not make any difference what we called him.

The Vice-Chancellor: Well, I am only trying to get this fact, as well as I can—is it not a fact that in 1919 he served these notices? 30

Mr. Wagner: He served upon William J. Shearer.

The Vice-Chancellor: When—in 1919?

Mr. Wagner: Yes, sir.

The Vice-Chancellor: Then, in 1926 the charter of this corporation was reinstated?

Mr. Wagner: Yes, sir.

The Vice-Chancellor: The matter of the legal application you can discuss hereafter. 40

W. J. Shearer, Jr., (recalled) for compl't, further cross.

(The paper last offered by Mr. Wagner, is admitted without objection and marked Exhibit D. 6.)

10 WILLIAM J. SHEARER, JR., recalled.

Further cross examination by Mr. Wagner.

Q From the time of the incorporation of this Company down to its reinstatement in 1926, no annual report was filed with the Secretary of State?

20 The Vice-Chancellor: Let me ask you—have you a letter from the Secretary of State to that effect?

Mr. Wagner: Yes, sir.

Mr. Engelke: I will agree to it.

The Vice-Chancellor: You are conceding that this Company did not file what?

Mr. Engelke: An annual report of the election of officers and directors.

The Vice-Chancellor: Excepting the first report that was filed?

30 Mr. Engelke: No, they did not file one until 1926.

The Vice-Chancellor: You both agree to that, do you?

40 Mr. Wagner: We agree that from the very day of its incorporation, in February, 1911, down to October, 1926, the only annual report, setting forth the registered agent, officers and directors, was one filed in 1926; and that no report to that end had ever been filed prior to 1926.

W. J. Shearer, Jr., (recalled) for compl't, further cross.

The Vice-Chancellor (To Mr. Engelke):
And that you concede?

Mr. Engelke: Yes, sir.

(The witness stood aside.)

THE DEFENDANT RESTS.

10

The Vice-Chancellor: Now, you gentlemen get together and perfect the rest of the case, and agree on what you can agree on; and if you have to come before me and put in proofs that you may be now deficient in, I will be glad to receive you and permit you to do it. Each side had better take care of its own exhibits.

(Case to be written up.)

20

30

40

*Complainant's Exhibits.***EXHIBIT C. 1.**

Bargain and Sale deed from MODERN HOMES REALTY COMPANY, to ELIZABETH HEIGHTS REALTY COMPANY, Dated June 1, 1916, Recorded in the Union County Register's office on June 14, 1916 in Book 683 of Deeds for said County, at page 423 &c. conveying to grantee the fee simple title to:

10 ALL those tracts or parcels of land and premises hereinafter particularly described, situate, lying and being in the City of Elizabeth, in the County of Union and State of New Jersey, and more particularly described as lots 37 and 38 in Block 1, lots 82 and 83, 60 and 61, 23 and 24, 34 and 35, 41 and 42, all in Block 2. All the above

20 lots being on Map of El Mora Manor, which map is on file at the Register's office at Elizabeth, N. J. Also lot 10 in Block 6 Map of Bellevue Property, which map is on file at the Register's Office at Elizabeth, N. J. All those tracts or parcels of land and premises hereinafter described, situate, lying and being in the Township of Union, in the County of Union and State of New Jersey and more particularly described as being Lots 1, 2 and 3 in Block 23, also lots 24 and

30 25 in Block 21. All the above lots being on Map of Elizabeth Heights which map is on file at the Register's office at Elizabeth, N. J.

Complainant's Exhibits.

EXHIBIT C. 2.

THIS IS TO CERTIFY that I, JOSEPH F. S. FITZPATRICK, Secretary of the State of New Jersey, have made due and diligent search in the records of my office relating to commissions issued to persons in the State of New Jersey, as and for notary publics therein, and I find that on June 26th, 1924 a commission was issued by the Governor of the State of New Jersey, His Excellency, George S. Silzer, to Mabel S. Graff, of 210 Broad Street, Elizabeth, this state, for a period of five years, expiring June 26th, 1929;

And I further certify that I have made further search and I find that the foregoing is the only record in my office of any commission issued to or in the name of Mabel S. Graff or Mabel Seibert Graff, as and for a notary public in the State of New Jersey.

IN TESTIMONY WHEREOF, I have hereto set my Seal of the State of New Jersey, and my hand, this 21st day of June, A. D., Nineteen hundred and twenty-seven.

JOSEPH F. S. FITZPATRICK,
(SEAL) Secretary of State.

30

40

*Complainant's Exhibits.***EXHIBIT C. 3.**

(ENVELOPE)

10 Karl F. Schaffer
 215 Broad Street
 Elizabeth, N. J.
 Mr. William J. Shearer,
 1100 Anna St.,
 City.

Stamp—Dated Elizabeth Mar 16 5:30 P M 1925
 N. J.

EXHIBIT C. 4.

20 KARL F. SCHAFFER
 215 Broad Street
 Elizabeth, N. J.

Better Land Realty Co.
 Elizabeth Investment Co.
 Reliance Realty & Improvement Co.
 S. & D. Realty Co.
 473 West End Avenue
 Corporation

30 March 16th, 1925.

William J. Shearer,
 1100 Anna St.,
 City.

Dear Sir:—

Replying to yours, I would like you to stop in
 here to see me some time this week, or whenever
 it is convenient for you.

Very truly yours,
 KARL SCHAFFER,

40

M

*Complainant's Exhibits.***EXHIBIT C. 5.**

Elizabeth, N. J.,
Dec. 22. 1919.

Mr. Morris Steinberg,
c/o Judge Abe David,
Elizabeth, N. J.

10

Dear Sir;—

I understand that you have bought at tax-sale
the following. Kindly let me know what amount
is standing against each.

Lot 217-219 William Ave.

Lot 181-183 William Ave.

Lot 203-205 William Ave

Lot 900-902 West Grand St.

Yours truly,

20

EXHIBIT C. 6.

KARL F. SCHAFFER

Real Estate

215 Broad Street, Elizabeth, N. J.

Jan. 5, 1920.

William J. Shearer, Esq.,
1100 Anna Street, City.

30

Dear Mr. Shearer:

Replying to yours of the 3rd instant, I beg to
say that I have not received your letter of De-
cember 22nd, and would suggest that you inquire
at the Post Office to ascertain what became of it.

As for lots 217, 219, 181, 183, 203, and 205
William Avenue and 900 and 902 West Grand
Street, I beg to say that the time to redeem this

40

Complainant's Exhibits.

property has expired, and I am now preparing the papers in order to take title to same. If you can save me the costs of going through this proceeding, I would be glad to pay a nominal sum for a Quit Claim Deed to the lots and save myself the costs and labor in connection with this work.

10 Of course this offer should not prejudice my title to the property.

If you are willing to do this, I would suggest that you make an appointment to meet me at this office. I think we can get together on this matter.

Yours very truly,

KARL SCHAFFER

G.

20

EXHIBIT C. 7.

CHARLES H. WILTSIE
Attorney and Counselor
820 Powers Bldg.
ROCHESTER, N. Y.

55-Elizabeth-20 Pd
10- " 21 Pd
26- " 22 Pd.

30

March 16, 1925.

Mr. Wm. J. Shearer, Jr.,
1100 Anna Street,
ELIZABETH, N. J.

My dear Sir:—

I am in receipt of your letter of recent date with reference to above numbered tax claims covering Lots 861 to 907, Pennington Street,
40 Elizabeth, N. J.

Complainant's Exhibits.

I find that these claims were paid on or about February 26, 1923 by Karl Schaffer and the papers were sent to him at that time.

Yours truly,

C H WILTSIE

K:B

10

In correspondence please refer to serial 55-Elizabeth-20 Pd.

EXHIBIT C. 8.

HARRINGTON COMPANY

Investments

550-552 Montgomery Street

Jersey City, N. J.

20

In Replying Please Refer to No.
4527-5893

W. J. Shearer Jr.
1100 Anna St.
Elizabeth, N. J.

We are in receipt of your favor of the 14th inst. with reference to Lots Nos. 861-863-901-907, Map of Elizabeth

Replying thereto would say that you may redeem this property any time on or before March 31st. upon the payment of the sum of \$120.61 Upon receipt of your check for the above sum by return mail we will have the original certificate of sale properly endorsed showing that it has been surrendered for the purposes of cancellation and will forward same to you.

30

Yours truly,
HARRINGTON COMPANY,
By R. E. Whitman

40

Dictated A.

Secretary

Complainant's Exhibits.

EXHIBIT C. 9.

#17507.

COMPTROLLER'S OFFICE

Elizabeth, N. J., September 24th, 1925.

- 10 I, DENNIS F. COLLINS, Comptroller of the City of Elizabeth, do hereby certify that I have examined the records in this office, and I find no Taxes or Assessments unpaid upon the property as shown on the above diagram except the following:
- Nos. 181-3 Halstead Road.
 Sold November 9, 1916 for taxes of 1915 to Karl Schaffer in fee.
 Sold November 12, 1917 for taxes of 1916 to Karl Schaffer in fee.
- 20 Bought by the City of Elizabeth at sale held July 26, 1920 under Chapter 237 Laws 1918 at 8% redemption fee for, . . \$ 110.14
 Add interest @ 8% from July 26, 1920
- | | |
|------------------|-------|
| Taxes 1919 | 5.00 |
| “ 1920 | 10.96 |
| “ 1921 | 12.08 |
| “ 1922 | 12.72 |
| “ 1923 | 12.36 |
| 30 “ 1924 | 12.32 |
- Add interest at 8% on one-half of these amounts from June 1st of each year, and on the remaining one-half from December 1st of each year.
- | | |
|--|----------|
| Taxes 1925, | \$ 13.12 |
| Add interest at 8% on one-half of this amount from June 1, 1925. | |
| Relaying sidewalk, | 84.00 |
| Add interest at 8% from July 21, 1921. | |

Complainant's Exhibits.

Nos. 203-5 Halstead Road.

Sold November 9, 1916 for taxes of 1915
to Karl Schaffer in fee.

Sold November 12, 1917 for taxes of 1916
to Karl Schaffer in fee.

Bought by the City of Elizabeth at sale
held July 26, 1920 under Chapter 237 10

Laws of 1918 at 8% redemption fee for.. 110.15

Add interest @ 8% from July 26, 1920

Taxes 1919 5.00

“ 1920 10.96

“ 1921 12.08

“ 1922 12.72

“ 1923 12.36

“ 1924 12.32

Add interest at 8% on one-half of these
amounts from June 1st of each year and 20
on the remaining one-half from December
1st of each year.

Taxes 1925, 13.12

Add interest at 8% on one-half of this,
amount from June 1, 1925.

Laying sidewalk, 84.00

Add interest at 8% from July 21, 1921.

Nos. 217-219 Halstead Road.

Sold November 9, 1916 for taxes of 1915
to Karl Schaffer in fee. 30

Sold November 12, 1917 for taxes of 1916
to Karl Schaffer in fee.

Bought by the City of Elizabeth at sale
held July 26, 1920 under Chapter 237

Laws 1918 at 8% redemption fee for, 110.14

Add interest at 8% from July 26, 1920.

Taxes 1919 5.00

“ 1920 10.96

Complainant's Exhibits.

DENNIS F. COLLINS, Esq., Comptroller:

Please search for Unpaid Taxes, Assessments and sales affecting the premises on the accompanying diagram and certify the result below for

10 *Owner's Name*

COMPTROLLER'S OFFICE

Elizabeth, N. J.,.....19

I, DENNIS F. COLLINS, Comptroller of the City of Elizabeth, do hereby certify that I have examined the records in this office, and I find no Taxes or Assessments unpaid upon the property as shown on the above diagram except the following:

20

| | |
|-------------------|----------|
| Taxes 1921, | \$ 12.08 |
| " 1922, | 12.72 |
| " 1923, | 12.36 |
| " 1924, | 12.32 |

Add interest at 8% on one-half of these amounts from June 1st of each year, and on the remaining one-half from December 1st of each year.

30 Taxes 1925, 13.12

Add interest at 8% on one-half of this amount from June 1, 1925.

Laying sidewalk, 84.00

Add interest at 8% from July 21, 1921.

D F COLLINS,
Comptroller.

Complainant's Exhibits.

EXHIBIT C. 10.

#17506

COMPTROLLER'S OFFICE

Elizabeth, N. J., September 24th, 1925.

I, DENNIS F. COLLINS, Comptroller of the City of Elizabeth, do hereby certify that I have examined the records in this office, and I find no Taxes or Assessments unpaid upon the property as shown on the above diagram except the following:

10

Nos. 190-192 William Avenue

Sold November 9, 1916 for taxes of 1915 to Karl Schaffer in fee.

Sold November 12, 1917 for taxes of 1916 to Karl Schaffer in fee.

20

Bought by the City of Elizabeth at sale held July 26, 1920 under Chapter 237

Laws 1918 at 8% redemption fee for. \$ ~~110.14~~ 110.15

Add interest at 8% from July 26, 1920

| | | |
|------------------|-------|----|
| Taxes 1919 | 5.00 | |
| “ 1920 | 10.96 | |
| “ 1921 | 12.08 | |
| “ 1922 | 12.72 | |
| “ 1923 | 12.36 | |
| “ 1924 | 12.32 | 30 |

Add interest at 8% on one-half of these amounts from June 1st of each year and on the remaining one-half from December 1st of each year.

Taxes 1925\$ 13.12

Add interest at 8% on one-half of this amount from June 1, 1925.

Laying sidewalk, 84.00

Add interest at 8% from July 21, 1921.

Signed DENNIS F. COLLINS,

40

Comptroller.

*Complainant's Exhibits.***EXHIBIT C. 11.**

There was offered in evidence before the Vice-Chancellor at the hearing and thereafter there were furnished to the Vice-Chancellor and considered by him in the case, photostatic copies of the original certificate of Tax Sale No. 2488, dated November 22, 1917, setting forth sale on November 12, 1917, to Karl Schaffer of premises known as 181-183 William Avenue, assessed as property of Modern Home Realty Co., to which was appended the following notice:

Elizabeth Heights Realty Company,
Morris Steinberg,

To.. Ralph L. Shearer, Mrs. Ralph L. Shearer.

You are hereby notified that a Public Sale held by Dennis F. Collins, Comptroller of the City of Elizabeth at the City Hall in said City on Nov. 12, 1917, under and by virtue of the provisions of an act of the Legislature of the State of New Jersey entitled "An Act for the Assessment and Collection of Taxes," approved April 8th, 1903, and the several acts supplementary thereto and amendatory thereof, KARL SCHAFFER, of the City of Elizabeth, State of New Jersey bought for the sum of \$5.77 for unpaid taxes for the year 1916 a certain tract and parcel of land assessed in the name of Modern Home Realty Co. and described as follows:

Lots 181 to 183 William Avenue

And you are hereby notified that you have or appear to have an interest or estate in said land and real estate and a right to redeem the same and that unless said land or real estate be redeemed within two years after the said sale, if this notice be served upon you more than sixty days before the expiration of said time; or if

Complainant's Exhibits.

not served until the expiration of said two years, then within sixty days after the service of this notice, your right of redempton will be barred.

Dated.....

Karl Schaffer 10
Purchaser

to which also were appended the following affidavits:

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

CHARLES L. BAUER, JR., being duly sworn upon his oath deposes and says that for the purpose of serving the within Notice to redeem, he was the agent of KARL SCHAFFER, and that on October 22nd, 1919, he served a duplicate of the within Notice to redeem on Elizabeth Heights Realty Company, by leaving same with William J. Shearer, Incorporator at his home #1100 Anna Street, Elizabeth, N. J. 20

CHARLES L. BAUER, JR.

Sworn and subscribed before me 30
this 23rd day of October, 1919.

MABEL SEIBERT GRAFF
NOTARY PUBLIC OF NEW JERSEY

Complainant's Exhibits.

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

10 KARL SCHAFFER, being duly sworn upon his
 oath deposes and says that on the 23rd day of
 October, 1919, he mailed duplicates of the within
 Notice to redeem addressed to the Elizabeth
 Heights Realty Company, % Mr. Charles S.
 Wood, Incorporator, 510 West 135th St., N. Y.;
 to Elizabeth Heights Realty Company, % A. W.
 Lossell, Incorporator, 435 East 66th St., N. Y.;
 to Mr. Ralph L. Shearer, 680 Sommer Ave.,
 Newark, N. J.; and to Mrs. Ralph L. Shearer the
 wife of Ralph L. Shearer, 680 Sommer Ave.,
 Newark, N. J.; by enclosing same in separate
 envelopes, sealing same, attaching postage
 stamps, and depositing same at the Post Office,
 20 Elizabeth, N. J.

KARL SCHAFFER.

Sworn and subscribed before me
 this 23rd day of October, 1919.

MABEL SEIBERT GRAFF,
 NOTARY PUBLIC OF NEW JERSEY

30 STATE OF NEW JERSEY, }
 COUNTY OF UNION. } ss.

40 KARL SCHAFFER, being duly sworn according to
 law on his oath deposes and says: That he was
 the purchaser of the premises known as Lot 181-
 183 William Avenue, Elizabeth, N. J., and that
 said property was sold to him by the Comp-
 troller of the City of Elizabeth at a tax sale
 held on the 12th day of November, 1917, for the
 unpaid taxes of 1916: That he served and caused

Complainant's Exhibits.

to be served, notice to redeem on the parties having, or appearing to have an interest in the above mentioned premises as required by law, and that more than two years expired since the date of sale of said premises and more than 60 days expired since the serving of the Notices To Redeem and that the said property has not been redeemed from the said sale. 10

KARL SCHAFFER.

Sworn and subscribed to before me
this 5th day of April, 1926.

MABEL S. GRAFF,
NOTARY PUBLIC OF NEW JERSEY

the said certificate with said notice and said affidavits having been recorded in the Register's Office of Union County on April 6, 1926 in Book 1040 of Deeds on pages 487 &c., and also filed with the said Register. 20

EXHIBIT C. 12.

There was offered in evidence before the Vice-Chancellor at the hearing and thereafter there were furnished to the Vice-Chancellor and considered by him in the case, photostatic copies of the original certificate of Tax Sale No. 2493, dated November 22, 1917, setting forth sale on November 12, 1917, to Karl Schaffer of premises known as 217-219 William Avenue, assessed as property of Modern Home Realty Co., to which was appended the following notice: 30

Complainant's Exhibits.

Elizabeth Heights Realty Company
Morris Steinberg,
To..Ralph L. Shearer, Mrs. Ralph L. Shearer

10 You are hereby notified that a Public Sale held
by Dennis F. Collins, Comptroller of the City of
Elizabeth at the City Hall in said City
on Nov. 12, 1917, under and by virtue of the
provisions of an act of the Legislature
of the State of New Jersey entitled "An Act for
the Assessment and Collection of Taxes," ap-
proved April 8, 1903, and the several acts sup-
plementary thereto and amendatory thereof,
KARL SCHAFFER, of the City of Elizabeth,
State of New Jersey bought for the sum of
\$5.77 for unpaid taxes for the year 1916 a certain
tract and parcel or land assessed in the name
20 of Modern Home Realty Co. and described as
follows:

Lots 217 to 219 William Avenue

And you are hereby notified that you have or
appear to have an interest or estate in said land
and real estate and a right to redeem the same
and that unless said land or real estate be re-
deemed within two years after the said sale, if
this notice be served upon you more than sixty
days before the expiration of said time; or if
30 not served until the expiration of said two years,
then within sixty days after the service of this
notice, your right of redemption will be barred.

Dated

KARL SCHAFFER,
Purchaser.

to which also were appended the following affi-
davits:

Complainant's Exhibits.

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

CHARLES L. BAUER, JR., being duly sworn upon his oath deposes and says that for the purpose of serving the within Notice to redeem, he was the agent of KARL SCHAFFER, and that on October 22, 1919, he served a duplicate of the within Notice to redeem on Elizabeth Heights Realty Company, by leaving same with William J. Shearer, Incorporator at his home, #1100 Anna street, Elizabeth, N. J.

10

CHARLES L. BAUER, JR.

Sworn and subscribed before me
 this 23rd day of October, 1919.

MABEL SEIBERT GRAFF,
 NOTARY PUBLIC OF NEW JERSEY

20

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

KARL SCHAFFER, being duly sworn upon his oath deposes and says that on the 23rd day of October, 1919, he mailed duplicates of the within Notice to redeem addressed to the Elizabeth Heights Realty Company, % Mr. Charles S. Wood, Incorporator, 510 West 135th St., N. Y.; to Elizabeth Heights Realty Company, % A. W. Lossell, Incorporator, 435 East 66th St., N. Y.; to Mr. Ralph L. Shearer, 680 Sommer Ave., Newark, N. J.; and to Mrs. Ralph L. Shearer the wife of Ralph L. Shearer, 680 Sommer Ave., Newark, N. J.; by enclosing same in separate envelopes, sealing same, attaching postage

30

40

Complainant's Exhibits.

stamps, and depositing same at the Post Office,
Elizabeth, N. J.

KARL SCHAFFER.

Sworn and subscribed before me
this 23rd day of October, 1919.

10

MABEL SEIBERT GRAFF,
NOTARY PUBLIC OF NEW JERSEY.

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

KARL SCHAFFER, being duly sworn according
to law on his oath deposes and says; That he
was the purchaser of the premises known as
20 Lot 203-205 William Avenue, Elizabeth, N. J.,
and that said property was sold to him by the
Comptroller of the City of Elizabeth at a tax
sale held on the 12th day of November, 1917 for
the unpaid taxes of 1916; That he served and
caused to be served, notices to redeem on the
parties having, or appearing to have an interest
in the above mentioned premises as required by
law, and that more than two years expired since
the date of sale of said premises and more than
30 60 days expired since the serving of the Notices
to Redeem and that the said property has not
been redeemed from the said sale.

KARL SCHAFFER.

Sworn and subscribed to before me
this 5th day of April, 1926.

MABEL S. GRAFF,
NOTARY PUBLIC OF NEW JERSEY

40

Complainant's Exhibits.

the said certificate with said notice and said affidavits having been recorded in the Register's Office of Union County on April 6, 1926 in Book 1040 of Deeds on pages 484, etc., and also filed with the said Register, and thereafter there was added to the foregoing, the following affidavit of Karl Schaffer:

10

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

KARL SCHAFFER, being duly sworn according to law on his oath deposes and says, that he was the purchaser of the premises known as lots Numbers 217 and 219 William Avenue, Elizabeth, N. J., and that said property was sold to him by the Comptroller of the City of Elizabeth at a tax sale held on the 12th day of November, 1917, for the unpaid taxes of 1916; that he served and caused to be served, notices to redeem on the parties having or appearing to have an interest in the above mentioned premises as required by law; and that more than two years expired since the date of sale of said premises and more than 60 days expired since the serving of the Notices to redeem and that the said property has not been redeemed from the said sale.

20

30

Deponent further says that this affidavit is made for the purpose of re-recording and filing same with the Register of the County of Union together with Certificate of sale and affidavit covering lots Numbers 217 and 219 William Avenue, Elizabeth, N. J., to take place of affidavit of non-redemption which was filed by deponent on April 6th, 1926, and in which affidavit through an error the above mentioned premises were

40

Complainant's Exhibits.

described as lots Numbers 203 and 205 William Avenue, Elizabeth, N. J.

KARL SCHAFFER.

10 Sworn to and subscribed before me
this 16th day of June, 1927.

MABEL S. GRAFF,
NOTARY PUBLIC OF NEW JERSEY.

and all of the foregoing, together with said subsequent affidavit of Karl Schaffer, were again recorded in Book 1113 of Deeds for Union County on pages 34, etc., and marked FILED with the Register.

20

EXHIBIT C. 13.

There was offered in evidence before the Vice-Chancellor at the hearing and thereafter there were furnished to the Vice-Chancellor and considered by him in the case, photostatic copies of the original certificate of Tax Sale No. 2490, dated November 22, 1917, setting forth sale on November 12, 1917 to Karl Schaffer of premises
30 known as 203-205 William Avenue, assessed as property of Modern Home Realty Co., to which was appended the following notice:

Elizabeth Heights Realty Company,
Morris Steinberg,

To...Ralph L. Shearer, Mrs. Ralph L. Shearer.

You are hereby notified that a Public Sale held by Dennis F. Collins, Comptroller of the City of Elizabeth at the City Hall in said City on Nov. 12, 1917, under and by virtue of the
40 provisions of an act of the Legislature of the

Complainant's Exhibits.

State of New Jersey entitled "An Act for the Assessment and Collection of Taxes," approved April 8th, 1903, and the several acts supplementary thereto and amendatory thereof, KARL SCHAFFER, of the City of Elizabeth, State of New Jersey bought for the sum of \$5.77 for unpaid taxes for the year 1916 a certain tract and parcel of land assessed in the name of Modern Home Realty Co. and described as follows:

Lots 203 to 205 William Avenue

And you are hereby notified that you have or appear to have an interest or estate in said land and real estate and a right to redeem the same and that unless said land or real estate be redeemed within two years after the said sale, if this notice be served upon you more than sixty days before the expiration of said time; or if not served until the expiration of said two years, then within sixty days after the service of this notice, your right of redemption will be barred.

Dated.....

KARL SCHAFFER,
Purchaser.

to which also were appended the following affidavits:

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

CHARLES L. BAUER, JR., being duly sworn upon his oath deposes and says that for the purpose of serving the within Notice to redeem, he was the agent of KARL SCHAFFER, and that on October 22nd, 1919, he served a duplicate of the

Complainant's Exhibits.

within Notice to redeem on Elizabeth Heights Realty Company, by leaving same with William J. Shearer, Incorporator at his home #1100 Anna Street, Elizabeth, N. J.

CHARLES L. BAUER, JR.

10 Sworn and subscribed before me
this 23rd day of October, 1919.

MABEL SEIBERT GRAFF.

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

20 KARL SCHAFFER, being duly sworn upon his
oath deposes and says that on the 23rd day of
October, 1919, he mailed duplicates of the within
Notice to redeem addressed to the Elizabeth
Heights Realty Company, % Mr. Charles S.
Wood, Incorporator, 510 West 135th St., N. Y.;
to Elizabeth Heights Realty Company % A. W.
Lossell, Incorporator, 435 East 66th St., N. Y.;
to Mr. Ralph L. Shearer, 680 Sommer Ave., New-
ark, N. J.; and to Mrs. Ralph L. Shearer the wife
of Ralph L. Shearer, 680 Sommer Ave., Newark,
30 N. J.; by enclosing same in separate envelopes,
sealing same, attaching postage stamps, and de-
positing same at the Post Office, Elizabeth, N. J.

KARL SCHAFFER.

Sworn and subscribed before me
this 23rd day of October, 1919.

MABEL SEIBERT GRAFF,
NOTARY PUBLIC OF NEW JERSEY

Complainant's Exhibits.

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

KARL SCHAFFER, being duly sworn according to law on his oath deposes and says: That he was the purchaser of the premises known as Lot 217-219 William Avenue, Elizabeth, N. J., and that said property was sold to him by the Comptroller of the City of Elizabeth at a tax sale held on the 12th day of November, 1917, for the unpaid taxes of 1916; That he served and caused to be served, notices to redeem on the parties having, or appearing to have an interest in the above mentioned premises as required by law, and that more than two years expired since the date of sale of said premises and more than 60 days expired since the serving of the Notices to Redeem and the said property has not been redeemed from the said sale.

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KARL SCHAFFER.

Sworn and subscribed to before me
 this 5th day of April, 1926.

MABEL S. GRAFF,
 NOTARY PUBLIC OF NEW JERSEY

the said certificate with said notice and said affidavits having been recorded in the Register's Office of Union County on April 6, 1926 in Book 1040 of Deeds on pages 490, &c., and also filed with the said Register, and thereafter there was added to the foregoing, the following affidavit of Karl Schaffer:

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Complainant's Exhibits.

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

10 KARL SCHAFFER, being duly sworn according to law on his oath deposes and says, that he was the purchaser of the premises known as Lots Numbers 203 and 205 William Avenue, Elizabeth, N. J., and that said property was sold to him by the Comptroller of the City of Elizabeth at a tax sale held on the 12th day of November, 1917, for the unpaid taxes of 1916; that he served and caused to be served, notices to redeem on the parties having or appearing to have an interest in the above mentioned premises as required by law; and that more than two years expired since the date of sale of said premises and more than 20 60 days expired since the serving of the Notices to redeem and that the said property has not been redeemed from the said sale.

Deponent further says that this affidavit is made for the purpose of re-recording and filing same with the Register of the County of Union together with Certificate of sale and affidavit covering Lots Numbers 203 and 205 William Avenue, Elizabeth, N. J., to take place of affidavit of non-redemption which was filed by deponent on April 6th, 1926, and in which affidavit through 30 an error the above mentioned premises were described as Lots Numbers 217 and 219 William Avenue, Elizabeth, N. J.

KARL SCHAFFER.

Sworn to and subscribed before me
 this 16th day of June, 1927.

MABEL S. GRAFF.

Defendant's Exhibits.

and all of the foregoing, together with said subsequent affidavit of Karl Schaffer, were again recorded in Book 1113 of Deeds for Union County on pages 32, etc., and marked FILED with the Register.

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EXHIBIT D. 1.**STATE OF NEW JERSEY**

Department of State

I, JOSEPH F. S. FITZPATRICK, Secretary of State of the State of New Jersey, Do Hereby Certify that our records of Notaries Public show that one Mabel Seibert of Elizabeth was duly commissioned and qualified as Notary Public as follows:

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Commission dated April 22, 1909, expiring April 22, 1914,

Commission dated April 22, 1914, expiring April 22, 1919,

Commission dated June 19, 1919, expired June 19, 1924; and, I further certify that this is the complete record of the said Mabel Seibert.

(SEAL) IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my Official Seal at Trenton, this twenty-third day of June A. D. 1927.

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JOSEPH F. S. FITZPATRICK,
Secretary of State.

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Defendant's Exhibits.

EXHIBIT D. 2.

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

10 This is to certify that MABEL SEIBERT has been duly commissioned a Notary Public by the Governor of the State of New Jersey, by commission dated 22nd April Nineteen hundred and Nine, and that he qualified as such Notary Public on the 22nd day of April in said year, by taking the necessary oath in this office.

Witness my hand and the seal of the said County of Union this 23rd day of June Nineteen hundred and Twenty-seven.

20 (SEAL) WM. B. MARTIN,
County Clerk.

EXHIBIT D. 3.

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

30 This is to certify that MABEL SEIBERT (nee Graff) has been duly commissioned a Notary Public by the Governor of the State of New Jersey, by commission dated June 19th, Nineteen hundred and nineteen, and that she qualified as such Notary Public on the 19th day of June in said year, by taking the necessary oath in this office.

Witness my hand and the seal of the said County of Union this 23d day of June Nineteen hundred and twenty-seven.

40 (SEAL) W. B. MARTIN,
County Clerk.

Defendant's Exhibits.

EXHIBIT D. 4.

STATE OF NEW JERSEY, }
COUNTY OF UNION. }*ss.*

This is to certify that MABEL S. GRAFF has been duly commissioned a Notary Public by the Governor of the State of New Jersey, by commission dated June 26 Nineteen hundred and twenty-four, and that she qualified as such Notary Public on the 26th day of June in said year, by taking the necessary oath in this office. 10

Witness my hand and the seal of the said County of Union this 23d day of June Nineteen hundred and twenty-seven.

W. B. MARTIN,
County Clerk.

(SEAL)

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EXHIBIT D. 5.

Certified copy of Incorporation of the ELIZABETH HEIGHTS REALTY COMPANY, which, among other things, set forth the name of the corporation as ELIZABETH HEIGHTS REALTY COMPANY, the location of the principal office at 27 West Grand Street, Elizabeth, N. J., the agent upon whom process might be served as William J. Shearer, the objects to carry on a general real estate business, the capital stock at \$150,000, divided into 1500 shares of the par value of \$100 each, capital stock with which business was to be commenced at \$25,000, the Incorporators Wm. J. Shearer, 1100 Anna Street, Elizabeth, N. J., 248 shares, A. W. Lassell, 435 East 66th Street, New York, 1 share, 30

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Defendant's Exhibits.

Chas. S. Wood, 510 West 135th Street, New York, 1 share,

10 filed April 22, 1911, to which was annexed the annual report filed September 23, 1926, which set forth the name as Elizabeth Heights Realty Company, the agent in charge as Harry B. Brockhurst, No. 921 Bergen Avenue, Jersey City, the Directors, William J. Shearer, Jr. 921 Bergen Avenue, Jersey City, Ralph L. Shearer, 921 Bergen Avenue, Jersey City, James L. Shearer, 921 Bergen Avenue, Jersey City, and the officers President, William J. Shearer, Jr.

Vice-president, Ralph L. Shearer

Treasurer, James L. Shearer

Secretary, James L. Shearer.

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EXHIBIT D. 6.

30 Certified copy of Petition of ELIZABETH HEIGHTS REALTY COMPANY for reinstatement, which, among other things, set forth that the corporation failed to pay franchise tax for the year 1915; that its charter was therefore suspended; that there were due taxes for 1915, 1916 and 1917, with interest, approximating \$461.32, and that the Petitioner offered to tender payment and asked to be reinstated to its franchises as a corporation, to which was annexed the recommendation of Attorney General E. L. Katzenbach, advising reinstatement, and the Order of A. Harry Moore, Governor, dated October 1, 1926, permitting such reinstatement.

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May Term
101

New Jersey Court of Errors and Appeals

Between

ELIZABETH HEIGHTS REALTY COM-
PANY, a corporation,

Complainant-Appellee,

and

KARL SCHAFFER,

Defendant-Appellant.

On Appeal from
Chancery.

BRIEF FOR COMPLAINANT-APPELLEE.

The complainant-appellee is a corporation organized under the laws of this State and filed its bill of complaint claiming to be the owner of Lots 23 and 24, 34 and 35, 41 and 42 in Block 2 and Lots 37 and 38 in Block 1 on the Map of Elmora Manor. (See Deed, Exhibit C-1, Case, p. 138.) These lots in the order named, are known on the Tax Collector's books as Lots 181 and 183, 203 and 205, 217 and 219 on the south side of William Avenue and Lots 190 and 192 on the north side of William Avenue, Elizabeth, this State. William Avenue was formerly known as Halstead Road.

In the case of *Shearer v. Schaffer*, also to be heard at this term, at page 44, Schaffer conceded complainant's right to the redemption of Lots 190 and 192 William Avenue, therefore on these two lots Shearer must prevail.

All the other lots above enumerated were sold to Schaffer in 1917 for the delinquent taxes of 1916.

The Comptroller of the City of Elizabeth gave to Schaffer three certificates of tax sale, namely:

Number 2488 for Lots 181 and 183 William Avenue;

Number 2490 for Lots 203 and 205 William Avenue;

Number 2493 for Lots 217 and 219 William Avenue.

The original certificates on file with the Register of Union County were produced by him at the hearing and photographic copies of the certificates were furnished the Court and by an understanding between counsel to this appeal are to be used before this Court in further explanation of Exhibits C-11, C-12 and C-13 (Case, pp. 148 to 156, incl.).

An original bill of complaint was filed in this matter on October 19, 1926; the hearing was had before the Vice-Chancellor on June 22, 1927. The three certificates of tax sale last mentioned had been originally recorded in the Register's office on April 6, 1926. On June 16, 1927, six days before the hearing commenced before the Vice-Chancellor, certificates numbers 2490 and 2493 were re-recorded after having been taken from the files, taken apart and "an explanatory affidavit" purporting to have been sworn to on June 16, 1927, by Karl Schaffer, was annexed thereto (Case, pp. 46 to 50; also the testimony of Edward Bauer, Register of Union County, commencing Case, p. 124).

Since the re-record of these certificates did not come to the attention of the complainant until about the time of the hearing, leave was obtained to file a supplemental bill setting out these facts and an order permitting the same was granted (Case, p. 9) and a supplemental bill filed (Case, p. 11).

The case was heard by the Vice-Chancellor on practically the same testimony that was offered in the *Shearer-Schaffer* case heard by the same Vice-Chancellor just prior to the instant case.

The facts, however, are not alike because in the instant case the owner of the property sold at tax sale was a corporation and the case hinges on the perfection of the proceedings by Schaffer, the tax sale purchaser.

The appellant insists that the only facts with which the Court is concerned are those which tend to demonstrate the service of notice to redeem and nothing more.

With this contention neither the Vice-Chancellor nor counsel for the complainant-appellee agree.

The complainant-appellee insists that something more than the mere service of notice is necessary. A tax sale purchaser must not only serve his notice to redeem strictly according to the statutory requirements, but also annex proof of the service of such notice, the notice itself, and proof of non-redemption of the lands sold, to the tax sale certificate and record such proceedings as a deed (C. S., p. 5137, Sec. 59). Until that is done, complainant-appellee is in a position to seek redemption. Counsel on both sides of this appeal are agreed that unless the owner shows weakness or error in the "proceedings to perfect title," he is not entitled to redeem, but we differ on what is the meaning of the "proceedings to perfect title."

Complainant-appellee urges that the weakness and error in the proceedings to perfect Schaffer's title in this case may be found in (1) the lack of service of the notice to redeem; (2) the efforts to redeem from Schaffer made by the attorneys of the complainant-appellee and also by its officer from the Comptroller of the City of Elizabeth; (3) the irregularities appearing in the proceedings

taken by Schaffer with reference to the affidavits of non-redemption; (4) the mutilation and alteration of the tax sale certificates numbers 2490 and 2493, and lastly, upon the lack of official qualification of the notary public who took the affidavits of service and non-redemption.

POINT I.

The notices to redeem were not properly served nor were they served upon the owner as required by law and accordingly the owner's right to redeem was not cut off.

The manner of service of the notice to redeem is set out in Section 59, in the words following:

"The purchaser of land at tax sale may, at any time within twenty years after the purchase, give written notice to all persons interested in the land, of their right to redeem * * * This notice shall be served *personally on persons interested who reside in the taxing district*, and on those who reside out of the district it may be served personally or by mailing to their post office address if it can be ascertained, and by posting on the premises sold, if it cannot be ascertained" (4 C. S., p. 5137, Sec. 59).

The Vice-Chancellor concludes:

"The notice of redemption alleged to have been served, was not legally served upon the complainant" (Case, p. 25).

The manner of service upon residents and non-residents differs,—

"This notice shall be served *personally on persons interested who reside in the taxing district.*"

No direct legislation appears to point the way for service upon corporations of notices to redeem from tax sales, argument must therefore be made by analogy.

A corporation has been held under similar statutes to be a person.

Chief Justice BEASLEY has said:

“A corporation is a distinct *person* in law * * *.”

Conway v. Halsey, 44 N. J. L. 462.

“A corporation has a distinct legal existence as a *person* * * *.”

Apperson v. Mut. Ben. Life, 38 N. J. L. 272.

Statutes have been adopted to point out how corporations may be served “personally” with process, but not with a notice of the character above required.

P. L. 1916, page 410.

The Courts have said what constitutes “personal service” of process on corporations, where statutes make this requirement.

“* * * that is, *service on the defendant personally*. This form of expression indicates *something more restricted* than would be meant by mere service on the defendant. * * * But this statute calls for service on the defendant *personally*, which excludes service upon mere agents. Whether such a service can be made upon a corporation need not now be decided. If it be possible, it must be by service upon the *stockholders* or the *directors* or *trustees, when convened as a body*, for only such a body can, in any fair sense, be said to constitute the corporate personality. Other persons are but agents of the corporation.”

Justice DIXON in *Laufman & Co. v. Hope Mfg. Co.*, 54 N. J. L. 70.

Other cases decided by our courts which hold that service upon an officer or agent of the company whose duty it is, either in his official capacity or by virtue of his employment, to communicate the fact of such service to the governing body of the corporation, is good, cannot be applied in the determination of the instant case. For, as pointed out by Justice DIXON in the last above cited case "This form of expression (service on the defendant *personally*) indicates something more restricted than would be meant by mere service on the defendant." The statute cited above, demands that the "notice be served" *personally*.

The statute construed by Justice DIXON and the statute here under consideration bear a certain resemblance. Both lead to radical results. The one to a judgment by default in shorter than ordinary time, the other to the irretrievable loss by the owner of title to his property. Both statutes should be strictly construed.

What are the facts, subject to the application of this law?

The complainant, Elizabeth Heights Realty Company, is a corporation incorporated in New Jersey, with its principal or registered office in Elizabeth, within the taxing district where the lands lie. It is the owner in fee of the lands sold for taxes (Exhibit C-1, Case, p. 138).

"A corporation has its domicile, for the purpose of taxation, at the place where its principal business office is located" (37 *Cyc.* 959).

Warren v. Warford, 37 N. J. L. 397;

Riverton v. Haig, 58 N. J. L. 295 at 298.

The complainant-appellee, therefore, resides in the taxing district and is entitled to "personal service" of the notice. It did not get "personal" or any other kind of service of the notice to redeem.

Attached to each of the three certificates, numbered respectively 2488, 2490 and 2493 and recorded as part of the alleged "tax sale proceedings" is an affidavit, using in each instance the same language, showing (1) that Bauer, Jr., served complainant-appellee by leaving with "William J. Shearer, Incorporator," at his home, a duplicate copy of the notice to redeem, and (2) that the defendant Schaffer *mailed* duplicate notices to redeem to complainant, the first "in care of Mr. Charles S. Wood, Incorporator, 510 West 135th Street, New York," and the other "in care of A. W. Possell, Incorporator, 435 East 66th Street, New York."

Such actions, if uncontradicted, do not constitute a "personal service" of notice to redeem on the complainant. They are mere meaningless gestures.

The broadest interpretation of the term "Incorporator" cannot go beyond the term "stockholder," and nowhere has it yet been held that an individual stockholder, at his home, is the proper person upon whom to serve a notice directed to the corporation. And such service falls far short of that which Justice Dixon points out as essential to acquire "personal service" on a corporation.

"Nothing is more clear than the distinction existing between the person of the corporation and that of the individual corporators. * * * The great object of an incorporator is to bestow the character and properties of personality and individuality upon the legal entity called the corporation as distinct from the *persons* of the corporators." * * *

"In a suit by a corporation, the *individual corporators are not liable* to be served with process, nor are they answerable for costs."

Berg Co. Mut. Assur. ads. Cole, 26 N. J. L. 362 at 365.

“A shareholder, not being in his mere character of shareholder in privity with the corporation, but being a stranger to it, notice to him of a fact which he is not under a special duty of communicating to the corporation, is not notice to the corporation” (10 *Cyc.* 1061).

It is interesting to note the testimony of one of the “incorporators,” Lasell (Case, p. 92), which demonstrates that he was not a resident at the address to which the notice was mailed to him, at the time it was mailed and that he never received it. It is also of importance to note that Schaffer made no inquiry further than an examination of the certificate of incorporation to learn the address of Lasell when he mailed this notice (Case, p. 117). Schaffer even acknowledges that he “could not locate him” (Case, p. 117).

It is argued by the appellant that service of the notice to redeem was made upon William J. Shearer as president of the complainant-appellee. But there was no competent proof that William J. Shearer was president of the owner corporation. The Vice-Chancellor admitted a question to a witness over counsel’s objection because he believed it could not harm complainant-appellee, for the reason that he believed, and so counsel insist, that the affidavit of service which demonstrates Shearer, as an “Incorporator,” bound appellant. Assuming for purposes of argument that William J. Shearer had been president of the owner corporation, then by reason of the loss of its franchises by the corporation by proclamation of the Governor (*P. L. 1918*, p. 1235) the office of president was suspended and the entire affairs of the corporation were placed in the hands of the directors or surviving directors (*C. S.*, p. 1635, Sec. 54) and there is no proof before the Court who they were. Therefore, all the emphatic arguments of appel-

lant that service was made on the president can avail him nothing. Such argument overlooks entirely the fact that in 1919, when it is claimed the notices were served, the Company had been deprived of its franchises and no longer had a president, secretary or treasurer.

General Corporation Act regulations of service of process in judicial proceedings cannot be helpful. Neither can the provisions of service in a Chancery suit or a District Court action. For in each of these an officer of the Court makes the service, and again the nature of a judicial proceeding is quite different from the one contemplated under the Tax Act.

Appellant admits that a tax sale proceeding is "ex-judicial." Yet he would have this Court apply the doctrine asserted in cases decided on service of process in judicial proceedings. *Hould v. Squire Co.*, 81 N. J. L. 103; 79 Atl. 282, is such a case and does not fit the facts in the case at bar.

It is respectfully submitted, therefore, that service of notice to redeem was not made upon the complainant-appellee in the manner required by law.

POINT II.

Several efforts at redemption were made, first by the owner's attorneys, from Schaffer and lastly from the City Comptroller.

By stipulation at the hearing, it was agreed between counsel that the testimony in the *Shearer-Schaffer* case of the following named witnesses: William J. Shearer, Jr. (Case, p. 50, *et seq.*), Henry F. Wolfskeil (Case, p. 94, *et seq.*), Frederick Simon (Case, p. 101, *et seq.*) and Benjamin Seligman (Case, p. 127) were incorporated in and con-

sidered part of the evidence to be considered by the Vice-Chancellor in the decision and disposition of this suit.

At the time of Shearer's personal visit upon Schaffer in October, 1919, the notices to redeem the property in this suit had not yet been served so far as the witness William J. Shearer, Jr., knew (Case, p. 71, l. 26). His experience with Schaffer, however, would be sufficient to deter him from making any effort had he known of the service of the notice in this case. Notice to redeem in this case had not been brought home to William J. Shearer, Jr.

In 1925, in connection with his own properties, Mr. Shearer endeavored to have cleared up all tax certificates covering not only his own properties but also the property of the complainant-appellee and conferred with his counsel, Henry F. Wolfskeil (*Shearer* case, p. 54), and later with Mr. Seligman (*Shearer* case, p. 55).

Mr. Wolfskeil ordered tax searches of the Shearer properties (*Shearer* case, p. 97), and Mr. Wolfskeil had a general discussion with Schaffer (Case, p. 97, l. 23). The two tax searches which Mr. Wolfskeil had made are Exhibits C-4, Case, page 183, and C-5, Case, page 184.

Mr. Simon testified that he was consulted by Shearer in the latter part of 1925, who brought him the tax searches obtained by Mr. Wolfskeil. He had a conversation with Schaffer right after the summer of 1925 in which Schaffer told him that he had a good title and that Schaffer would not treat with Shearer or the witness on anything but that he would pay a nominal sum for a deed from Shearer (*Shearer* case, pp. 102-3).

Three tax searches relating to property on William Avenue (Halstead Road) and West Grand Street, were identified by Simon, Case, page 103,

and admitted in evidence as Exhibits C-6, Case, page 186, C-7, Case, page 187, and C-8, Case, page 190.

Simon, too, had a general conversation with Schaffer, but succeeded in accomplishing nothing because Schaffer insisted that he had a good title and would not do anything except to offer Shearer a nominal sum for a deed (Case, pp. 105-6). In fact, Simon had a series of conversations with Schaffer and the conclusions were always the same (Case, p. 109, l. 31).

It was consented that the testimony of Wolf-skeil and Simon should also go in the Elizabeth Heights case (Case, p. 111).

A reading of the testimony of these two witnesses compels the conclusion that Schaffer had determined that his title was good and that he would not permit redemption. Under these circumstances a tender of redemption or a tender of an exact amount of money is unnecessary and obviated by his conduct.

MacLeod v. Hoover, 159 La. 244; 15 So. 305;

Bundy v. Wills, 88 Neb. 554; 130 N. W. 273.

It must be remembered and borne constantly in mind that the "tax sale proceedings," consisting of the tax sale certificates, proofs of service of notice to redeem and affidavits of non-redemption, were not originally recorded by Schaffer until April 6, 1926, and that the endeavors made by Shearer's father and his attorneys, Messrs, Wolf-skeil and Simon, were made before any proceedings, good or bad, were perfected or attempted to be perfected.

Lastly, we have a tender of redemption made by Shearer and Seligman in behalf of the company,

to the City Comptroller and City Treasurer as fully set out in the testimony (*Shearer* case, pp. 55 and 128, 129). While it is true that the certificates were originally recorded on April 6, 1926, two of them, Exhibits C-12 and C-13 were removed from the files, a new "explanatory affidavit" attached to each, refiled and re-recorded on June 27, 1927.

The frustrated efforts of attorneys for the complainant-appellee in an endeavor to redeem these properties from Schaffer in 1925 are a sufficient foundation on which the complainant can build its right to redeem.

Sichel v. Willett, 145 Atl. 721;

Clift v. Frenche, 83 N. J. Eq. 437; 91 Atl. 817;

Gonzales v. Harrington, 2 Misc. 316; 126 Atl. 40, and other cases cited by counsel in the *Shearer* brief.

The effort to redeem from the Comptroller was timely and sufficient, because the tax sale proceedings then recorded in the Register's office were full of irregularities. And because of such irregularities, were taken from the files and explanatory papers attached and refiled and re-recorded, a year later. In consequence, the owner corporation was not cut off by the alleged "tax sale proceedings."

It follows that the Comptroller should have accepted redemption offered and his refusal entitles complainant-appellee to the decree permitting redemption.

POINT III.

The irregularities attending the recording of the tax sale proceedings, of tax sale certificates numbers 2490 and 2493 vitiate these proceedings and entitle the complainant-appellee to redeem.

When the tax sale certificate number 2490 (Exhibit C-13, Case, p. 156) and tax sale certificate number 2493 (Exhibit C-12, Case, p. 151) were sought to be turned into the tax sale proceedings or statutory deeds by the filing and record thereof, Schaffer, although appending to the certificate number 2493, which dealt with premises known as 217-219 William Avenue, the affidavit of service and notice, appended an affidavit by himself (Case, p. 154) in which he says that he was the purchaser of premises known as 203-205 William Avenue, and that although he has given notice to redeem "the above mentioned premises" "the said property has not been redeemed."

When Schaffer recorded tax sale certificate number 2490 which related to premises 203-205 William Avenue as a tax sale proceeding or statutory deed, he appended thereto a notice to redeem and the affidavit of service and himself made an affidavit (Case, p. 159), wherein he swears that he was the purchaser of premises known as "217-219 William Avenue" and that he served notice to redeem *such* premises and that although sixty days had expired "the said property has not been redeemed from the said sale."

Section 59, 4 *Compiled Statutes*, page 5137, with reference to the recordation of a tax sale proceeding or statutory deed, provides:

"The purchaser may, after the time to redeem has expired without redemption, annex the notice (to redeem) and affidavit of service to the certificate of sale, *together with an affidavit that the sale has not been redeemed* and record and file the same therewith in the office of the County Court or Register, where the same shall be recorded as a deed or conveyance."

See *Moore Securities v. Hammel Co.*, 97 N. J. Eq. 292; 127 Atl. 207.

It is at once apparent that Schaffer did not comply with the law because he records a certificate of tax sale number 2493 which sold to him Lots 217 and 219 William Avenue but fails to show by the affidavit he appends thereto that said property has not been redeemed from such tax sale because the affidavit he annexed describes other property. This is equally true regarding tax sale certificate number 2490. This is not a compliance with the statute. It is immaterial to the sale of property 203-205 William Avenue that property 217-219 William Avenue has not been redeemed and vice versa.

It is clear that Schaffer shares counsel's view in this matter because on June 16, 1927, he draws an "explanatory affidavit" that he made a mistake in his former affidavit, and tries to cure the irregularities and defects above pointed out so far as each of the certificates are concerned (Case, pp. 155 and 160). In this connection it may be well to point out the last affidavit (?): although the jurat purports that Schaffer swore to and subscribed the affidavit, Mabel S. Graff does not sign the same in any official capacity. In other words, she has omitted to state that she is a notary, a commissioner or other person qualified to take oaths (Case, p. 160).

The Court will grasp at the slightest irregularity in the perfection of the tax title to let the owner in to redeem.

Where a Deputy instead of a Sheriff signed the deed:

Wilson v. Doe, 7 Leigh (Va.) 22.

Where the tax sale purchaser extended the time beyond the sixty-day notice:

Clift v. Frenche, 83 N. J. Eq. 437; 91 Atl. 817.

Where the tax sale purchaser refused to discuss the amount that should be paid for redemption:

Gonzales v. Harrington, 2 Misc. 316; 126 Atl. 40.

Where the description of the lands was slightly inaccurate:

Welles v. Schaffer, 98 N. J. Eq. 31; 129 Atl. 622.

“The object of recording (certificate) as a mortgage is to mark the distinction between the effect of the certificate before proceedings have been taken to bar the right of redemption and its effect after such proceedings, when the same certificate, with affidavits and proofs of notice annexed, is to be recorded as a deed. In the first case the certificate is a mere lien; in the second, the purchaser has an absolute estate in fee or for a term of years.”

Anson v. Elwood, 76 N. J. L. 56; 68 Atl. 784.

POINT IV.

The mutilation of the certificates by the removal from the files of the register of the tax sale proceedings and the addition of an explanatory affidavit of non-redemption, vitiates the record and opens the door to redemption.

“The (County) Clerk is the lawful custodian of the records and indexes thereto and is responsible for the safekeeping thereof.” * * *

Lum v. McCarty, 39 N. J. L. 287 at 290;

State v. Freeholders, 67 N. J. L. 444; 51 Atl. 488.

At common law a public officer by virtue of his office becomes the legal custodian of all papers, books and records pertaining to his office and is responsible for their safekeeping and protection against alteration, injury or mutilation, which duty the law presumes that a public officer will perform (*34 Cyc.* 590).

* * * (a recording officer) “has no authority to interpolate anything not in the instrument recorded at the time of the original record, and if at the time of the original record, the proper entry was made, or the instrument correctly copied, the officer cannot subsequently alter the record.”

34 Cyc. 591 (citing cases).

The Vice-Chancellor has concluded that such action is not only reprehensible but illegal and says:

“The Register himself would be unauthorized to make the changes in the instruments filed with him which he permitted the defendant to make. The effect of the Register per-

mitting the defendant to mutilate the instruments filed with such officer is to invalidate such instruments. That the defendant appreciated the invalidity of his tax sale proceedings in the case *sub judice* is evidenced by the fact that shortly prior to the hearing of the case he undertook to correct the proceedings in the manner above mentioned" (Case, pp. 27-28).

This conclusion is warranted by the testimony. The findings of fact are conceded correct by counsel for the appellant in his brief (Appellant's Brief, p. 3).

The evidence as to the mutilation and alteration of the instruments is fully set out in the evidence of Edward Bauer (Case, p. 124, *et seq.*). What the effect of this alteration is, remains for the Court to say. It has been repeatedly held that an altered instrument is so far vitiated that no recovery can be had on its original or altered terms (2 *Cyc.* 182).

Diligent search has failed to reveal any case in point. This seems to show that no other person has attempted the audacious procedure resorted to in this case.

When Schaffer originally recorded the two last mentioned tax sale certificates, the proofs of non-redemption attached thereto were incorrect, consequently he failed to perfect title. Then, when the complainant filed his bill, which has been held to tender redemption, and after Schaffer had answered, he attempted to correct these tax sale proceedings, going to the length of taking them from the files of the Register, taking them apart and refastening them with "explanatory" proofs (Case, p. 132). Schaffer confessed his certificates ineffective and the Court should not differ with him. If ineffective, the complainant-appellee was entitled to redeem.

POINT V.

All the recorded tax sale proceedings are ineffective because the papers annexed to the certificate of sale and purporting to be affidavits of service and of non-redemption were not sworn to before and do not bear the certification of a duly commissioned notary public, authorized to take and certify to such oath, inasmuch as the person purporting to act as a notary public had no official qualification to act as such.

Mabel Seibert was commissioned a notary June 19, 1919, for a term of five years (Exhibit C-1, Case, p. 161).

Mabel Seibert married August 16, 1919.

On October 23rd, 1919, Mabel Seibert Graff purports to administer oaths to Charles L. Bauer, Jr., on alleged affidavits proving service of the notices to redeem (Case, pp. 149, 153, 158) and to administer oaths to Karl Schaffer on alleged affidavits purporting to prove the non-redemption of some parcels of real estate, as well as other affidavits as to mailing certain notices (Case, pp. 150, 151, 154, 156, 157, 159).

The Secretary of State has certified that a commission as notary public was issued to Mabel S. Graff on June 26, 1924, and that was the only record of any commission to a person of that name (Exhibit C-2, Case, p. 139).

Therefore, when these purported affidavits were taken, they were taken before one not qualified nor commissioned to act as notary public and the affidavits are a nullity (Vice-Chancellor's Conclusions, Case, p. 28, l. 23).

Women were first empowered to act as notaries by an act

P. L. 1894, p. 35; *C. S.*, p. 3761.

There was never any legislation respecting women who married and had been commissioned as notaries while single, similar to those laws which were adopted with respect to Masters in Chancery (*P. L. 1923*, p. 265) and attorneys (*P. L. 1923*, p. 267). But such an act was passed after Vice-Chancellor FALLON's opinion was rendered in the case *sub judice* (*P. L. 1930*, p. 955).

In the absence of such legislative authority the married woman, Mabel Seibert Graff, commissioned when single as Mabel Seibert, had no power to administer the oaths to Bauer and Schaffer above mentioned and consequently there was no adequate proof of service of notice or non-redemption required by the statute and the tax sale proceedings even as originally recorded were defective and the owner corporation was not cut off and therefore entitled to redeem.

SUMMARY.

It is respectfully urged that the conclusions of the Vice-Chancellor to permit complainant-appellee to redeem are well founded in fact and law and that the resulting decree of the Chancellor should be affirmed, because the evidence demonstrates that efforts at redemption, although timely, were frustrated by the conduct of the appellant whose attempts at perfecting his tax title were defective owing to the many irregularities hereinbefore discussed.

Respectfully submitted,

ADOLF L. ENGELKE,
Solicitor for and of Counsel
with Complainant-Appellee.

APPEAL PRINTING CO., 22 THAMES ST., NEW YORK CITY

[4618]

New Jersey Court of Errors and Appeals

Between

ELIZABETH HEIGHTS REALTY
COMPANY, a corporation,
Complainant-Appellee,

and

KARL SCHAFFER,
Defendant-Appellant.

BRIEF OF DEFENDANT-APPELLANT.

Statement of the Case.

This was a suit in Chancery to redeem from the lien of several tax sales made under the Act of 1903, Chapter 208, page 394.

These are sometimes referred to by lot and block number, as set forth in the deed. They are more often indicated in the case by street numbers, and they are so designated in the tax sale certificates. It is more convenient to speak of them by their street numbers, and they will be so treated in the brief.

Four parcels are mentioned in the complaint. They are lots situated on William avenue, Elizabeth, New Jersey.

One parcel is known as Nos. 190-192 William avenue.

There were two cases tried practically at the same time before the Vice-Chancellor, the present one, in which William J. Shearer, Jr., appears as secretary and sole representative of the complainant-appellee, and another case, that of said William J. Shearer, Jr., against this

same defendant-appellant, and there was an identity of some testimony, so that, to avoid duplication, testimony in the Shearer case is considered part of this case. See pages 57, 63, 64, 65, etc., of this case.

At the outset of the case of *Shearer v. Schaffer*, which is also now on appeal in this Court, the defendant-appellant conceded the right to redeem the parcel known as lots 190 and 192 William avenue. See page 44 of *William J. Shearer, Jr., v. Karl Schaffer*. The defendant-appellant has ever since been ready to accept redemption when it is offered. That parcel, therefore, is out of the controversy, and not a part of the present litigation and appeal.

There are three lots left, which constitute the issue,

- (a) Nos. 181-183 William avenue,
- (b) Nos. 203-205 William avenue, and
- (c) Nos. 217-219 William avenue.

Each is a separate lot. Each of these was sold by the Comptroller of the City of Elizabeth on November 12th, 1917, to the defendant-appellant. A certificate of tax sale was issued to him for each. The certificates, together with respective affidavits of service and affidavits of non-redemption, appear in the case as Exhibits, and were recorded as deeds. Exhibit C. 11, page 148, concerns 181-183 William avenue. Exhibit C. 12, page 151, concerns 217-219 William avenue. Exhibit C. 13, page 156, concerns 203-205 William avenue.

There is practically no issue of fact in this case. The learned Vice-Chancellor mentioned in his opinion, at the bottom of page 23 and top of page 24, that he was constrained to follow the testimony of the witnesses for the complainant-

appellee. This is in substance repeated by him in his amended opinion. See bottom of page 28 and top of page 29.

The amended opinion was filed by the learned Vice-Chancellor because there was an error in his earlier opinion as to the designation of the lots. The earlier opinion stated the controversy hinged upon the lot concerning which redemption was conceded, whereas it concerned the other three lots. This was corrected in the subsequent opinion.

We have been unable, through careful search, to find any items of substance in which there is any definite controversy as to the testimony. If there were, however, we concede the right of the trial court to be the judge of the facts, and assuming all of the facts to be as the Vice-Chancellor found them, our contention is that it then became a question of law applicable to the facts.

Under the law, no situation appeared that justified an award of redemption. The argument along this line will be considered in detail.

The record owner of these three parcels appeared to be the Elizabeth Heights Realty Company, the complainant-appellee. The defendant-appellant caused the requisite notice to redeem to be served upon the president of this company on October 22, 1919, with respect to each of the three parcels.

By force of the statute, the complainant-appellee was constrained to redeem by December 22, 1919, or, in absence thereof, its equity of redemption would be barred, and title become fixed in defendant-appellant.

The defendant-appellant made affidavit of such non-redemption, and the certificates, with respective affidavits of service and respective affidavits of non-redemption, were recorded with the Register of Union County among deeds, as appears from the Exhibits C. 11, C. 12 and C. 13 above mentioned. The affidavits are further supported by testimony in the case, concerning which reference more in detail will be made herein.

The time of service and of non-redemption within the time stipulated are not disputed. No effort to redeem from any of these parcels was made till March, 1926, more than six years after service of notice to redeem.

The prayer of the complainant-appellee for redemption from these three parcels was allowed by the Vice-Chancellor. The present appeal is from such award of redemption. It is manifest that in a situation as above outlined, and upon proceedings after a tax sale by the City, and proceedings by the tax purchaser, as above indicated, that title in the premises becomes good in him, unless the owner shows weakness or error in the proceedings to perfect title.

In the absence of such weakness or error, the title becomes invulnerable and award of redemption is beyond the pale of the law.

It is manifest, therefore, that the decree awarding redemption needs to be founded upon such error or weakness, and that this has to be gleaned altogether from the testimony.

It will be my purpose in this brief to take up all the points which the complainant-appellee raised in an effort to show some weakness or

defect in the proceedings to perfect title, and to show that these points do not raise anything of substance within the law to defeat such title, that there was no basis on which the Vice-Chancellor could legally ground a decree awarding redemption, and that, therefore, the decree should be set aside.

I.

The certificate of sale and proceedings thereon established good title in the premises in the defendant-appellant.

There is no question in the case as to the sales by the City. Exhibit C. 11, page 148, shows the tax sale to Karl Schaffer, defendant-appellant, of lots 181-183 William avenue. Exhibit C. 12, page 151, shows the sale to him of lots 217-219 William avenue. Exhibit C. 13, page 156, shows the sale to him of lots 203-205 William avenue, all on November 12th, 1917.

The affidavit, page 149, shows service of notice to redeem through Charles L. Bauer, upon Elizabeth Heights Realty Company, complainant-appellee, by leaving with William J. Shearer as to the first mentioned lot. The affidavit of Bauer, page 153, shows similar service with regard to the second lot, and the affidavit of Charles L. Bauer, on page 157, line 33, etc., shows similar service of the notice to redeem with respect to the third lot.

In these same Exhibits there are the affidavits of Schaffer to show that in each instance more than two years expired after the date of sale, and more than sixty days since the serving of the notice, and that the respective properties had not been redeemed. See his affidavit, page

150, line 30; also his affidavit, page 154, line 15, etc.; also his affidavit, page 159.

The substance of these affidavits, that there was no redemption, is supported by his testimony at the hearing, page 120, lines 3, etc.

In the affidavits of service by Charles L. Bauer, William J. Shearer is mentioned as an incorporator. The complainant-appellee makes a point of this, although we will show that he was the president of the company. This company was the record owner of the property, and is the party coming in to seek redemption. See page 44.

The affidavit of Charles L. Bauer, who made service of the notice to redeem, is supported by his testimony, page 104, line 24, and is reiterated throughout the remainder of his testimony. He mentions, on page 106, line 10, his own information that William J. Shearer was the president of the company. Since this William J. Shearer subsequently died, and was not alive at the time of the hearing, we lay no stress upon this.

There is other evidence in the case, however, that of William J. Shearer, Jr., son of William J. Shearer, who is secretary of the company, that at the time of such service his father, William J. Shearer, was the president of Elizabeth Heights Realty Company, this evidence having issued with apparent, but perhaps natural reluctance, since its effect is to solidify the effectualness of service on the owning company. See page 86, line 40. The question related to the officers of the company as of October 22, 1919, the time of service. Page 85, line 10, etc. The answer, p. 85, line 33, is that the witness was secretary and treasurer, "then." The answer of the witness on p. 86, line 40, relates back to this, the "then" referring to October 22, 1919,

at which time he states his father, William J. Shearer, Sr., the man served, was president of the company.

It will be observed that the tax sales occurred on November 12, 1917. The law controlling the subject is the Tax Sale Act of 1903, Chapter 208, page 394. It provides method of service and manner of redemption, if there is to be redemption.

Section 59, page 432, states:

“The purchaser of land at tax sale may at any time within twenty years after the purchase give written notice to all persons interested in the land of their right to redeem and that unless they do so within the term of two years after the sale, if the notice is served more than sixty days before the end of the term, or within sixty days after the service of said notice if served later, their right of redemption will be barred; this notice shall be served personally on persons interested who reside in the taxing district, and on those who reside out of the district it may be served personally or by mailing to their post office address if it can be ascertained * * * ; if there shall be no redemption within the said term of two years after the sale, or thereafter within the time limited by said notice, or in case no notice is given, if there shall be no redemption within twenty years after the purchaser has entered into open possession since continued under the sale, then the right of redemption shall be barred; the purchaser may after the time to redeem has expired without redemption annex the notice and affidavit of service to the certificate of sale, together with an affidavit that the sale has not been redeemed, and record and file the same therewith in the office of the County Clerk or Register where the same shall be recorded as a deed or conveyance, and the

said notice and affidavits and the record thereof shall be presumptive evidence of the service and facts therein stated; * * *.”

It will be seen, therefore, that the defendant-appellant literally complied with the statute. His filed papers are given a presumptive force of verity by this section, and the presumption is made binding by the positive testimony above mentioned.

III.

The complainant-appellee never made any redemption within the time designated by the statute and the defendant-appellant's title to the premises in question became fixed.

In the foregoing status, title in defendant-appellant is good unless complainant shows the proceedings to perfect title were defective, or unless it shows there was redemption within time.

The tax sales by the City are not questioned. They could not be, under Laws of 1925, page 480. By force of the statute, the service having been made on October 22, 1919, the owner had until December 22, 1919, within which to redeem.

The case is barren of any effort to redeem within that time. Conceding every statement of all the witnesses for the complainant-appellee to be correct, nothing can be found to show such redemption within the legal time. Their whole testimony shows that the only effort at redemption was made in a visit to the office of the Comptroller of the City of Elizabeth on March 20, 1926, six years and three months after the time for redemption had expired.

All the testimony as to facts on this phase is comprised in that of William J. Shearer, Jr., and Arthur E. Lenox. Besides this, the testimony of Henry F. WolfsKeil, Frederick Siman and Benjamin Seligman given in case of William J. Shearer, Jr., *v.* Karl Schaffer, and that of Lenox in that case, are considered part of this case, as heretofore pointed out.

Let us consider the testimony of William J. Shearer, Jr. In his own case against Schaffer, pages 50 and 51, he mentions a visit to Schaffer in October, 1919. He points out, however, in this present case, page 71, line 20, etc., that that visit did not concern the premises now in question, but concerned other premises.

The only time the present premises were considered by him for redemption was when he made his visit to the Comptroller's office in March of 1926. See page 71, line 40, page 72, line 1, etc. He refers to his attorneys, but it will be seen they also were not consulted till 1925, about six years after right to redeem expired.

The testimony of WolfsKeil is that he was not consulted till February of 1925. See page 94, line 40, of the Shearer-Schaffer case. Also that he never made any offer to defendant-appellant to redeem. See page 95 of that case, line 20.

The testimony of Siman is practically similar to that of WolfsKeil, namely, that he was consulted in March of 1925 by William J. Shearer, Jr., that he made no offer to redeem. See page 102, line 12, etc., and page 110, lines 10, etc., of the Shearer *v.* Schaffer case.

The testimony of Seligman relates solely to the visit to the Comptroller in March of 1926.

See page 128, line 12, of the Shearer-Schaffer case.

The testimony of Lenox also relates solely to the visit to the Comptroller in March, 1926. See page 132, line 26, etc., of the Shearer-Schaffer case.

All of the foregoing takes in every phase of any testimony on the subject of redemption, and giving to the complainant-appellee all the leeway, and all allowance for verity of the testimony, it simmers down to no more than this, that in March of 1926 an effort was made at the office of the Comptroller to redeem from these sales, which was refused by the Comptroller because of the lapse in time. It is quite manifest that such refusal was justifiable. The evidence on the subject of this attempted redemption is set forth in the Shearer-Schaffer case, and allowed in this case without need of repetition *in toto*. See pages 57, 63, 64 and 65 of this case. Both in this case and in the other, there is not a single line of evidence to show any effort to redeem these three parcels till March, 1926. On page 73, line 10, etc., the witness, William J. Shearer, Jr., secretary of the company, admits that the foregoing constituted all effort at redemption in the case, and that the sole attempt was in March, 1926. He adds "plus the attempts of my father." No efforts on the part of the father appear in the case. In fact, complainant's own Exhibit C. 6, page 141, is a letter from Schaffer to him on January 5, 1920, pointing out that the time for redemption had expired.

The complainant-appellee waited six years and three months before taking action. He was totally and irrefutably out of time. I cannot

see by any phase of reasoning or explanation how, in the face of the clear mandate of the statute, the visit to the Comptroller in March of 1926, six years and three months after the time of redemption had expired, could in any way afford a ground for redemption.

IV.

The service of notice to redeem upon complainant-appellee was good, and coupled with non-redemption within time, effectually cut off the right to redeem.

The next point raised by the complainant-appellee is that although service was made upon the president of the owning company, Charles L. Bauer, who made the affidavit of service, described him as an incorporator in such affidavit.

It is conceded that the company was properly named. It is conceded that the notices were proper. At no time in the case is any objection raised to them. The notices, page 148, page 152 and page 156, with respect to each parcel, were directed to the Elizabeth Heights Realty Company. There were other names mentioned in the notice, but that is purely surplusage, neither helping nor detracting. It is properly precautionary on the part of a tax purchaser to include anyone who might have an interest. If they have none, no harm is done. If they have an interest, it would be dangerous to leave them out. It so happens that Elizabeth Heights Realty Company, the complainant-appellee, was the record owner, and, therefore, the party to be served.

The testimony of Bauer, who made service, is that he served William J. Shearer, Sr. See page 104, line 25. This is repeated later, and emphasized on cross examination. If William J. Shearer were not a due officer for such service, then there would be merit in the contention of the complainant-appellee. It is manifest, however, that he was at the time of such service, the president of the company.

The witness, William J. Shearer, Jr., secretary of the complainant-appellee, after legal fencing, admitted that he was. See pages 85 and 86 and touched on above in the brief.

The complainant-appellee forfeited its charter through not paying its franchise taxes. Exhibit D. 6, page 164. It indicated no interest in the premises for payment of taxes. See Exhibit C. 9, page 144, and C. 10, page 147, which show the unpaid taxes. It never filed the annual reports required of corporations. See page 136, line 30. The absence down to reinstatement, of minutes, stock books and any of the data customarily normal with a corporation, was apparent. The company came to life and was revived for the sole purpose of entering into this litigation, and it designated as its attorney and representative in proceedings for re-instatement of its charter, Mr. Harry B. Brockhurst, altogether without his knowledge, and left him bereft of the slightest acquaintanceship with any of the proceedings. See testimony of Brockhurst, page 55, line 22, etc., and page 56, lines 23, etc.

In this status, anyone having business or recourse against this company was left without the information ordinarily exacted and requisite in a corporation.

Now as to the service, and whether or not there is any merit in the contention of the complainant-appellee. We have a situation in which the company to be served is concededly the Elizabeth Heights Realty Company. We have the situation that at the time of service its charter had been forfeited, and we have the situation that the person who is the president is William J. Shearer, the father, and we have the indisputable fact that service of the notice to redeem addressed to the company was made upon him, its president, on October 22, 1919.

How should service be made under the law, under such circumstances?

The General Corporation Act, Revision of 1896, Section 87, states "a personal action may be commenced against a corporation by service upon the *president*, or head officer, or agent, at his usual abode * * *."

A Chancery provision, Laws 1907, page 76, provides that "in any Chancery suit against a New Jersey corporation, service may be made upon the *president* * * *."

District Court Act, Laws of 1908, page 181, provides that "service may be made upon the *president* * * *."

As above stated, this company filed no annual report setting forth names of officers and directors, as required by Section 43 of the General Corporation Act. In such a contingency, service can be made upon the Secretary of State, by virtue of paragraph two of that section, or one could make service in the former way, if possible. It was, in this instance, found possible, and service was made on the president, constituting effectual service on the corporation.

It remains to be seen whether the status is altered by the fact that the charter had been dissolved, and it is apparent that this is not the case.

Section 55 of the General Corporation Act provides that the directors, after dissolution, are suable by name of the corporation, or in their own names.

Section 53 of the Act provides that all corporations, whether they expire by their own limitation or be revoked by the Legislature or otherwise dissolved, *are continued as bodies corporate for the purpose of prosecuting or defending suits, and to close their affairs.*

This company was, therefore, at the time it was served, suable in its own name.

In *Hould v. Squire Company*, 81 N. J. L. 103, the particular question arose. It was held that even after dissolution a corporation could be sued in its own name, and service made on the registered agent. It so happened that service was made, in that case, on the registered agent. But service would have equally been good as, in our instance, upon the president, since the statute designates him also as a person that can be served in a representative capacity for the corporation.

Of course, the proceedings to perfect a tax sale title are ex-judicial. But it has been held in *McKenna v. Harrington*, 96 N. J. Equity 700 and *Wilson v. Trenton*, 53 N. J. Law 645, that service need not be technical or prescribed, but that the statute is met when the person in interest is actually served.

Those cases are quoted in a later one, *Alexander v. Rekoon*, 104 N. J. L. 1.

There is no question, therefore, as to the effectualness of the service upon the president as representing the company, in this situation.

The remaining phase of this point on the part of the complainant-appellee is that Charles L. Bauer, in his affidavit of service, pages 149, line 25, 153, line 14, and 158, line 3, used the word "Incorporator" after the name of William J. Shearer.

It is to be noted that William J. Shearer, the person served, was not the person in interest. The person in interest and owner was Elizabeth Heights Realty Company. That company, as above shown, could be served by service upon its president, and there is no dispute but what notice was addressed to the owning company, and that service was made upon its president.

The notice was not addressed to William J. Shearer. It was addressed to the person in interest, Elizabeth Heights Realty Company. All the essentials of requisite service, as defined by the statute, were met.

After such service has been made, how can it be weakened if the process server calls the man who was served an "Incorporator"? The appellation is purely descriptive and surplusage. A mere appellative description could not remove Shearer from his office as president, and the only thing which could have weakened that service was to show that Shearer was not the president.

As a matter of fact, the description happened to be correct. He was also an incorporator—see page 163, line 38. Not what a process server calls a person, but the identity of the person served is the controlling factor. If there were

a mistake in identity, that would be fatal. But if the identity is correct, any descriptive language by the process server is supererogation. In his conclusions, see page 26, the learned Vice-Chancellor rested his opinion on stressing the description of Shearer as an incorporator, and urging that service on an incorporator is not service on the company. This, of course, is not refuted. But he overlooked entirely the undisputed testimony of Shearer's son, the secretary of the company, that William J. Shearer, his father, the man served, was the president of the company. That testimony was controlling on the Court.

A case apropos is *Saunders v. Adams Express Company*, 71 N. J. Law 270, affirmed by this Court in 71 N. J. Law 520. There it was held that if a summons and declaration described a defendant as an unincorporated organization, when in fact it might be a corporation, those words could be rejected as surplusage, and the organization, whether incorporated or unincorporated, be considered effectually served, if the proper person has been served.

V.

Service of notice to redeem on others besides actual owner is surplusage and does not affect subject of redemption.

It was sought to be shown by complainant-appellee that the witness Armwell W. Lasell, page 91, was an incorporator of Elizabeth Heights Realty Company, and that he did not receive a notice to redeem. This neither helps the real owner on the subject of redemption, nor does it harm the tax purchaser. The Tax Sale Act contemplates that notice to redeem is

to be served upon persons "interested" in the premises. It will be seen from the Exhibits setting forth the tax sale, C. 11, page 148, C. 12, page 151, and C. 13, page 156, that the notices to redeem are addressed not only to Elizabeth Heights Realty Company, but to Morris Steinberg, and to Ralph L. Shearer and Mrs. Ralph L. Shearer.

In an affidavit made by Schaffer, attached to these Exhibits, he sets forth that he mailed notices to redeem, addressed to Elizabeth Heights Realty Company, to Charles S. Wood, an incorporator, and to A. W. Lasell, incorporator; also to Ralph L. Shearer and to Mrs. Ralph L. Shearer. They were outside the taxing district, and hence service, if they were to be served, could be made by mailing.

Schaffer states on page 114 that Morris Steinberg was included in the notice because he had a judgment against someone of the name Shearer. It turned out afterwards that this was a different Shearer. He corroborates his affidavit by testimony on page 116 as to the mailing. He explains that Ralph L. Shearer and Mrs. Ralph L. Shearer were included in the notice because, as he states on page 116 of the testimony, lines 24, etc., there appeared of record a deed to Ralph L. Shearer for the same property. Now it happens that in this case, Elizabeth Heights Realty Company, the complainant-appellee, claims to be the owner. It offered its deed in evidence (see page 44), for the premises. Service upon this Elizabeth Heights Realty Company, therefore, was all that was required. Schaffer pursued the precautionary method of including in his notice to redeem any others who might appear to have an interest. Such a course by a

tax purchaser is part of wisdom, since if any had an interest and were omitted from notice and service, they would retain such interest.

Nugent v. Lindsley, 100 N. J. Equity 87.

This situation is then tantamount to a suit to quiet title, with a notice directed to the defendants to answer if they claim an interest; otherwise not.

Mailing to incorporators of the company, when the company itself has been duly served, is pure surplusage, neither adding nor detracting from the service upon the company, and as has been shown above, service of the notice to redeem upon Elizabeth Heights Realty Company was complete and adequate.

VI.

Complainant-appellee's attack upon the status of the Notary Public is without force to give right of redemption because her standing as a Notary Public remained good, and also because the recording of documents after an owner has been cut off is permissive and does not revive the right of an owner once it has been lost.

Another point in the complainant-appellee's case is that the Notary Public, who took the affidavit as to service upon the owning company, was a married woman, and that her commission had been issued when she was single. The claim is that the jurat is defective.

It will be noticed that in the Exhibits setting forth the tax sale certificates, and attached affidavits, Exhibits C. 11, page 149, C. 12, page 153, and C. 13, pages 157 and 158, the affidavit of service made by Charles L. Bauer, Jr., is taken

before Mabel Seibert Graff, Notary Public of New Jersey, October 23, 1919.

The affidavit of mailing by Karl Schaffer is also taken before her on the same day.

To each Exhibit there is also attached the affidavit of non-redemption by Karl Schaffer, but this was taken on April 5, 1926. That affidavit is, therefore, not part of the complainant-appellee's argument, since, at that time, the Notary was married, and her commission was issued in her married name.

It was made a point at the hearing by the complainant-appellee and considered as a ground by the Vice-Chancellor (see page 28, line 10, etc.) that the Notary Public had her commission issued to her as a single woman, but was married subsequently on August 16, 1919, and was married at the time the affidavits of service were taken. The point of the complainant-appellee, and the ground in the Vice-Chancellor's opinion is, therefore, that although she was a duly constituted Notary Public, her marriage curtailed her authority.

There are two answers to this. First—having been appointed a Notary Public by the Governor of the State, only two means are provided in the statute for the extinguishment of her authority; one, removal by the Governor, and secondly, her death, besides, of course, the normal expiration of the term. None of these exigencies appear in the case. The idea that a duly commissioned officer loses authority through marriage is rather novel.

Secondly—even if it were to be assumed that her authority ended by marriage, that in no way

gives an owner, who has been cut off, the right thereafter to redeem, once his title is gone.

I intend to comment on the first part and thereafter upon the second.

It is shown from the Exhibits that Mabel Seibert was a Notary from April 22, 1909, at which time she was appointed by the Governor, and that she was such Notary at the time the affidavits were taken, and continued to be such Notary by subsequent re-appointment under her married name. The exhibits are Exhibit D. 1, page 161, which shows her appointment on April 22, 1909, expiring April 22, 1914; again on April 22, 1914, expiring April 22, 1919, and again on June 19, 1919, expiring June 19, 1924. Exhibit D. 2, page 162, certifies to her qualification on April 22, 1909. Exhibit D. 3 on the same page certifies to her qualification on June 19, 1919, these being under her single name. Exhibit D. 4, on page 163, certifies to her qualification as such Notary on June 26, 1924, under her married name, Mabel S. Graff. There is, therefore, unbroken record of her activity as such Notary, and there is nothing to show a cessation or abrogation of this authority.

The appointment as Notary is to an individual, and not to an empty name. The name is for identification of the individual.

In 29 Cyc. 1075, opinion collected from various states is to this effect:

“Generally a person acting as a notary under color of authority with public acquiescence is held to be a notary de facto, and as to the public and third persons, his acts are valid and cannot be attacked collaterally.”

Also from New Jersey:

If an affidavit is in fact properly sworn to, the failure of the officer to sign or certify the same is not fatal. *Capner v. Fleming Min. Co.*, 3 N. J. Equity 467.

In general, an affidavit may be amended nunc pro tunc, *Ely v. Fen*, 12 N. J. L. 321.

Where an affidavit is sufficient in substance, extraneous proof to supply a deficiency of form in the jurat is admissible, in the absence of a showing that an injustice would be done thereby, *Whitehead v. Hamilton Rubber Co.*, 53 N. J. Equity 454.

There is no injustice to the owner in this case, as it no longer had an interest, it having been served and barred by failure to redeem within time. Only persons in interest can be heard.

Section 57, 4 Comp. St. N. J. 5136; *Mitsch v. Owens*, 82 N. J. Equity 404; *Cadmus v. Bayonne*, 61 N. J. L. 494; *Frazier v. Johnson*, 65 N. J. L. 673.

In *Magowan v. Baird*, 53 N. J. Equity 656, the affidavit was taken in a foreign jurisdiction, and the jurat was on its face deficient. But the Court of Errors and Appeals refused to void the affidavit. This case is quoted in *Dreier v. Dreier*, 101 N. J. Equity 342.

Our statute relating to Notaries, Laws of 1894, page 35, gives the Governor the power to appoint, with a provision that they shall hold office for the term of five (5) years, but shall be removed from office at the pleasure of the Governor.

There is nothing to show, and, of course, there could not be anything to show that the Governor, in this instance, had removed the Notary in question.

The same Notarial Act provides that women may be appointed as Notaries, and that anything in the Act relating to Notaries referring to the masculine gender, shall apply to females as well as to males.

The institution of marriage is one that has the favorable sanction of judicial support. It is not conceivable that it should have been the intention of the Legislature to extinguish the Notarial rights of a woman who marries and follows the accepted practice of adopting her husband's name, and that this approved social procedure should automatically debar rights which the solemn act of the Chief Magistrate of the State conferred.

If it is a question of determining the identity of the Notary, then the above cited cases indicate that this can be furnished extraneously, and in the present case the identity is shown by the records and by the testimony of the witness in the two cases, on pages 114 and 144, etc., of the William J. Shearer, Jr., case, and on page 96 of the present case.

Moreover, legislative tendency has been in the direction of effectuating affidavits. This is shown in the Laws of 1926, page 44, validating affidavits, and also in Laws of 1930, page 317, which particularly validates all deeds, mortgages, acknowledgments and other papers, wherein there is an affidavit taken before a Notary who was a single woman and thereafter married, by whichever name she signed. That act alone disposes of this point.

There is unconstrained freedom in adopting names. Collected cases in 29 Cyc. 270 and 271 set forth:

“A man may lawfully change his name without resort to legal proceedings, and for all purposes the name thus assumed will constitute his legal name just as much as if he had borne it from birth.”

Our own Courts uphold this in re *Witsenhau-
sen*, 42 N. J. L. J. 183:

“There is nothing in the common law prohibiting a man from taking another name if he so desires.”

It also holds that 3 Compiled Statutes 3685, providing a legal method for change of name, does not repeal the common law by implication or otherwise, but merely gives an additional method of effecting change of name, whereby a record may be kept of such change.

So far as substance is concerned the essential data, namely, that the company was served in the manner and at the time set forth is substantiated by Charles L. Bauer in his oral testimony at the hearing, as already pointed out in this brief.

The second part of the reply to this phase of the complainant-appellee's point is perhaps even more determinative. We have here the undisputed situation of a good tax sale certificate, service of notice to redeem upon the owner, substantiated in court by the person who made the service, and admitted in court by the owner itself. We have also complete failure of the owner to redeem within the time limited by law. The force of the statute relating to tax sales, already cited, thereupon automatically cuts off the owner from any right to redeem. It is no longer an interested party.

Section 56 of the Act, *supra*, states that the tax purchaser may then take his papers and record them in the Register's office in the form of a deed. This, however, is purely an optional privilege on the part of the tax purchaser, just as it is the privilege of a grantee to record his deed, or to refrain from recording it. It may be wiser to record it, but unrecording cannot restore to a grantor title with which he has parted. In the same way, the unrecording of the tax certificates and accompanying proofs cannot restore to an owner, who has been cut off, what the statute has deleted from him. Consequently, it is normal reasoning that anything that occurs in such recording after an owner has been cut off is no avail to revive a right, which he, in conformity with the statute, has lost.

In *Fort Lee, etc. v. Harrington Co.*, 102 N. J. L. 541, the section of the Tax Act referring to filing of such title papers is defined to mean "*there is no statutory time limit*" for doing so. A tax purchaser may or may not record them, and at any time.

To allow an owner to come in to redeem after he has been cut off because of any details of recording that occurred after he has been cut off would be to revive his right to redeem beyond the statutory period, and both the statute and the cases have explicitly reiterated that when he has been served and has failed to redeem within the statutory time, such right of redemption is gone.

Suppose there were a proper mortgage foreclosure, a proper decree, a sale of premises by the Sheriff, which, by the wording of the statute on mortgages, and the conformable wording of

the decree, cuts off the owner from and after the sale by the Sheriff, and suppose afterwards the Sheriff, in the recording of his deed, made an error in name or description, could it be contended that this revived the right of the former owner? Manifestly not, and manifestly such an error, if there were one, would be purely between the Sheriff and his grantee, and would not at all concern the former owner, who by force of the statute, had been effectually cut off by the Sheriff's sale.

The same reasoning could apply in the case of a judgment. Suppose there were a judgment, an execution, and a sale of the premises, all of them unquestioned in propriety, and thereafter the Sheriff, in drawing his deed to the grantee, had in it an affidavit by a single woman who had become married, and took the jurat in her married name, could this possibly revive any rights of the judgment debtor when they had been effectually extinguished by a sale? Any question that might hinge about such an affidavit would be purely one between persons in interest subsequent to the owner who had been cut off. Similarly in this case, any question, if there were one, about this jurat, would be one, not that concerned Elizabeth Heights Realty Company, who had been already cut off, but between Schaffer and any possible subsequent grantee.

The tax certificate, the proof of service and the proof of non-redemption when the previous owner has been cut off conformably with the statute, are purely muniments of title in the hands of the tax purchaser. This point is set forth in *McCandless v. Schaffer*, 103 N. J. Equity 170. The wording of the opinion in that case is:

“The right is barred (that is, right of redemption, my insertion) *not by a perfect*

record title, but by failure to redeem within the time limited by law after notice. An owner has two years from the date of sale in which to redeem, provided 60 days' notice to redeem be given within that time, and thereafter, 60 days after notice.' Thereafter, the statute says, 'the right of redemption shall be barred.' The purchaser's title is thenceforth absolute, and he *may* make it a matter of record by recording the certificate, etc. * * *,"

This case emphasizes the fact that the controlling thing in determining if an owner has been cut off, is not the filing of papers, but whether or not he has been served, and whether or not he has redeemed in time. If he was not served, his rights remain irrespective of filing affidavits, etc. If he has been served, and has failed to redeem, he is cut out, whether or not the tax purchaser subsequently chooses to record his papers. In this case there is no question of Elizabeth Heights Realty Company having been served, and having failed to redeem in time, and of having been cut out.

No person holding a certificate and attempting to take title, nor any derivative title could be secure, if an owner, who had been cut off in the manner provided by the statute, could come in afterwards and revivify an expired right ten, twenty or thirty years later, by examination of a record with which he was no longer concerned.

In such cases as I have been able to find on the subject, there is not a single New Jersey case in which once an owner has been properly cut off, anything that occurred subsequently enabled him to come in and extend the time of redemption beyond what the law fixed.

In *Nugent v. Lindsley*, 100 N. J. Equity 87, which related to a Comptroller's tax deed, which is significant on the same point of the interposition of bar against redemption, the following is said:

“Notice and default are indispensable conditions to the divestiture of title by deed under the tax sale. The Comptroller's deed operates as a bar only upon owners who have been served, in the manner required by the act, with notice to redeem, and who have defaulted. As to those not served, the deed is ineffective, * * *. The deed may be likened to a decree in foreclosure against defendants who were not served with process. As to them the decree is invalid and may be attacked anywhere and at all times, *while as to those served it is an effectual bar.*”

VII.

Explanatory affidavits annexed to two tax sale certificates are not a ground of redemption, and complainant-appellee is in no position to question them.

The only remaining ground that was urged, or appears in complainant-appellee's case, is that explanatory affidavits were annexed to two of the tax sale certificates after filing, and that this was not allowable.

This is made a basis in the Vice-Chancellor's opinion, page 27, lines 20, etc., wherein appears a condemnatory comment of the Vice-Chancellor anent Edward Bauer, Register of Union County, who is a public official of many years' standing, and whose integrity and high standing has not been a subject of questioning.

The complainant filed a supplemental bill on this subject, page 11, alleging alteration of the

record. Defendant filed his answer, page 17. What occurred can be noted from examination of the last affidavit attached to Exhibit C. 12, page 155, and the last affidavit attached to Exhibit C. 13, page 160, and also from the testimony of Mr. Bauer, the Register.

It will be noticed that the tax certificate, Exhibit C. 12, relates to the premises #217-219 William avenue. Exhibit C. 13 relates to premises #203-205 William avenue. The City is the same, the street the same, the purchaser the same, the man who made service in each instance is the same, Charles L. Bauer, and the man who made the affidavits of non-redemption, Karl Schaffer, is the same. The contents of his affidavits of non-redemption are alike, with the exception of the difference in the street numbers. What happened is something that could readily have occurred, and doubtless does occur in offices, regardless of what checks are installed to overcome errors; namely, the affidavit by Karl Schaffer setting forth non-redemption as to lot #203-205 William avenue (see page 154) was by error appended to the tax certificate relating to lot #217-219 William avenue, and filed that way. Conversely, the affidavit of non-redemption by Karl Schaffer relating to 217-219 William avenue (see page 159) was attached to the tax certificate relating to 203-205 William avenue, and filed that way.

There is almost absolute identity in data, except for the street numbers, and in this state of similarity in loose papers being handled to be tacked up, an inadvertence in joining the papers occurred, to which any office doing business is subject.

The testimony of Edward Bauer, a disinterested witness, Register of Union County, whose character has been attested by the confidence of many thousands of his fellow citizens, sets forth what occurred, pages 124, etc.

The gist of it all is that when Schaffer discovered that the affidavits had been transposed, he drew an explanatory affidavit and presented them to the Register to be attached. See the last affidavit of Exhibit C. 12, page 155, and the last affidavit of Exhibit C. 13, page 160.

The suggestion that there was any mutilation or alteration, or effacement has no parallel in the occurrence itself. There is no allegation, and not the slightest evidence that the original tax certificates and accompanying papers were in any way changed, or that the record of them was changed. The explanatory affidavit was added in each instance, and the two then left for re-recording, the papers being at all times under the control of the Register.

An even more determinative answer to the matter of these filed papers is set out in the preceding argument summarized on the subject of the Notary Public, namely, that the owner, Elizabeth Heights Realty Company, having already been cut off, anything that occurred subsequently is of no avail to revive a right of redemption which the statute had previously eliminated.

The filed papers were Schaffer's muniments of title. Whether or not they were filed, is, by the statute, entirely permissive. If the complainant-appellee were cut off, irrespective of their filing, then filing them in whatever manner could not serve to revive a right already lost.

It is pointed out quite clearly in *McCandless v. Schaffer, supra*, that the right of redemption is barred not by a record title, but by failure to redeem within the time limited by law, after notice. The record title in these matters is the filing of the tax certificate and accompanying affidavits. They concern the tax purchaser. The owner, having been cut off, is not concerned with them, he being a stranger to the title after his rights are barred.

VIII.

The effect of the law as interpreted by the cases is completely to bar redemption after failure to redeem within time.

I have in the foregoing considered all the various grounds appearing in the conclusions of the Vice-Chancellor, or raised by complainant-appellee at the hearing, or that can be gleaned from the case, as a possible basis for awarding redemption, and have sought to show that they all fall short of that objective.

I will seek in this portion of the brief to advert to the law and cases that stress the finality of barring an owner from redemption when the time limit has passed.

The method governing redemption that controlled in the present instances is the Tax Sale Act of 1903, as amended by Laws of 1907, 1908 and 1909, appearing in Compiled Statutes, page 5136, section 57, as follows:

“The owner, mortgagee, occupant or other person having an interest in the land sold for taxes, may redeem the same at any time within two years from the date of sale or at any time thereafter until the right to redeem has been cut off in the manner here-

inafter set forth, by paying to the collector or other collecting officer of delinquent taxes on lands of the municipality where the land is situate, the amount of purchase money shown on the certificate with twelve per cent. interest thereon, together with such other fees and expenses as may be incurred by the purchaser, etc.”

Section 59 of the Act provided, among other things,

“If there shall be no redemption within the said term of two years after the sale, or thereafter within the time limited by said notice, or in case no notice is given, if there shall be no redemption within twenty years after the purchaser has entered into open possession since continued under the sale, then the right of redemption shall be barred.”

It has already been shown that the Elizabeth Heights Realty Company was served on October 22, 1919. Its last date to redeem, therefore, was December 22, 1919. By force of the statute such redemption would have had to be made to the Collecting Officer of the municipality, and the admitted testimony was that no such effort was made until March of 1926, six years and three months too late.

In *Welles v. Schaffer*, 98 N. J. Equity 31, it is stated that the only issue the Court can entertain is whether the right to redeem is still open to complainant.

Nugent v. Lindsley, 100 N. J. Equity 87.

Nugent v. Meeker, 4 N. J. Misc. 1041.

Nugent v. Spinning, 4 N. J. Misc. 1043.

The fact that there was a due sale, that a certificate was issued, that notice to redeem was served upon Elizabeth Heights Realty Company, that there was no redemption within the time

limited by law, established conclusive title in the defendant-appellant.

In *Fitzsimmons v. Bonavita*, 77 N. J. Equity 277, where the subject of tender was at issue, it was pointed out that a tender must be "sufficient." Timeliness is an inherent basic requisite in a tender.

Section 59 of the controlling Act, Laws of 1903, Chapter 208, sets forth:

"If there shall be no redemption within the said term of two years after the sale, or thereafter within the time limited by said notice * * * then the right of redemption shall be barred."

Clift v. Frenche, 83 N. J. Equity 437, states:

"This statutory ex parte proceeding affords no method whatever for extending the time originally fixed by the notice."

Cadmus v. City of Bayonne, 61 N. J. L. 494, says:

"There is not the vestige of authority in this Court to extend the time for redemption to alter the terms prescribed by the statute, * * *"

The general rule is set forth in *Blackwell on Tax Titles*, 4th Edition, page 330, in this way:

"The right of a purchaser to a deed in pursuance of the sale and certificates when the time of redemption expires is a vested one; and the Legislature cannot, without a violation of the contract between the State and the purchaser, repeal the authority of the officer to execute and deliver a deed to him. Nor can the Legislature extend the time of redemption, after the rights of the purchaser have attached. Those rights attach when his bid is accepted and he pays the purchase money, and the statute then in force constitutes the law of his contract;

by it alone are the rights and duties to be determined; nor can the Legislature renew the remedy once barred by the statute of limitations. The certificate vests such an interest in a purchaser that when the time fixed for the redemption has expired, and the officer improperly refuses to clothe the purchaser with the legal title a mandamus will be awarded at the instance of the purchaser, to compel the execution of a deed."

Equity has no jurisdiction to afford relief beyond the limits of the law.

Langley v. Jones, 43 N. J. E. 404.

Nugent v. Hayes, 94 N. J. Equity 305.

I find only one instance where the time to redeem is extended by the statute, Laws of 1913, page 821, which gives additional time to redeem where there is a dispute between the purchaser and the owner "concerning the amount of costs and charges to which the purchaser is entitled by law." That is not pertinent here.

Besides, in such an instance, the appeal must come "either before or within one year after the time of redemption has expired."

There is, of course, the general effect of the statute that when a tax certificate is being foreclosed, right of redemption extends up to the time of the entry of the decree, but this is not a foreclosure case, and that provision has no application here.

This is a bill on the part of the owner to redeem. To sustain such a bill he must show that he has a right to redeem. If it appears that he has been properly cut off, his right to redeem is gone, and equity cannot revive it.

The language of the cases stress the thought that redemption not having been made within time, the rights of the owner are cut off.

In *McKenna v. Harrington*, 96 N. J. Equity 700, redemption is denied in the following language:

“Because of her failure to redeem within the time limited by the statute, her equity of redemption in the premises in question was effectually cut off, and she is not entitled to the relief prayed for in her bill of complaint.”

Just as a right to redeem resides in the owner at the time of a tax sale, so equally a right to perfect a title inures in the purchaser at the time of sale. Neither can be abridged. Neither can be deprived of the specific rights given under the statute.

This is pointed out in *Rodgers v. Cressman*, 98 N. J. Equity 209, in which the Court stated:

“Her (defendant’s) right to redeem vested in her at the same time the right to perfect the title vested in the purchaser (the complainant), which was on the day of the sale.”

If our Tax Sale Act means anything at all, if it is to have any vitality or substance, and if it is to afford any real significance to a tax purchaser, its chief import is that when a tax purchaser has once cut off the owner, the right to redeem is forever gone.

If such right of the purchaser is diminished beyond the statute, or if the right of redemption is extended beyond the clear confines of the statute, then such right of the purchaser is taken without warrant, and he is deprived of the rights and title which the Tax Sale Act, by its plain language, gives him.

IX.

A tax purchaser is entitled to the rights given him under a Tax Sale Act.

The trial court in its conclusions cited *Harrington v. Horster*, 89 N. J. Equity 270, and the expression that is sometimes quoted to the effect that a court of equity will seize upon the slightest flaw of substance in tax sales to restore property to the owner. Page 26, lines 37, etc. The Harrington-Horster case was one to foreclose and not a redemption case, as in the present instance.

Undoubtedly, where there is a flaw of substance, the proceedings of a tax purchaser are vulnerable. This cannot mean that an invariable mantle of protective sympathy is to be extended over all owners, but is no more than a declaration that the law is to be followed. It could not be taken to mean that when a tax purchaser, as in this case, has complied with the law, a court of equity, out of generous feelings, can divest him from a title which he has perfected. It can mean no more than when the law has not been followed, the tax purchaser gains nothing, but when the law has been followed, he is entitled to whatever the statute gives him.

Consideration of laws involves their just interpretation as affecting all parties concerned. If a tax sale act is devitalized, there is no purpose in having any, and the means of collecting taxes is vitiated.

Municipalities and governments live only by taxes. All the machinery of Courts, the police power, protection from destroying elements, and the vast utilities and benefits which arise from communal living rest on taxation. It is the only

means through which the united agency of the people can carry out their constructive work, and in essence, represents the contribution of members of the community towards the perpetuation of their communal life. If taxes are to be collected, then the means of collection need to be enforceable.

The sale of land for non-payment of taxes is the means indicated by the statute for collection of these taxes in the cases of those who omit or do not meet their share of the community's burden. The purchaser at a tax sale thereby contributes to the maintenance of civic living.

The Courts have increasingly shown their regard for this essential factor by statutes on the subject, and making it possible for a sale to a tax purchaser to mean something of substance to him, and not have it barren of real effect and so cloaked with insurmountable difficulties that such sales become empty in the hands of a tax purchaser.

An instance is the Act which makes the sale unquestionable in Chancery, unless directly attacked, Laws 1925, page 480; also note the difference between the 1903 Act, Section 56, which makes records presumptive proof, and the comparative Section 48 in the 1918 Act which makes them conclusive proof after two years. Note also the sweeping guarantee given to the purchaser by the supplementing Act of 1922, Chapter 115, page 207, which makes the title of any person claiming under any tax sales free from all municipal liens except those recited in the certificate.

An instance also is *McKenna v. Harrington*, 96 N. J. Equity 700, which reiterates the previous

doctrine of *Wilson v. Trenton*, 53 N. J. L. 645, and points out that service need not be technical, but that the statute is met when actual service is made.

This is shown also in *Fort Lee & Manhattan Realty Corp. v. Harrington Co.*, 102 N. J. L. 541, in which counsel for the present complainant-appellee appeared, and in which it was said:

“This act shall be deemed and taken to be a remedial act, and to operate both prospectively and retrospectively, and be liberally construed to effect the remedial objects thereof.”

The same thought is expressed in *Keys v. State*, 117 Atlantic Reporter 166, a Maine case, which mentions that since the State has adopted a policy of enforcing payment of taxes by the sale of property upon which taxes are delinquent:

“* * * the purchaser at a tax sale, should not, in any proceeding to test or touching the validity of such sale, be regarded with suspicion, or put at a disadvantage merely because he is such purchaser.”

X.

SUMMARY.

The defendant-appellant respectfully urges that assuming all the facts to be as the learned Vice-Chancellor found them, there is, nevertheless, no basis laid for right of redemption within the statute by the complainant-appellee, and that, therefore, no redemption should have been awarded.

It is respectfully urged that the trial court is limited to the consideration of only those facts which are set forth in the testimony, and that

no decree can be rested except as warranted by such testimony.

The clear proofs show a sale of the three parcels in question to the defendant-appellant, service of notice upon the owner to redeem, failure on its part to redeem within time, and a consequent devolution of title to defendant-appellant. The points raised by complainant-appellee indicate nothing within the law by which the title of the defendant-appellant to the premises is defeated.

It is respectfully urged that the decree awarding right of redemption to complainant-appellee be set aside.

Respectfully submitted,

CHARLES WAGNER,
Solicitor for and of Counsel
with Defendant-Appellant.

