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## Original Bill of Complaint.

### IN CHANCERY OF NEW JERSEY.

TO HIS HONOR, EDWIN ROBERT WALKER, CHANCELLOR OF THE STATE OF NEW JERSEY.

10

Complainant, Joseph A. Kristen, of the Town of Belleville, in the County of Essex and State of New Jersey respectfully shows that:

1. On October 3, 1921, there was due the Town of Belleville in the County of Essex and State of New Jersey for taxes for the year 1920 assessed against Lot No. 8, in Block No. 87, Map 19, in the names "Crane & Webster" as said lot is shown on the official tax map of the said Town the sum of \$24.66 which, with interest and costs then amounted to the sum of \$29.46. 20

2. On the said day the Collector of Taxes of the said Town, pursuant to an act entitled "An Act for the Assessment and Collection of Taxes" (Revision of 1918) P. L. 1918, page 847, and the amendments thereof and supplements thereto, duly sold the said land and premises (hereinafter more particularly described as the first tract), to the said Town of Belleville, and on October 10, 1921, duly made and executed a Certificate of Sale, under his hand and seal, conveying the said premises to the said Town of Belleville, which said Certificate, duly acknowledged, was recorded on December 31, 1921, in Book K 45 of mortgages for Essex County at page 31. 30

3. On February 26, 1926, there was likewise due to the said Town for taxes for the years 1915 to 40

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1925 inclusive, and for assessments for improvements on Lot No. 1, in Block No. 87, Map 19, as shown on the official tax map of the said Town, assessed in the names "A. H. & J. H. Osborne" a sum which with interest and costs then amounted to \$1,463.80.

10

4. On the said day, the Collector of Taxes of the said Town, pursuant to the act aforesaid, duly sold the said lot to the Town of Belleville for the sum aforesaid, and duly made and executed his certificate of Sale under his hand and seal, conveying the said lot to the Town of Belleville, which certificate, duly acknowledged, was recorded June 25, 1927, in Book D. 58 of mortgages for Essex County, page 252.

20

5. The said premises are more particularly described as follows:

All those certain lots, tracts or parcels of land and premises, situate, lying and being in the Town of Belleville, in the County of Essex and State of New Jersey,

30

THE FIRST TRACT: Beginning at a point in the Easterly line of Hornblower Avenue distant northerly 188.12 feet from the Northerly line of Rutgers Street, and running thence (1) Northerly along the said line of Hornblower Avenue, 87.68 feet: Thence (2) Easterly at right angles to Hornblower Avenue 125 feet to the Westerly line of Prospect Street; Thence (3) Along the same Southerly 75 feet more or less to the line of lands assessed to J. H. & A. H. Osborne; and Thence (4) along the same Westerly 125 feet to the place of beginning.

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THE SECOND TRACT: Beginning at the intersection of the Northerly line of Rutgers Street with the Easterly line of Hornblower Avenue, and running thence (1) Northerly along the said line of Hornblower Avenue, 188.12 feet; Thence (2) Easterly 125 feet to the Westerly line of Prospect Street; Thence (3) along the same Southerly 175 feet more or less to the said line of Rutgers Street, and Thence (4) along the same Westerly 137 feet to the place of beginning. 10

6. That the said premises were conveyed, with other lands, to one Thomas B. Codington by deed of Elias N. Miller, Sheriff, dated March 22, 1861, and recorded in Book K II of deeds for Essex County, page 458. 20

7. That the said Thomas B. Codington died in the City, County and State of New York February 23, 1886, seized of the said premises, and leaving a last will and testament dated June 11, 1879, which was duly admitted to probate by the Surrogate of the County of New York, March 16, 1886, and is recorded in Book L 348 of Wills for said County, at page 493.

8. The said Thomas B. Codington did not, in and by his said will, specifically devise the said premises to any person, but that the same was included in his residuary estate which he bequeathed to his daughters Marie F. Codington and Fannie Codington, to be divided equally between them. 30

9. The said Thomas B. Codington at the time of his death was a widower, and left him surviving three daughters Emily Codington, Marie F. Codington and Fannie Codington. 40

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10. The said Emily Codington died interstate and without issue, after the death of her said father, but on what date complainant is unable to state.
11. The said Fannie Browning married one  
10 Barret Browning, who has since died, and is now known as Fannie Browning.
12. On May 6, 1875, one Hugh Holmes and Anna D. Holmes his wife made, executed and delivered to one Henry Osborne a paper purporting to be a mortgage upon the premises above described as the second tract, which said paper was recorded November 20, 1875, in Book A 7 of mortgages for Essex County, page 457.
- 20 13. On July 20, 1886, the said Henry Osborne made, executed and delivered to Arthur H. Osborne and Joseph H. Osborne as assignment of the said alleged mortgage, which assignment is recorded in Book 40 of Assignments of mortgages for Essex County, page 220.
- 30 14. In the year 1898, by proceedings in this court, the said Arthur H. Osborne and Joseph H. Osborne attempted to foreclose the said alleged mortgage, and obtained a decree of sale, dated January 14, 1899, pursuant to which a writ of Fi. fa. was issued out of this court January 25, 1899, directing the Sheriff of Essex County to sell the said premises above described as the second tract.
- 40 15. Pursuant to such writ the Sheriff of Essex County did advertise and sell the said premises above described as the second tract, and made, executed and delivered his deed therefore to said Arthur H. Osborne and Joseph H. Osborne, which

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deed is dated March 18, 1899 and is recorded in Book E 33 of deeds for Essex County, page 487.

16. On August 5, 1926, there was recorded in Book B 75 of deeds for Essex County, page 42, a paper purporting to be a quit-claim deed from the said Fannie Browning and Marie F. Codington, individually and as executors of the will of Thomas B. Codington, deceased, to one Hugh Holmes, and which described the second tract as hereinabove described, which said paper was executed by one John McL Nash purporting to execute the same as attorney in fact for the said Fannie Browning and Marie F. Codington. 10

17. On January 15, 1927, the said Arthur H. Osborne and Mary Ella, his wife, made, executed and delivered to one John C. Lloyd a paper purporting to be their deed for the said premises hereinabove described as the second tract, which paper is recorded in Book U 75 of deeds for Essex County, page 234. 20

18. The said Joseph H. Osborne died intestate, in or about the year 1920, leaving him surviving his widow, Ruth Osborne, his son, William H. Osborne (who is married and whose wife's name is Elizabeth E.), and his daughter, Ruth Mardell Osborne, who is married to one LeRoy Smith. 30

19. The said Ruth Osborne died intestate in or about the year 1925, leaving her surviving the said William H. Osborne and Ruth Mardell Smith, her only heirs at law.

20. On July 14, 1927, the said William H. Osborne and Elizabeth E. Osborne, his wife, made, executed and delivered to the said John C. Lloyd 40

*Original Bill of Complaint.*

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a paper purporting to be their deed conveying to said Lloyd the second tract hereinabove described, which paper is recorded in Book U 76 of deeds for Essex County, page 177.

10 21. On July 21, 1927, the said Ruth Mardell Smith made, executed and delivered to the said John C. Lloyd a paper purporting to be her deed conveying to said Lloyd the second tract hereinabove described, which paper is recorded in Book U 76 of deeds for Essex County, page 176.

20 22. On August 5, 1927, the said LeRoy Smith made, executed and delivered to the said John C. Lloyd a paper purporting to be his deed conveying to the said Lloyd the second tract hereinabove described, which paper is recorded in book W 76 of deeds for Essex County, page 210.

30 23. On June 23, 1926, the said The Town of Belleville duly assigned to complainant the two certificates of sale above referred to, and made, executed and delivered to complainant its deed conveying to complainant all the right, title and interest of the said Town in and to the said premises hereinabove described, which deed is recorded in Book O 74 of deeds for Essex County, page 369.

40 24. Complainant expressly charges that the said alleged mortgage referred to and described in paragraph 12 hereof and the assignment thereof mentioned and described in paragraph 13 hereof, and the various deeds or alleged deeds referred to and described in paragraphs 15, 16, 17, 20, 21 and 22 hereof were not and are not valid encumbrances on or conveyances of the said premises hereinabove described as the second tract, and that the said John G. Lloyd did not, by reason of the said mort-

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gage, and its said assignment, and the various deeds hereinabove referred to acquire any right, title or interest in or to the said premises therein mentioned and described (hereinabove described as the second tract) and has not, by virtue thereof, or otherwise, any right, title or interest of, in or to the said premises or any part thereof.

10

25. The said Hugh Holmes, Henry Osborne, Arthur H. Osborne, Joseph H. Osborne, Ruth Osborne, William H. Osborne, Ruth Mardell Smith and John C. Lloyd did not, nor did any or either of them, at any time, enter into actual possession of the said premises above described, or any part thereof, but that the said above described premises at all the times herein mentioned were, and still are open, unenclosed, unimproved and vacant.

20

26. The whole sums for which the said two tracts were so sold as aforesaid to the Town of Belleville (as set out in paragraphs 2 and 4 hereof) together with interest thereon at 8% from the dates of such sales respectively, and costs and other necessary expenditures for taxes to preserve the security of the said certificates of sale, and for search fees and other lawful expenses is still due and owing to complainant, and in the aggregate amounts to approximately the sum of three thousand dollars.

30

27. No part of the said land and premises has been redeemed as provided by law.

28. On February 23, 1928, the said John C. Lloyd caused to be paid to the Collector of Taxes of the said Town of Belleville the sum of \$1,713.01 in attempted or pretended redemption of the Second Tract hereinabove described from the said

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*Original Bill of Complaint.*

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Certificate of Sale therefor, but the said sum was less than the amount required by law to be paid for the redemption thereof, and complainant expressly charges that the said John C. Lloyd is not entitled by law to redeem the same.

10     29. Complainant refused to accept the payment aforesaid in redemption of the said Second Tract, and has not accepted the same nor surrendered the certificate of sale for the said tract.

30. More than two years have elapsed since the sale of the said lands as aforesaid.

20     31. All proceedings taken in connection with the said sales, the levy of the taxes and assessments for which the said sales were made, and with the assignment of the said certificates of sale and the execution and delivery of the said deed to complainant for the said lands as above set out were duly taken, according to law, and are binding upon the parties and upon the premises above mentioned and described.

30     32. Complainant files this bill to foreclose the right of redemption which any person may have in the said premises, under the Act above referred to, and to quiet the title to the said premises.

33. Complaint is without adequate remedy in the courts of law, and therefore prays:

1. That the said Marie F. Codington, Fannie Browning and John C. Lloyd, who are the defendants to this action, may answer this bill of complaint, and each allegation herein made, but without oath.

40     2. That an account may be taken of the amount due on complainant's said Certificates of Sale, and

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of the amount due to the complainant herein, including costs.

3. That the defendants Marie F. Codington and Fannie Browning, and each of them, may be decreed to pay to the complainant the amount so found to be due, with interest and costs, by a short day to be appointed by the court, and that in default thereof they and each of them, and any and all persons claiming under them or either of them may be debarred and forever foreclosed of all equity of redemption of the said premises, or any part thereof. 10

4. That a decree may be entered herein barring any right of redemption of the defendants and each and every of them, and foreclosing the right, or any claimed or pretended right of the said defendants, or any of them, to redeem the said premises, or any part thereof, from such sales. 20

5. That the defendant John C. Lloyd may be decreed to have no right, title or interest in the said premises entitling him, under the aforesaid Act, to redeem the said premises or any part thereof.

6. That the part of the said premises hereinabove described as the second tract may be by the decree of this court relieved of the cloud upon the title thereto of the alleged mortgage, and the alleged conveyance thereof, or of some right, title or interest therein or thereto, by reason of the recording of the papers above referred to in paragraphs 12, 13, 15, 16, 17, 20, 21 and 22 of this complaint, and the title to the said second tract quieted. 30

7. That a writ of subpoena may issue commanding the said defendants Marie F. Codington, Fannie 40

*Amended Bill of Complaint.*

Browning and John C. Lloyd, and each of them, to answer this bill of complaint, and abide by such decree as this court may make in the premises.

8. That complainant may have such other and further relief in the premises as shall be equitable and just.

W. H. K. DAVEY,  
Solicitor for Complainant.

**Amended Bill of Complaint.**

IN CHANCERY OF NEW JERSEY.  
TO HIS HONOR, EDWIN ROBERT WALKER,

20

Chancellor of the State of New Jersey.

Complainant, Joseph A. Kristen, of the Town of Belleville, in the County of Essex and State of New Jersey, by this, his amended bill of complaint, respectfully shows:

30

1. On February 26, 1926, there was due the Town of Belleville for taxes for the years 1915 to 1925, inclusive, and for assessments for improvements on Lot No. 1, in Block No. 87, Map 19, as shown on the official tax map of the said Town, assessed in the names "A. H. & J. H. Osborne" a sum which with interest and costs then amounted to \$1,463.80.

40

2. On the said day, the Collector of Taxes of the said Town, pursuant to an Act entitled "An Act for the Assessment and Collection of Taxes" (Revision of 1918) P. L. 1918, page 847, and the amendments thereof and supplements thereto, duly sold

*Amended Bill of Complaint.*

the said lot to the Town of Belleville, for the sum aforesaid, and duly made, executed and delivered his Certificate of Sale under his hand and seal, conveying the said lot to the Town of Belleville, which said certificate was recorded June 25, 1926, in Book D 58 of mortgages for Essex County, page 252.

10

3. The said premises are more particularly described as follows:

All that certain lot, tract or parcel of land and premises, situate, lying and being in the Town of Belleville, in the County of Essex and State of New Jersey,

BEGINNING at the intersection of the Northernly line of Rutgers Street with the Easterly line of Hornblower Avenue and running Thence (1) Northerly along the said line of Hornblower Avenue, 188.12 feet; Thence (2) Easterly 125 feet to the Westerly line of Prospect Street; Thence (3) along the same Southernly 175 feet more or less to the said line of Rutgers Street, and Thence (4) along the same Westerly 137 feet to the place of beginning.

20

4. The said premises were conveyed, with other lands, to one Thomas B. Codington by deed of Elias N. Miller, Sheriff, dated March 22, 1861, and recorded in Book K 11 of deeds for Essex County, page 458.

30

5. The said Thomas B. Codington died in the City, County and State of New York, February 23, 1886, seized of the said premises, and leaving a last Will and Testament dated June 11, 1879, which was duly admitted to probate by the Surro-

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*Amended Bill of Complaint.*

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gate of the County of New York March 16, 1886, and is recorded in Book L 348 of Wills for said County, page 493.

10 6. The said Thomas B. Codington in and by said will made no specific bequest of the said premises, but the same became and was a part of his residuary estate which he bequeathed to his daughters Marie F. Codington and Fannie Codington, to be divided equally between them.

7. The said Thomas B. Codington in and by his said will appointed the said Marie F. Codington and Fannie Codington to be executors thereof, and they duly qualified as such, and are still qualified to act as such.

20 8. The said Fannie Codington married one Barret Browning, who has since died, and is now known as Fannie Browning.

30 9. On June 23, 1926, the said The Town of Belleville duly assigned to complainant the said Certificate of Sale above referred to, and made, executed and delivered to complainant its deed, conveying to complainant all its right, title and interest in the said premises, among others, which deed is recorded in Book O 74 of deeds for said County of Essex, page 369.

40 10. On March 16, 1928, the said Marie F. Codington and Fannie Browning, acting individually and as executors of the said Thomas B. Codington, made, executed and delivered to complainant their deed, releasing and quitclaiming to complainant all the right, title and interest of the said Thomas B. Codington, deceased, and of themselves, in and to the said premises, which deed is recorded March

*Amended Bill of Complaint.*

20, 1928, in Book of deeds for Essex County,  
page .

11. On May 6, 1875, on Hugh Holmes and Anna D. Holmes, his wife, made, executed and delivered to one Henry Osborne a paper purporting to be a mortgage upon the premises above described, which paper was recorded November 20, 1875 in Book A 7 of mortgages for Essex County, page 457. 10

12. On July 20, 1886, the said Henry Osborne made, executed and delivered to Arthur H. Osborne and Joseph H. Osborne an assignment of the said alleged mortgage, which is recorded in Book 40 of Assignments of mortgages for Essex County, page 220.

13. In the year 1898, by proceedings in this court, the said Arthur H. Osborne and Joseph H. Osborne undertook to foreclose the said alleged mortgage, and obtained a decree of sale, dated January 14, 1899, pursuant to which a writ of fi.fa. was issued out of this court January 25, 1899, directing the Sheriff of Essex County to sell the said premises in said alleged mortgage described, which are the same premises hereinabove described, to satisfy the said alleged mortgage. 20

14. Pursuant to the mandate of such writ, the Sheriff of Essex County advertised and sold the said premises, and made, executed and delivered his deed therefor to said Arthur H. Osborne and Joseph H. Osborne, which deed is dated March 18, 1899, and is recorded in Book F 33 of deeds for Essex County, page 487. 30

15. On August 5, 1926, there was recorded in Book B 75 of deeds for Essex a paper purporting 40

*Amended Bill of Complaint.*

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10 to be a quit claim deed dated April 29, 1895, from the said Marie F. Codington and Fannie Browning, individually and as executors of the will of Thomas B. Codington, deceased, to one Hugh Holmes, which described the said premises, which said paper was executed by one John McL Nash, purporting to act as Attorney in fact for the said Marie F. Codington and Fannie Browning.

16. On January 15, 1927, the said Arthur H. Osborne and Mary Ella, his wife, made, executed and delivered to one John C. Lloyd a paper purporting to be their deed for the said premises, which is recorded in Book U 75 of deeds for Essex County, page 234.

20 17. The said Joseph H. Osborne died, intestate, in or about the year 1920, leaving him surviving his widow, Ruth Osborne, his son, William H. Osborne (who is married and whose wife's name is Elizabeth F.) and his daughter, Ruth Mardell Osborne (who is married to one Le Roy Smith).

30 18. The said Ruth Osborne died intestate in or about the year 1925, leaving her surviving the said William H. Osborne and Ruth Mardell Osborne, her only heirs at law.

19. On July 14, 1827, the said William H. Osborne and Elizabeth E. Osborne, his wife, made, executed and delivered to said John C. Lloyd a paper purporting to be their deed for the said premises, which is recorded in Book U 76 of deeds for Essex County, page 177.

40 20. On July 21, 1927, the said Ruth Mardell Smith made, executed and delivered to the said John C. Lloyd a paper purporting to be her deed

*Amended Bill of Complaint.*

for the said premises which is recorded in Book U 76 of deeds for Essex County, page 176.

21. On August 5, 1927, the said LeRoy Smith made, executed and delivered to the said John C. Lloyd a paper purporting to be his deeds for the said premises, which is recorded in Book W 76 of deeds for Essex County, page 210. 10

22. Complainant expressly charges that the said alleged mortgage referred to and described in paragraph 11 hereof, and the various alleged deeds referred to and described in paragraphs 14, 15, 16, 19, 20 and 21 hereof were not and are not valid as encumbrances on or conveyances of the said premises, and that the said John C. Lloyd did not, by means of the said mortgage, and its said assignment, or the various deeds above referred to, or any of them, acquire any right, title or interest in or to the said premises in the said various documents described, (being the same premises hereinabove described) and has not, by virtue thereof, or otherwise, any right, title or interest, by law or in equity, of, in or to the said premises or any part thereof. 20

23. The said Hugh Holmes, Henry Osborne, Arthur H. Osborne, Joseph H. Osborne, Ruth Osborne, William H. Osborne, Ruth Mardell Smith and John C. Lloyd did not, nor did any or either of them, at any time, enter into actual possession of the said premises above described, or any part thereof, but the said premises at all the times herein mentioned were, and still are, open, unenclosed, unimproved and vacant. 30

24. The whole sum for which the said premises were so sold as aforesaid to the Town of Belleville 40

*Amended Bill of Complaint.*

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as above set out together with interest thereon at 8% from the date of such a sale, and other necessary expenditures for taxes paid to preserve the security of said Certificate of Sale, and for costs search fees and other lawful disbursements is still due and owing to complainant, and in the aggregate  
10 amounts to approximately \$2,050.00.

25. No part of the said land and premises has been redeemed as provided by law.

26. On February 23, 1928, the said John C. Lloyd caused to be paid to the Collector of Taxes of the said Town of Belleville the sum of \$1,713.01 in attempted or pretended redemption of the said premises from the said sale, but the said sum was  
20 materially less than the sum required by law to be paid for the redemption thereof, and complainant expressly charges that the said John C. Lloyd is not entitled by law to redeem the same. Complainant refused to accept the said payment in redemption of the said premises, and has not received the same, nor surrendered the certificate of sale therefor.

27. More than two years have elapsed since the sale of the said lands as aforesaid.

30 28. All proceedings taken in connection with the said sale, the levy of the taxes and assessments for which the said sale was made, and with the assignment of the said certificate of sale and the execution and delivery of the said deed from the said Town of Belleville to complainant above set out were duly taken, according to law, and are binding upon the parties, and upon the premises above described.

40 29. Complainant files this bill to quiet the title to the said premises, and to foreclose any pretended

*Amended Bill of Complaint.*

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right of redemption which the said John C. Lloyd claims to have under the Act above referred to.

30. Complainant is without adequate remedy in the courts of law, and therefore prays:

1. That the said defendant, John C. Lloyd, may answer this bill of complaint, and each allegation herein made, but without oath. 10

2. That the said mortgage and the said various deeds to Hugh Holmes, Arthur H. Osborne and Joseph H. Osborne, and to John C. Lloyd may be decreed to be invalid to vest in the said John C. Lloyd any right, title or interest in the said premises.

3. That the title of the complainant to the said premises may be quieted and relieved of the cloud upon title of the said alleged mortgage, and the said alleged conveyances by reason of the execution and recording of the documents referred to in paragraphs 11, 12, 14, 15, 16, 19, 20, and 21 of this complaint. 20

4. In the alternative, that an account may be taken of the amount due on complainant's said Certificate of Sale, and of the amount due the complainant herein, with costs. 30

5. That the defendant, John C. Lloyd, may, if he be decreed to have any right, title or interest in the said premises entitling him to redeem the same, may be decreed to pay to the complainant the amount so found to be due, with interest and costs, by a short day to be appointed by this court, and that in default thereof he, and any and all persons claiming under him may be debarred and forever 40

Answer of John C. Lloyd to Amended Complaint.

foreclosed of all equity of redemption of the said premises, and of any part thereof.

6. That complainant may have such other and further relief in the premises as shall be equitable and just.

10

W. H. K. DAVEY,  
Solicitor for Complainant.

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**Answer of John C. Lloyd to Amended  
Complaint.**

IN CHANCERY OF NEW JERSEY.

20

Between

JOSEPH A. KRISTEN,  
Complainant,  
and

MARY F. CODDINGTON, and others,  
Defendants.

} On Bill, &c.

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The defendant, John C. Lloyd, of the Town of Belleville, County of Essex and State of New Jersey, answering the amended bill of complaint in the above entitled cause says:

1. He has no knowledge or information sufficient to form a belief as to the allegations of Paragraph 1 of the amended bill of complaint.

2. He admits that the Collector of Taxes of the said Town of Belleville did attempt to sell the said lot to the Town of Belleville and did make, execute

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Answer of John C. Lloyd to Amended Complaint.

and deliver a certificate of sale under his hand and seal as alleged in Paragraph 2 of the bill of complaint, but he denies that the said sale to the Town of Belleville was a valid sale under the statutes in such case made and provided and the supplements thereto and amendments thereof. He alleges that the said sale was invalid under said statutes and was not made in compliance with the provisions thereof. 10

3. He admits the allegations of Paragraphs 3, 4, 5, 6, 7 and 8, of the amended bill of complaint.

4. He admits that on June 23, 1926, the said Town of Belleville attempted to assign to the complainant the said certificate of sale and made, executed and delivered to complainant its deed purporting to convey to complainant all its right, title and interest in the said premises, as alleged in Paragraph 9 of the bill of complaint, but he denies that the attempted assignment of the said certificate of tax sale was valid and he alleges that the Town of Belleville at the time of the execution of the deed in said paragraph mentioned was without any right, title or interest in said premises. 20

5. He admits the allegations of Paragraph 10 of the amended bill of complaint, but he alleges that the said Mary F. Coddington and Fannie Browning, acting individually and as executrices of the said Thomas B. Coddington had no right, title or interest in the said premises at that time. He alleges that the right, title and interest of said Mary F. Coddington, Fannie Browning and Thomas B. Coddington in said premises was conveyed to one Hugh Holmes by said Mary F. Coddington and Fannie Browning, individually and as executrices of the last will of Thomas B. Coddington, by their 30  
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Answer of John C. Lloyd to Amended Complaint.

10 duly constituted attorney in fact, John McL. Nash, by deed dated April 29, 1895 and recorded in Book B 75 of Deeds for Essex County, and that their deed was valid in law to vest in the said Hugh Holmes all the right, title and interest which the said Mary F. Coddington, Fannie Browning and Thomas B. Coddington then had or later acquired. All the right, title and interest of said Mary F. Coddington, Fannie Browning and Thomas B. Coddington is now vested in this defendant under the conveyances referred to in the amended bill of complaint.

6. He admits the allegations of Paragraphs 11, 12, 13, 14, 15, 16, 17, 18, 19, 20 and 21 of the amended bill of complaint.

20 7. He denies the allegations of Paragraph 22 of the amended bill of complaint and alleges that on the contrary the said mortgage referred to in Paragraph 11 of the bill of complaint was a valid mortgage and that the deeds referred to and described in Paragraphs 14, 15, 16, 19, 20 and 21 of the amended bill of complaint were valid conveyances of the said premises and vested in this defendant the title to the same. He alleges that at the time of the making of said mortgage, May 6, 1875, the said Hugh Holmes was the legal and equitable owner of said premises.

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8. He denies the allegations of Paragraphs 23, 24 and 25 of the amended bill of complaint.

9. He admits the allegations of Paragraph 26 of the amended bill of complaint and he alleges that the sum of \$1,713.01 paid by this defendant to the Collector of Taxes of the said Town of Belleville

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Answer of John C. Lloyd to Amended Complaint.

on February 23, 1928 to redeem the said premises from the alleged tax sale was the amount, or more than the amount, required by law to be paid for the redemption thereof and he alleges that he is entitled by law to redeem said premises from said tax sale.

10. He admits the allegations of Paragraph 27 of the amended bill of complaint but he alleges that two years had not passed since the sale of the said lands for taxes on February 23, 1928 when this defendant paid to the Collector of Taxes of the said Town of Belleville the sum of \$1,713.01 in redemption of the said premises from said tax sale, and he alleges that said payment was made by him to the Collector of Taxes of the said Town of Belleville in compliance with the provisions of and within the time specified by the statutes and the amendments thereof and supplements thereto under which said alleged sale was made.

11. He denies the allegations of Paragraph 28 of the amended bill of complaint and he alleges that the proceedings taken in connection with the said sale, the levy of the taxes, the giving of notice, the advertisements, the assessments of the taxes for which the said sale was made, the public sale for said taxes, the assignment of the said certificate of sale and the execution and delivery of the said deed from the Town of Belleville to the complainant, were not in compliance with the statutes and amendments thereof and supplements thereto under which said alleged sale was held and were not taken according to law and are invalid.

PITNEY, HARDIN & SKINNER,  
Solicitors for Defendant,  
John C. Lloyd.

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**Opinion.**

## IN CHANCERY OF NEW JERSEY.

Between

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JOSEPH A. KRISTEN,  
Complainant,  
and  
JOHN C. LLOYD,  
Defendant.

W. H. K. DAVEY, for Complainant.  
PITNEY, HARDIN & SKINNER, for Defendant.

CHURCH, V. C.:

20

Complainant is the holder of a tax title to certain property in the Town of Belleville. On February 23, 1928 (within the statutory period allowed for redemption), defendant paid to the collector of taxes \$1,713.01 to redeem. Complainant's contention is that defendant is not entitled to redeem.

The statute gives the right of redemption to "the owner, mortgagee, occupant, or other person having an interest in lands sold for municipal liens."

30

(Tax Sale Revision of 1918, P. L. 1918,  
Chapter 237, Section 37—Vol. 2 Cum.  
Supp. p. 3534, Sec. 40.)

The following are undisputed facts:

On May 6, 1875, Hugh Holmes and wife mortgaged the premises in question to one Henry Osborne. In 1886 Henry Osborne assigned this mortgage to Arthur H. Osborne and Joseph H. Osborne, and in 1898 proceedings for the foreclosure of said  
40 mortgage in this court resulted in a decree of sale

and sale by the sheriff of the mortgaged premises. Arthur H. Osborne and Joseph H. Osborne were the purchasers and received sheriff's deed in the usual form.

In 1927, Arthur H. Osborne and wife conveyed to defendant, Lloyd, and in the same year Mr. Lloyd obtained deeds from the heirs at law of Joseph H. Osborne, who had died intestate. 10

The premises in question are on the corner of two streets, Hornblower Avenue and Rutgers Street. Both of these streets have for many years been in public use. Hornblower Avenue was originally Hornblower Lane and later widened and called Hornblower Avenue. The lots have been and are vacant and unfenced, except that on the easterly side a fence was erected on the dividing line by the owner of the adjoining premises, Mr. Sleator. 20

This title running back over fifty years is, in my opinion, sufficient to vest in the defendant the right to redeem.

He derives his title from the Osbornes, who, in their turn, derived it from a sheriff's deed after the usual proceedings in foreclosure. He represents the mortgagee and certainly is a "person having an interest" in the lands. Complainant has not sustained the burden of proof that defendant has under the statute no right to redeem. 30

The next point is that defendant did not pay the entire amount he should have paid and therefore there was no redemption. Complainant testified he paid \$1,959.97 for this property "amongst other land." Complainant says \$1,790.48 should have been paid. \$1,713.01 was actually paid, which, if we accept the complainant's figures would be \$77.47 too little.

Complainant's counsel explains the larger sum by saying that it included the taxes for 1925 paid 40

by complainant. Complainant did not so testify and, although an opportunity was given to recall the collector and take his testimony as to who paid these taxes, this was not done. Defendant, on the other hand, testified that he asked for the bill for 1925 taxes, received it and sent a check. The re-  
 10 ceipted bill was produced. Defendant also testified—and it is uncontradicted—that he was present at the sale when the premises were offered, that he was the only bidder, but when he made his bid the officer said, "Taken by the Town of Belleville at flat." This is explained to mean that the one re-  
 20 deemng would not have to pay any interest. On this theory the amount paid was about \$250 more than it need to have been. On this point also complainant has failed to sustain the burden of proof that his allegations as to amount that should have been paid are correct.

I will advise a decree dismissing the bill.

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**Final Decree.**

IN CHANCERY OF NEW JERSEY.

30	Between  JOSEPH A. KRISTEN, Complainant, and JOHN C. LLOYD, Defendant.	} On Bill, etc. } Decree dis- } missing bill of } complaint.
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40 This matter being opened to the court by W. H. K. Davey, solicitor for the complainant, in the presence of Pitney, Hardin & Skinner, solicitors for the

*Notice of Appeal.*

defendant, and the court having heard and considered the testimony offered by the parties and the argument of counsel;

It is on this 9th day of October, 1928, ORDERED, ADJUDGED and DECREED that the bill of complaint filed in the above entitled matter be dismissed with costs to defendant as against complainant; 10

And it is further ORDERED that a counsel fee of Five hundred Dollars be allowed to Pitney, Hardin & Skinner, to be taxed in the costs.

E. R. WALKER,  
C.

Respectfully advised,  
ALONZO CHURCH,  
V. C.

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**Notice of Appeal.**

IN CHANCERY OF NEW JERSEY.

Between

JOSEPH A. KRISTEN,  
Complainant,  
and

JOHN C. LLOYD,  
Defendant.

Dkt. 67 p. 458.  
On Bill, &c.

30

To Messrs Pitney, Hardin & Skinner,  
Solicitors for Defendant.

Sirs:

PLEASE TAKE NOTICE that Joseph A. Kristen, the complainant in the above entitled cause, 40

*Petition of Appeal.*

hereby appeals from the final decree made in this cause by the Chancellor on the advice of Vice-Chancellor Alonzo Church, and from the whole and every part thereof to the Court of Errors and Appeals in the last resort in all causes.

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W. H. K. DAVEY,  
Solicitor for Complainant.

I conceive that there is good cause for appeal in this suit.

W. H. K. DAVEY,  
Of Counsel with Complainant.

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**Petition of Appeal.**

NEW JERSEY COURT OF ERRORS AND  
APPEALS.

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Between

JOSEPH A. KRISTEN,  
Complainant-Appellant,

and

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JOHN C. LLOYD,  
Defendant-Appellee.

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The petition of Joseph A. Kristen, the complainant, respectfully shows that 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, bearing date the ninth day of October, 1928, wherein Joseph A. Kristen was complainant and John C.

*Petition of Appeal.*

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Lloyd was defendant, in this respect, to wit, that the said decree orders, adjudges and decrees.

1. That complainant's bill of complaint be dismissed with costs.

2. That a counsel fee of \$500 be allowed to defendant's counsel, to be taxed in the costs. 10

And your petitioner humbly appeals from the said decree adverse to the complainant as aforesaid upon the ground that the same is erroneous in that:

1. The evidence does not justify the finding that the alleged mortgage purporting to have been executed by Hugh Holmes and wife to Henry Osborne May 6, 1875, was a valid lien upon the property described therein. 20

2. The evidence does not justify the finding that the defendant, by virtue of the assignment of the said mortgage, its foreclosure and the various mesne conveyances of the property described in the said mortgage, mesne conveyances and in the bill of complaint vested in the defendant any title to the said property.

3. The evidence does not justify the finding that under the said mortgage, its said assignment, and the various mesne conveyances, the property described in the bill of complaint became and was the property of the defendant John C. Lloyd. 30

4. The evidence does not justify the finding that by virtue of the said mortgage, its said assignment, and the various mesne conveyances to the defendant John C. Lloyd, as alleged in the bill of complaint, the said John C. Lloyd was entitled to redeem the 40



**Answer to Petition of Appeal.**

NEW JERSEY COURT OF ERRORS AND  
APPEALS.

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BETWEEN

JOSEPH A. KRISTEN,  
Complainant-Appellant,

and

JOHN C. LLOYD,  
Defendant-Respondent.

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The answer of the above named respondent to the petition of appeal of the above named appellant.

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This respondent, not acknowledging all or any of the matters which in the said petition of appeal are contained to be true, for answer thereto notwithstanding says and admits that a decree was on the 9th day of October, 1928 made and entered in the Court of Chancery in the cause for that purpose mentioned in the said petition as is therein stated; but as to the substance and form thereof this respondent prays to refer thereto when the same shall be produced. And this respondent is advised and believes that the said decree is agreeable to equity and he prays that the same may be affirmed with costs to be adjudged to this respondent.

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PITNEY, HARDIN & SKINNER,  
Solicitors for Defendant-Respondent.

ALFRED F. SKINNER,  
of Counsel.

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**Testimony.**

IN CHANCERY OF NEW JERSEY.

May 29th, 1928.

10 Between:

JOSEPH KRISTEN,  
Complainant,  
and

JOHN C. LLOYD,  
Defendant.

20 Transcript of shorthand notes of testimony taken in the above entitled cause before his Honor, Alonzo Church, Vice Chancellor, at the Chancery Chambers, Newark, New Jersey, in the presence of W. H. K. Davey for complainant; Messrs. Pitney, Hardin & Skinner (by Mr. Skinner) for defendant.

30 Mr. Skinner: The defendants tender themselves ready now to pay into court, or to the complainant Kristen, any amount that may be found necessary to correct the amount that was already paid into court, which was some fourteen hundred and odd dollars, nearly fifteen hundred.

Mr. Davey: Our contention as to that payment is that the payment was less than the amount required to redeem, and that is an item that is denied in the answer, which we will be required to prove.

40 I desire, as a first step, to offer in evidence, the certificate of tax sale, which sale was held on Friday, the 26th day of February, 1926, for the taxes of 1924, and including also an item of taxes

and interest in 1915 to 1923, inclusive, the total amount being \$1,463.80. That was recorded on the 25th day of June, 1926, as a mortgage.

Mr. Skinner: I interpose no objection to the admission of the deed, but I notice that on the back is a certificate by the collector of taxes, subsequent to the execution and acknowledgment of the deed and not, I think, referred to anywheres in the text, so I conceive it to be no part of the deed, and ask that that be excluded from the document as it appears in evidence. 10

Mr. Davey: It is recorded as a part of the certificate, your Honor please, under section 36 of the tax law of 1918 and is presumptive evidence of every fact therein stated.

The Court: I will receive it. We will argue about its validity later. 20

(Paper marked Exhibit C-1.)

Mr. Davey: I will call Mr. Daly.

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JOHN J. DALY, sworn for complainant.

Direct Examination by Mr. Davey:

Q. Mr. Daly, you are the Town Clerk of Belleville? A. I am. 30

Q. And how long have you been clerk there? A. Ten years.

Q. Belleville is governed by what form of government? A. Commission government.

Q. And how many commissioners? A. Five.

Q. In December, 1926, who were the commissioners? A. Mayor Kenworthy—1926 or 1925?

Q. I beg your pardon, I should have said in June, 1926. A. June, 1926, was Mayor Kenworthy, Commissioner Nelson, DeGraw, Garragher and Clark. 40

Q. Who was Mayor at that time? A. Mayor Kenworthy.

Q. As Town Clerk you keep the minutes of the resolutions adopted by the Board? A. I do.

10 Q. Do you know whether or not on June 8th, 1926, a resolution was passed by the Board with reference to the property herein questioned? A. It was.

Q. Have you it here? A. I have.

Mr. Davey: I offer it in evidence.

The Court: I will receive it.

(Paper marked Exhibit C-2.)

Q. I show you a paper and ask you if you recognize your signature on that as attesting witness?

A. Yes, sir; that is my signature.

20 Q. And the signature of the gentleman who executed the deed, who is that? A. The signature of the mayor, Samuel S. Kenworthy, I attested to his signature.

Q. And did you make proof of the deed as appears here before Mr. Brown? A. Yes, sir.

30 Mr. Davey: I offer in evidence this paper, if your Honor please, being deed from the town to Mr. Kristen, dated June 23, 1926, proved the same date, June 23, 1926, and recorded June 25, 1926, in Book O-74 of Deeds, page 369, its execution and recording have been charged in the complaint and admitted in the answer.

The Court: It will be received.

(Paper marked Exhibit C-3.)

Cross Examination by Mr. Skinner:

40 Q. Mr. Daly, this certificate or copy of the resolution of June 8th, which has been received in evi-

*Joseph A. Kristen—Direct Examination.*

dence as C-2, recites certain facts. Did you yourself make any inquiry as to those facts for the town, the Board of Commissioners? A. No, sir.

Q. But you don't know anything, then, about any of the recitals of fact that are in it? A. No, sir; I do not.

Q. You have no interest in this tax title, have you, Mr. Daley? A. No, sir. 10

Mr. Skinner: That is all.

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JOSEPH A. KRISTEN, sworn for complainant.

Direct Examination by Mr. Davey:

Q. Mr. Kristen, you are the complainant? A. Yes, sir. 20

Q. In June of 1926 did you arrange for the purchase of the lot in question amongst other land from the authorities of the Town of Belleville? A. I did.

Q. I show you a paper and ask you what that is. A. That is my check that I gave to the Town of Belleville for the land.

Q. Dated? A. June 14th, 1926.

Q. In what amount? A. Sir? 30

Q. What amount? A. \$1,959.97.

Q. Is it endorsed? A. Yes, sir; Peoples National Bank of Belleville, Edward Nelson, director.

Mr. Davey: I offer it in evidence, your Honor please.

The Court: It will be received.

(Check marked Exhibit C-4.)

Q. Mr. Kristen, how long have you lived in Belleville? A. Thirty-six—thirty-seven years. 40

*Joseph A. Kristen—Direct Examination.*

Q. And how long have you been familiar with the property in question? A. I started in Number 1 school in Belleville when I was six years old. I can recollect that property for thirty-two years.

Q. Have you in that time seen it frequently? A. Why, yes.

10 Q. How often? A. Well, when we went to school, every day until Number 2 was built—Montgomery.

Q. State whether or not the property has ever been fenced. A. Never was any fence on it. We used to play baseball there and it was not even any good for farm land; there was no grass would grow on the place.

Q. Has it ever been cultivated? A. No, sir; not to my knowledge.

20 Q. Has there ever, within your recollection, been a sign indicating ownership or possession? A. No, sir.

Q. In the month of March of this year, did you receive the paper that I now show you? A. Yes, sir, quit claim deed from the Coddingtons.

Q. And that you caused to be subsequently recorded? A. Yes, sir.

30 Mr. Davey: I offer in evidence, if your Honor please, quit claim deed from Mary F. Coddington and Fannie Browning, individually and as executors of the last will and testament of Thomas B. Coddington, to Joseph Kristen, the 20th of March, 1928, acknowledged in the City of Washington on the 16th of March, 1928, certificate of the notary being attached, and recorded on the 20th day of March in Book Z-77, page 37 and 38, its execution having been charged in the amended complaint and admitted in the answer.

40

Mr. Skinner: Our objection is as to its materiality, rather than to its contents.

(Paper marked Exhibit C-5.)

Cross Examination by Mr. Skinner:

Q. What is your business? A. I am in the automobile business. 10

Q. In Belleville? A. Yes, sir.

Q. And have been for a number of years there? A. For the last seven.

Q. Have you also been a frequent purchaser of tax titles? A. No, sir; I never bought one in my life.

Q. Have you joined with anyone else in buying them? A. It is my own money I am spending.

Q. Have you in the past joined with anyone else in buying them? A. No, no. 20

Q. You say in this case it is your own money you are spending? A. Yes.

Q. Is there anyone else interested? A. Why, if he loaned me a little money I am not saying who it is.

Q. More than one? A. No; just myself, we will say.

Q. Someone else that loaned you money? A. No; I wouldn't say that. 30

Q. What do you mean when you— A. What did you ask me, if—

The Court: Just answer questions. Do not argue with counsel.

Witness: I see.

Q. Has anyone loaned you money? A. Why, yes.

Q. In the purchase of tax titles? A. Not for tax titles, no.

Q. And no one has any interest in this tax title 40

that you have except yourself? You say that under oath? A. Oh, I wouldn't say that under oath, no, I would not.

10 Q. Now, you said that you arranged in June, 1926, for the purchase—for this quit claim deed from the Coddingtons. Do you remember it? How do you know that it was in June that you arranged?  
A. My attorney had taken care of that.

Mr. Davey: You know by the date of the check, don't you.

Mr. Skinner: Perhaps I have misunderstood you. I think perhaps your attorney was arranging for the purchase of this property at the tax sale, because that was in 1926.

20 Mr. Davey: For other clients, if you want the facts.

Mr. Skinner: That was in 1926. What time in 1926?

Mr. Davey: The tax sale was in February.

Mr. Skinner: Pardon me.

30 Q. Mr. Kristen, you spoke of arranging for the purchase of this property in June, 1926. Did you not refer to the purchase of it at the tax sale? A. What tax sale?

Q. The sale by the Town of Belleville for taxes.  
A. My lawyer took care of that for me. All I did was to pay for it.

Q. When you answered to his question, "Did you not arrange—" he said—"in June, 1926, for the purchase of this property?" You said, "Yes," what did you mean? A. Why, naturally, if I was going to buy it, I had to arrange with him.

40 Q. With whom? A. With Mr. Davey and with

*Joseph A. Kristen—Cross Examination.*

Mr. Nelson of the Town Hall to buy that property at a tax sale.

Q. You made that arrangement before the tax sale—wouldn't you? A. What? Before the tax sale—

Q. Yes. You made that arrangement before the tax sale. A. No; the tax sale was held, then we bought it. 10

Q. Didn't you arrange to buy with Mr. Nelson before that sale in February? A. No, I don't—really, I don't know what you are getting at. If you will let me talk to my lawyer a minute I will answer.

The Court: You talk to Judge Skinner.

Q. Weren't you present at the tax sale in February, 1926, when this very property was sold for taxes? A. No, sir; I was not present at that sale. 20

Q. Weren't in the room? A. No, sir; I was not. My attorney took care of that for me.

Q. He was there? A. I believe he was.

Q. You mean Mr. Davey? A. Yes.

Q. He was there for you? A. Yes, sir, representing me.

Q. For the purpose of what, buying the property in? A. Yes, if it could be bought.

Q. Well, you did not buy it in, did you? A. I guess we did; we got a tax title from the town for it. 30

Q. Wasn't it bought in by the town that day? A. Well, perhaps it was and perhaps I got my date wrong.

Q. And you afterwards bought from the town? A. Bought from the town, yes.

Q. And you had your arrangement to buy from the town before the sale, did you not? A. No; not 40

with the town to buy it. I arranged with my lawyer to see if he could buy it from the town when the tax sale was held, because it was published in the papers when the ground was to be sold.

10 Q. So you don't know anything about what the bidding was, or that Mr. Lloyd was there and bid on it? A. There was not any bidding, as I understand.

Q. Were you there? A. I couldn't say that for sure.

Q. All right. You say this property had been unfenced— A. I never saw a fence around it.

Q. Just a minute until I finish. You spoke of playing ball on it. A. Yes, sir.

20 Q. Don't you refer to the property on the west side of Hornblower Avenue— A. Hornblower Avenue.

Q. —when you speak of ball playing? A. No; Hornblower Avenue was not there. There was only a cow path, a lane, when I played on it. There was no street on it at all.

Q. How long has Hornblower Avenue been there? A. I couldn't answer that.

Q. Well, you have been there. A. I know, but I can't answer just when it was cut through.

30 Q. About. A. Oh, it is about eighteen years, I think. Maybe I am wrong. I wouldn't want to be quoted on that. I am not sure, because I was a boy and I would have to bring back a few years to remember just when the road was cut through. I couldn't answer that.

40 Q. I also was a boy in Belleville, Mr. Kristen, and I want to ask you now from your recollection of thirty-two years if you do not remember seeing Hornblower Avenue as a traveled street as early as you can recollect it? A. Oh, I can remember it a traveled street, but when I was a boy going to

Number 1 School when Bissel was principal there—

Q. No matter which school. A. All right. We will say Number 1, because that was my only reason for going down there, I had to go through there.

Q. No matter what your reasons were you remember Hornblower Avenue as a traveled street as early as you can recollect? A. No; it was not. It was a lane. 10

Q. Well, all right, a traveled lane. A. It was a lane.

Q. It was used by vehicles and for pedestrians? A. No vehicles; I can't see how a vehicle could go in that.

Q. You played ball right on this property? A. Yes; I played on it, on a lot of property around there in Belleville. 20

Q. Yes, on that lot. We are talking about this particular lot. A. Well, we stopped there and played coming up the hill from school.

Q. All right. A. Or not through—not up the street—up to a lane was there.

Q. Now, you bought at tax sale. You expected, then, did you not, to have the property, that there would be perhaps a redemption of it by—(interrupted). A. I understood there was to be a sale, yes—that the real owners could redeem, but I haven't found any real owners that came along to redeem. There was a check there from a Mr. Lloyd that Brooks called me up or wrote me a letter—he called me up first and then wrote me a letter that Mr. Lloyd wanted to redeem that property. 30

Q. Mr. Brooks being— A. The collector of taxes in Belleville. And, from the records my attorney gave me, I couldn't see where Mr. Lloyd had any right to redeem, as the property was laying there 40

*Verner W. Forgie—Direct Examination.*

for years, nobody taking care of it or paying any attention on it that I could see and I thought perhaps I could get a clear deed through for it.

Q. Then it is your idea that no one has been in possession of that property there? A. It seems that way when there has not been any taxes paid  
10 on it, or anything like that, for all these years.

Q. And no one had possession that you know of?  
A. No, sir; nobody had it fenced in or anything.

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VERNER W. FORGIE, sworn for complainant.

Direct Examination by Mr. Davey:

Q. Mr. Forgie, where do you live? A. Belleville.  
20 Q. What part of it? A. 110 Belleville Avenue.

Q. How far is that from the northeast corner of Rutgers and Hornblower Avenue? A. Oh, about six or seven hundred foot.

Q. You have lived in that neighborhood or vicinity of that property in issue here how long?  
A. All my life.

Q. Are you familiar with the property? A. I sure am.

Q. How long can you remember this property?  
30 A. Fifty years.

Q. Within your recollection has there ever been any fence around this property? A. No.

Q. Within your recollection has there ever been any cultivation attempted on this property? A. No.

Q. Within your recollection has there ever been any sign of any kind of ownership or forbidding trespassers on the property? A. Not that I ever  
40 saw.

Q. How frequently have you seen the property, in fact? A. Oh, when I was younger every day almost, because I used to cross it.

Cross Examination by Mr. Skinner:

Q. Mr. Forgie, within your recollection have you had any knowledge by a popular report as to who was the owner? A. No. 10

Q. Haven't you ever heard of Mr. Osborn's name connected with that property? A. Not that property, not that I know of.

Q. Well, you have heard his name connected with the property on Hornblower Avenue, haven't you? A. Yes, but I think that was on the south side.

Q. But you don't know that he did own any property on the south side, do you? A. No. 20

Q. What reason have you for thinking that the ownership you heard was that property on the south side rather than this property? A. Well, it was during the time they were talking about putting the school there and that examination that they were making was on the south side of Rutgers Street.

Q. Well, at that time was Rutgers Street open or did they have to open it for the purpose of the school? A. No; Rutgers Street was open at the time that they spoke about it. 30

Q. Are you sure of that? A. Pretty sure, because that is only recently.

Q. You have no interest in this tax title, have you? A. No.

Mr. Skinner: That is all.

HENRY W. FACKRELL, sworn for complainant.

Direct Examination by Mr. Davey :

Q. Mr. Fackrell, where do you live? A. 48 Van Houten Place, Belleville.

10 Q. How long have you lived in Belleville? A. How long have I lived in Belleville? Fifty-six years.

Q. Are you familiar with the property at the northeast corner of Hornblower Avenue and Rutgers Street? A. I am, sir.

Q. How long have you been personally familiar with it? A. Why, ever since I have been in the town.

Q. How frequently had you seen it, Mr. Fackrell? A. Oh, I pass there two or three times a week.

20 Q. How long back does that go, did you say? A. Oh, to 1872.

Q. During the time of your familiarity with this property has it ever been to your knowledge—has it ever been fenced in or enclosed? A. Never had a fence about it to my knowledge.

Q. Has there ever been any cultivation attempted on it? A. Not to my knowledge; no, sir.

30 Q. Has it ever had any signs indicating ownership or forbidding trespassers? A. I never saw one on it, no, sir.

Q. You personally have been on the land, Mr. Fackrell? A. I used to cross there, going down to the Second river, to catch the horse cars in my younger days.

Cross Examination by Mr. Skinner :

40 Q. Mr. Fackrell, you have not seen any evidence of possession of that property by Mr. Kristen, have you? A. I have not seen it, no, I have not.

ALFRED COOPER, sworn for complainant.

Direct Examination by Mr. Davey:

Q. Mr. Cooper, where do you live? A. 195 Washington Avenue, Belleville, corner of Rutgers Street.

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Q. That is corner of Rutgers Street, is it not, and how far from the property at the northeast corner of Hornblower Avenue and Rutgers Street?

A. Why, my property runs back two hundred and forty-five feet, I should say, to the extreme corner of Hornblower Avenue.

Q. Yes. A. I should say, about four hundred feet.

Q. Aside from the two streets, Prospect Street and High Street, indicated on the map, but not, in fact, laid out, you are in the same block, are you not? A. Yes, sir.

20

Q. Are you familiar with the property at the northeast corner of Hornblower Avenue and Rutgers Street? A. Yes, sir.

Q. How long do you remember it? A. Why, I have been living where I do now forty-one years.

Q. And during that period have you seen the property frequently? A. Yes, sir.

Q. Where was your business formerly conducted? A. Corner of Washington Street and Williams Street.

30

Q. And that is two blocks to the south of this property in question? A. Two blocks to the south.

Q. Mr. Cooper, during your recollection of that property, has it ever been enclosed or fenced in?

A. No, sir.

Q. Has it ever been cultivated? A. No, sir.

Q. Has there ever been erected on it any sign indicating ownership or forbidding trespassers in

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the name of the owner? A. No, sir; not to my knowledge.

Cross Examination by Mr. Skinner:

10 Q. Then there has been no possession of that property in any form by Mr. Kristen, has there?  
A. No, sir; not that I ever heard of. I never knew of it.

Q. Did you ever hear of that property belonging to Howard Osborn? A. I heard of a property somewhere on Hornblower Avenue belonging to Osborne. I couldn't say whether it was the north or south side of Rutgers Street. Been referred to, but I never knew.

20 Q. By the way, Mr. Cooper, this property that you are speaking of is worth fifteen or twenty thousand dollars, isn't it? A. I should say—well, I don't really know the depth of it, Mr. Skinner, but it is worth quite a little money now.

The Court: How long has Hornblower Avenue been there?

Witness: Oh, Hornblower Avenue has been there most of that time.

30 The Court: As I recollect it, that old Hornblower map was around the late '40s or '50s, wasn't it?

Mr. Skinner: I think it was and the Coddington map was—perhaps, I don't know—

The Court: I remember from my searching days.

Mr. Skinner: I think the Coddington map was in 1870.

40 Witness: That property has been—Hornblower Avenue has been used as a right of way ever since I have been there. Mrs.

*Michael Sleator—Direct Examination.*

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Cooper's home was over on Thomas Street.  
We would go back and forth.

Q. Yes. A. But I think it must be, oh, guessing, I would say, thirty years since it has been opened up, to my knowledge.

Q. When the Methodist Church was located up in that neighborhood a man named Speer was the owner on the southeast corner of Hornblower Avenue and Rutgers Street, wasn't he? 10

Mr. Davey: If you know. It isn't in issue here. I don't know what purpose it has.

Mr. Skinner: Never mind; I withdraw it. I will just give the depth and dimensions. It is 138 feet on Rutgers Street and 188 on Hornblower Avenue. 20

Witness: Well, it is—it would be worth from sixty-five to one hundred dollars a foot, the way property has been selling there.

Q. On Hornblower Avenue or Rutgers Street? A. On either of the streets.

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MICHAEL SLEATOR, sworn for complainant. 30

Direct Examination by Mr. Davey:

Q. Mr. Sleator, where do you live? A. On Rutgers Street, one half block in from the corner of Hornblower Avenue.

Q. With reference to this property on the north east corner of Hornblower Avenue and Rutgers Street where is your house situated? A. Well, my house is situated to the east of it. 40

*Michael Sleator—Cross Examination.*

Q. Immediately adjoining it on the east? A. Yes.

Q. How long have you lived there? A. Why, I lived there since about 1873.

Q. And you can see this land from your own home? A. Every day.

10 Q. Within your recollection, Mr. Sleator, has it ever been fenced in? A. Never a fence on it.

Q. Has it ever been cultivated? A. Well, I have got a fence there on the eastern—(interrupted).

Q. Between you and the—(interrupted). A. Yes; that is the only fence I ever saw there.

Q. Has the land ever been cultivated? A. Never, to my knowledge.

20 Q. Has there ever been erected on it any sign indicating ownership or forbidding trespassers in the name of the owner? A. I have never seen any there.

Q. And you have seen it practically— A. Wild, play ground before.

Q. For fifty years practically every day? A. Every day.

## Cross Examination by Mr. Skinner:

30 Q. Mr. Sleator, you did not have to depend upon any sign upon that property to know who was the owner of it, did you? A. Well, my father I always heard say it was the Coddingtons owned the estate.

Q. Exactly. And had you not yourself heard that it later came into Mr. A. Howard Osborn and his brother? A. I heard rumors that the Osborns owned some property in around there known as the Osborn tract, but I didn't know whether it was just that piece of land or not.

40 Q. You didn't know it was that one? A. Well, I didn't pay no attention to it, anyhow.

*Roy Brooks—Direct Examination.*

Mr. Skinner: That is all.

Mr. Davey: Judge Skinner, I understand that you are willing to stipulate on the record that no deed appears on record from Coddington to Hugh Holmes?

Mr. Skinner: Yes.

The Court: Let it be so stipulated. 10

Mr. Davey: Mr. Brooks.

The Court: Is this the same line of testimony?

Mr. Davey: No; I have finished with that line of testimony, your Honor please.

The Court: All right.

ROY BROOKS, sworn for complainant. 20

Direct Examination by Mr. Davey:

Q. Mr. Brooks, what office, if any, do you hold in the town of Belleville? A. Tax collector.

Q. And you attend here under subpoena? A. Yes, sir.

Q. You were asked to produce, Mr. Brooks, the original of an affidavit of the complainant, Mr. Kristen, verified July 19, 1926, respecting payment made for tax expenditures as to Lot #1, Block 87, Map 19. Have you produced it? A. What do you mean, the copy of the tax search? 30

Q. No; an affidavit. A. No; I have not got any affidavit. I couldn't find it.

Q. Have you made search for it in your office? A. I did; yes, sir.

Q. In July, 1926, were you then collector? A. No.

Q. When did you assume office? A. September, 1926. 40

*Roy Brooks—Direct Examination.*

Q. And who was collector, if you know, in July, 1926? A. Why, I don't believe there was any collector then.

Q. Who acted at the window in the actual collection of taxes? A. A man by the name of Jordan.

10

Mr. Skinner: Your Honor please, I may save time. If this is done for the purpose of making clear that the complainant has a tax title, for the purpose of verifying the complainant's right to have the property redeemed or from his tax title, as we stand upon the record tendering ourselves ready to pay whatever may be found by the court to be correct, it seems to me to be immaterial to go into it.

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Mr. Davey: All I propose to prove is this, your Honor please: I have subpoenaed a record; if it is not produced, I shall offer secondary evidence in an attempt to show what the redemption figure should have been; that is all.

The Court: I will allow it.

Mr. Davey: Mr. Brooks, excepting—oh, I will—

30

The Court: Is there any record in your office to show what the amount of the redemption should have been?

Witness: Oh, yes, sir.

The Court: Well, what was it? How much is it?

Witness: It is a resolution that Mr. Daly has; he has it right in his pocket now.

40

Q. Mr. Brooks, I show you a letter and I will ask you if you wrote that. A. Yes, sir.

*Roy Brooks—Cross Examination.*

Q. And did you assist in making up the calculation of the amount \$1,713.01 here referred to? A. I did not.

Q. Do you know how it was made up? A. No; I don't know how it was made up.

Q. This property at the northeast corner of Hornblower Avenue and Rutgers Street is known as Lot 1 and Block 87, is it not, on the tax map? A. Yes, sir. 10

Q. Has there been, excepting for the payment of \$1,713.01, referred to in the letter which I showed you, mailed to you on or about February 23, 1928, any other money paid to you in redemption or attempted redemption of this property from tax sale of February 26, 1926? A. No.

Cross Examination by Mr. Skinner: 20

Q. Mr. Brooks, would you remember that there was a payment made by Mr. Lloyd on his behalf—don't you? A. I have no recollection of any payments made.

Q. Well, you know there was such a payment made in the attempt to redeem this property? A. What was sent me, yes, in a letter.

Q. Yes. Now, did you in any way help in the computation of the amount that was to be paid? A. No; I did not figure those figures at all. I don't know where you got your information from. 30

Q. Didn't you have a telephone conversation with Mr. Feick of the office of Pitney, Hardin & Skinner, in which Mr. Feick, representing Mr. Lloyd, asked you to give the amount that would be necessary to redeem that property? A. I don't recollect it, to tell the truth.

Q. Will you say that you did not have such a conversation? A. I did not. Yes. 40

Q. As a matter of fact, who is your town—you say you did not? A. I did not.

Q. Who was your town attorney at that time? A. Brown. You mean at what time?

Q. At the time that Mr. Lloyd made the payment. You mean made the payment that I received? 10

Q. Yes. A. Oh, Mr. Brown.

Q. Do you know whether Mr. Brown was consulted at all in the computation of the amount?

A. I do not.

Q. You were not? A. I say, I don't know whether he was—

Q. You were not yourself consulted? A. No.

Q. Now, this—have you stated that the correct amount is named in a resolution that Mr. Daly had? A. Yes. 20

Q. Is that resolution here?

Mr. Davey: Yes.

Witness: It means what they paid. They claim they paid in the resolution, I believe, that the two amounts coincide.

Q. Will you turn to the resolution, Exhibit C-2, and tell me what figure it is that you refer to as showing the amount that should be paid to redeem this property? 30

Mr. Davey: Well, I object to that, your Honor please. In the present state of the record the man could not tell.

The Court: I will allow it.

Witness: Of course, in redeeming property, they are entitled to the interest on the money from the time they bought it in.

Q. Yes. A. Of course it would be—they would only be entitled to what they paid plus their interest or any other court costs that might occur.

Q. What did you mean by “court costs”? In this proceeding do you mean? A. No, not court costs. I mean in filing, and so forth, paid at the Court House, the Hall of Records.

10

Q. Let us cut out the “and so forth” next. Just the filing of the certificate of sale and the recording of the deed? A. Yes.

Q. And did you find anything—this resolution says that the amount due as recited in the said resolution—

Mr. Skinner: Strike it out, please.

Q. This speaks of a resolution adopted in December, 1925, authorizing the director of the Department of Revenue and Finance to assign tax sale certificate relating to Lot 1 in Block 87. Lot 1 in Block 87 is this property now in controversy? A. Yes.

20

Q. So the director had been authorized to assign that tax certificate? A. Yes, sir.

Q. Did you know of the passage of that resolution of December, 1925? A. No; I was not there then, see?

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Q. This says “Whereas tender was made to the town—” this says “That whereas the amount due on said Lot #1 as recited in the said resolution was the total of \$1,436.48, whereas the said offer is now renewed and includes interest and costs on said Lot #1 aggregating \$1,463.80, the amount for which the said lot was bought in by the Town as aforesaid.” You understand, do you not, that this Lot #1 was bought in by the Town at the sale in February, 1926, for \$1,463.80? A. Right.

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Q. And that is the amount on which interest should be computed from the date of that sale to the present time, or to the time when redemption is set to be made, is it not? A. Yes, plus—(interrupted).

10 Q. And at what rate of interest? A. The Town always buys at eight per cent.

Q. The Town requires eight per cent? A. Yes.

Q. That is, it could charge more, but does not? A. No; it is eight per cent.

Q. Eight per cent; yes. Then the town attempts to collect in their interest the principal what it has been bought in for and eight per cent? A. Plus the regular fee.

20 Q. Plus the regular fee. Don't you know that the Town threw off two hundred fifty dollars when it assigned this to Mr. Kristen? A. No; I don't know anything about that. That is before my time.

Q. Well, this is a resolution; therefore be it resolved—(interrupted). A. Oh, the resolution goes, then.

Q. What? A. I say, the resolution—(interrupted).

30 The Court: He says that is before his time, there is no use reading the resolution to him.

Mr. Davey: That resolution was repealed, judge.

Mr. Skinner: That is all.

Mr. Davey: I will now have to take the stand myself, your Honor please.

W. H. K. DAVEY, sworn for complainant.

Witness: I am attorney for the complainant, solicitor for him in this action. Following the purchase of the tax sale certificate marked as C-1, the payment of the check, I filed—I prepared—the complainant swore to before me an affidavit of which I have a copy, the signatures not being appended, and that affidavit as sworn to was filed by me on the 20th day of July, 1926, with Mr. Jordan, the then collector or acting collector of the Town of Belleville. 10

I offer the copy of the affidavit in evidence, the original not having been produced.

The Court: I will receive it.

(Paper marked Exhibit C-6.) 20

Cross Examination by Mr. Skinner:

Q. That affidavit, Mr. Davey, is offered for the purpose, is it not, of adding to the amount of the taxes as bought in by the town and interest at eight per cent some fees for searches? A. Taxes of 1925 with interest and the fees for recording the deed and the certificate.

Q. Well, then, in your computation—have you made a computation of the amount necessary to redeem? A. I have. 30

Q. And what is that amount? A. The amount necessary to redeem, including interest on the 23rd of February, the day on which you made your payment, was \$1,790.48.

Q. How much paid in? A. \$1,790.48—they have paid seventeen hundred and one—\$1,713.01.

Q. Then that is the difference between us as to the amount required for redemption, eighty-nine dollars? 40

The Court: Yes, apparently.

Witness: A tender is a tender and if not sufficient is not sufficient, judge.

The Court: Is that all with this witness?

Mr. Davey: Yes.

10 Mr. Skinner: It will be stipulated and agreed upon the record as part of the defendant's proof that examination of the records in the County Clerk's office has been made and discloses no proceeding with reference to Hornblower Avenue—no record of any proceeding for the opening or widening of Hornblower Avenue at the corner—  
20 affecting the premises—in front of the premises on the northeast corner of Hornblower Avenue and Rutgers Street, nor any other proceeding affecting said premises, and that such proof shall be received in place of the formal offer of the record or official testimony to this effect.

Mr. Davey: Quite right.

Mr. Skinner: Your Honor please, I will recall Mr. Davey for one more question, if I may.

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30 W. H. K. DAVEY, recalled, for further cross examination.

By Mr. Skinner:

Q. Exhibit C-6 is a copy of the affidavit that you say was filed? A. Yes.

Q. Now, do you offer that for the purpose of establishing to this court the facts that are set forth in this affidavit? A. No; I offer it in compliance with section, I think it is, 42 of the Tax  
40 Act, that the holder of a tax title may not recover

expenses due and taxes paid unless he has filed an affidavit with the collector.

Q. This says: "Deponent paid the taxes assessed against the lot for the year 1925." A. Yes.

Q. "Deponent" in this case was Joseph A. Kristen, wasn't it? A. He was.

Q. And he has not—you did not ask him on the stand whether he had paid the taxes for 1925, did you? A. No, I overlooked that. 10

The Court: Well, has he paid them, as a matter of fact?

Witness: He has paid them; they are marked paid on the tax return on July 14, of 1926.

Q. I show you receipted bill for those taxes produced to me by Mr. Lloyd and so endorsed. Do you know whether or not—you say they are marked paid on the duplicate? A. They are. 20

Q. Do you have any knowledge as to who paid them? A. I think they were included in the price as I figured it.

Q. Have you any knowledge as to who paid them other than the mere fact they were paid? A. I did not personally pay them and I have no knowledge that he did. 30

Mr. Davey: I would like to recall Mr. Daly.

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JOHN J. DALY, recalled for further direct examination.

By Mr. Davey:

Q. Mr. Daly, some question was asked by Judge Skinner of one of the witnesses as to a paragraph 40

in the resolution already offered in evidence regarding a rebate of two hundred and fifty dollars on the purchase price of these lots. Was there a further resolution adopted by the council with reference to that? A. There was.

Q. On what date? A. On June 29, 1926.

10 Q. And have you it there? A. I have.

Mr. Davey: I offer it in evidence.

The Court: It will be received.

(Paper marked Exhibit C-7.)

Witness: It repeals Section 5.

Re-cross Examination by Mr. Skinner:

20 Q. Do you know who drew that resolution? A. That one was drawn by Mr. Brown, the town attorney—that resolution.

Q. Who drew the preceding resolution that authorized the rebate? A. Mr. Davey.

Q. As attorney for the town? A. No, he submitted it. He drew it and submitted it to the town.

Q. Yes. Then, as a matter of fact, when the money was paid—(interrupted).

30 Mr. Davey: I have not rested, Judge. I have a question to ask. The question is not addressed to the paper and I object to it at the moment as not being proper.

Mr. Skinner: It is addressed to the paper.

40 Q. Then, as a matter of fact, this recital that there had been inadvertently included in the fifth paragraph the resolution to rebate to the party making such offer the sum of two hundred and fifty dollars, that had not been inadvertently included, had it? Was there such an agreement?

Mr. Davey: I object to that, your Honor please. I don't see how any one can possibly tell.

The Court: I don't see how he can tell.

Q. Well, you don't know nothing about it.

The Court: He doesn't know about any agreement (to witness): Do you? 10

Witness: Yes; I do know.

The Court: All right. Well, tell us about it, then.

Witness: It seems this prior resolution called for two hundred and fifty dollars of the interest to go back to the buyer, and, after the resolution had been passed the board, or Mr. Brown, the Town attorney, felt that that was not according to statute, and he therefore passed that repealing section to have the town keep the two hundred and fifty dollars. 20

Re-direct Examination by Mr. Davey:

Q. Now, after that, were you present at the First District Court in this city and in a trial brought by me against the Town of Belleville for that sum of two hundred and fifty dollars? A. Yes, sir. 30

Q. What was the result of that action? A. Why, you lost the suit.

Q. The two hundred and fifty dollars never was paid? A. We got it, that is, an abatement against interest.

Mr. Davey: Well, not in this case.

Re-cross Examination by Mr. Skinner:

Q. Mr.—Well, that is all. 40

Mr. Skinner: I would like to ask Mr. Brooks one question.

The Court: All right.

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10 ROY BROOKS, recalled.

By Mr. Skinner:

Q. Mr. Brooks, you have with you here some book, haven't you, showing the payment of the taxes for the year 1925? A. No; I have not.

Q. What was it we were looking at a little while ago? A. That was a tax search.

20 Mr. Skinner: Well, never mind, then. That is all. I thought you had a book that showed.

Mr. Davey: Complainant rests.

Mr. Skinner: Now, if your Honor please, I realize there is no such thing as a motion for non suit in the Court of Chancery, but I do think perhaps the case has shaped itself so that with certain offers on our part it might be disposed of if the court felt so inclined.

30 The Court: Are you making a motion for a decree on the complainant's case in your own favor? You know the rule of the Court of Chancery, that, if you make such a motion and I should deny it, you are precluded from introducing any evidence.

40 Mr. Skinner: Yes. I will not do that, nor take any such risk, but I thought that the situation was one where the bill of quiet title might be ignored and the redemption pro-

ceedings go ahead and we were ready to act on that.

I will ask, then, that Mr. Fisher take the stand.

ANTHONY FISCHER, sworn for the defendant. 10

Direct Examination by Mr. Skinner :

Q. Mr.—(interrupted).

Mr. Davey: One moment, before defendant proceeds with his case. I want to say that I would like to assure myself that the statement that I made from my desk here instead of on the witness stand that the calculation shows the amount necessary to redeem on the 23rd of February at \$1,790.40 is included in the minutes. I don't want the minutes to fail to show that, although I stated it here as an attorney. 20

Mr. Skinner: I would like to have the inclusion in that seventeen hundred ninety, whatever it is, of taxes of 1925, amounting to eighty-five fifty, wasn't it?

Mr. Davey: Seventy-five sixty. 30

Mr. Skinner: Well, with interest—

Mr. Davey: It was figured from the date when they were due, of course.

Mr. Skinner: Eighty-five fifty.

Mr. Davey: Yes.

Mr. Skinner: It has been agreed between Mr. Davey and myself, and I would now like to put on the record that the proof of the record title or any conveyances or instruments involved in this property that are 40

of record, may be proven by one who has examined the record and is familiar with it, without the presentation of the records themselves.

10 Mr. Davey: That is true, but no proof is necessary as it is set up in the complaint and admitted in the answer which includes, I think, everything, except one document that there is of record. That is the power of attorney.

20 Mr. Skinner: Of course, I want to get not only the admission that there is filed a document in the terms that it has been described limited and condensed in the pleading in which it is mentioned, but possibly some other things that are in the document that were not—in other words, we did not present a copy of the document and get an admission it was a true copy, we simply stated there was a document or instrument.

30 Mr. Davey: The ninth paragraph is a sufficient illustration of that. It charges on June 23rd,—or, I will pick out another one. For instance, it admits the fact, but denies that they had any title. That is with reference to the Coddington quit claim to Osborn. Your Honor please there cannot be any—(interrupted).

The Court: There need not be any dispute as to the actual contents of these papers. Counsel will agree on that. You do not have to prove them.

40 Mr. Davey: No. They are all charged and admitted and I do not think any proof is necessary excepting one single document that is not charged that does appear of record.

Mr. Skinner: The contents of the documents are not proved or set forth in the complaint nor answer, nor are they admitted, but, as is usual in pleadings, there is a mere statement that there was a conveyance or there was a deed of such and such character.

The Court: You can produce copies of these; they are all on record, aren't they? 10

Mr. Skinner: Yes, sir.

The Court: Well, produce the copies and Mr. Davey will admit them as such.

Mr. Skinner: What I am getting on the record is that Mr. Davey and I have agreed that this gentleman, or anybody else he has concerning the record, may testify.

Mr. Davey: No; I have not agreed that this gentleman may testify to the contents. I have agreed that he should stipulate—or I should stipulate with you as to the fact that a deed was recorded on such a date. 20

The Court: You must get copies of these instruments and show them to Mr. Davey.

Mr. Skinner: Your Honor please, may I just give the court this assurance that in this corridor here I asked Mr. Davey if we would have to make formal proof of these instruments or whether we could prove their contents by someone who had examined them and he agreed that that should be so, and I have called a gentleman from the Fidelity to do that. That is how we were to save the production of the records themselves. Now we will have to—(interrupted). 30

The Court: Now you will have to get copies of the records themselves.

Mr. Davey: I don't know what it is you want, Judge. If you will proceed with your 40

examination, I will raise any objection I have at the time. I don't know what you want to prove.

The Court: He wants to prove the contents of these instruments.

10 Mr. Davey: Well, that affects the land in question. That is a description. I admit it.

Mr. Skinner: I ask this question—May I?

The Court: Yes.

Mr. Skinner: Mr. Davey seems to think he will make no objection unless it be of a certain character.

Q. Mr. Fischer, you are connected with the Fidelity Title & Deposit Company? A. Yes, sir.

20 Q. Did you at any time in the course of your employment read the title, as it is called for that company? A. I did.

Q. That is, go over the abstract, over the instruments affecting it? A. I did, on February fifteenth.

Mr. Davey: There you are right there. He went over the abstract. He doesn't even testify that he went over the instrument.

30 Q. Have you anything with you here, that is, as an instrument, abstract of the instrument that appeared in this chain of title? A. I have here a copy of each instrument as recorded in the Essex County Register's office.

Mr. Davey: Well, now, do you mean that, a copy?

Witness: Well, I meant an abstract.

Mr. Davey: You have an abstract?

Witness: Yes.

40 Mr. Davey: Don't say "copy."

Q. Among the things have you a copy of an abstract of the mortgage made by Hugh Holmes to Henry Osborn in 1873? A. I have an abstract of a mortgage made by Holmes to Osborn in 1875.

Q. Now, is there in that a recital of any title in Mr. Holmes, the man who made the mortgage?

A. There is.

10

Q. What is that recital? A. The mortgage recites, "Thomas B. Coddington and wife to the party of the first part", that was Hugh Holmes, dated January 31, 1873.

Q. Now, what do you mean when you say it "recites Thomas B. Coddington"? Do you mean it recites a deed from Thomas B. Coddington? A. I wouldn't say that. It recites Thomas B. Coddington and wife, party of the first part. That means the deed—

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The Court: That is what you think it means. Now, the thing to find out is what actually is said in the paper.

Mr. Davey: That, if I may say to your Honor, raises a point right there that is going to be difficult both for my friend and myself. That mortgage is not recorded but registered; no complete copy of it can be had from the record.

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The Court: We can get all there is on the record.

Mr. Davey: Yes; you can get all there is on the record.

The Court: And that is what we want. I think it is very important to find out just exactly what that record states.

Mr. Skinner: I thought I had the means to do it all, but apparently—

Mr. Davey: If the Judge has the orig-

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inal—he foreclosed it and I suppose he will find among his files the original mortgage.

Mr. Skinner: I did not. I expected I would be able to prove the copy of the recital.

- 10 Q. Have you any copy of that recital in any other form than this? This is an abstract. A. No; I have not. This is the only abstract I have.

Mr. Skinner: Can we take an adjournment to obtain such a copy?

The Court: Yes. We will adjourn now for lunch.

Mr. Skinner: I perhaps may find something else. We have got to get a copy of it.

- 20 The Court: All right.

Mr. Skinner: It is to be stipulated between Mr. Davey and myself upon the record—if I have correctly understood, and I think I have—that there is no deed; that the premises in question were a part of a tract of land conveyed to Thomas B. Coddington some time prior to 1873.

Mr. Davey: 1861.

- 30 Mr. Skinner: Well, prior to 1873. And that there is no deed of record out of Thomas B. Coddington; that it was a part of the premises of which, if he had any interest in it, passed by his will; that it would be a part of the undivided one-third of his property bequeathed by him to his two daughters, Mary F. and Fannie in trust for their sister Emily and with remainder to themselves; that, if he had any interest at all, it passed by another clause in his will, which was a gift of all the residue of his estate to his two

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daughters, Fannie and Mary F., outright. Is that correct?

Mr. Davey: That is correct.

The Court: That is all admitted.

Mr. Davey: It is charged in the complaint and admitted in the answer.

The Court: Now you want an adjournment in order to get this mortgage? Do you want to get copies of the other instruments also? 10

Mr. Davey: No. He has the deed, but we admit their deeds cover this property—charge it and admitted.

The Court: All right. I will adjourn then for lunch.

Noon Recess.

20

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After Recess.

Mr. Skinner: I will continue.

Q. Mr. Fischer, have you examined some of the records in the Hall of Records since the adjournment of court? A. I have.

Q. Among other things did you look at the records of the mortgage recorded in A7 of Mortgages, pages 4, 5 and 7? A. I have. 30

Q. You found that, did you not, to be a mortgage from Hugh Holmes and Anna D., his wife, to Henry Osborn, dated May 6, 1875, registered November 20, 1875, covering the premises in question described in this controversy? A. Yes.

Mr. Skinner: They are described.

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Mr. Davey: It is admitted in the answer, paragraph 11.

The Court: Just let Judge Skinner alone, now.

10 Q. You found it there described as being—as beginning on the southwest corner of Prospect Street and Rutgers Street? A. I did.

Q. And is that not a mistake in the description? A. It is.

Q. And it should have been the northwest corner. A. Yes.

Q. And was subsequently described as the northwest corner. A. On the foreclosure of that mortgage it was.

20 Q. And there is a reference in that mortgage, is there not, to the Lot numbers on the map, the Coddington map, by which lot numbers it is explained that the property is on the northwest corner of Prospect and Rutgers Street. A. Yes, sir.

Q. Otherwise the description is correct. A. Approximately. It says "more or less."

Q. This runs to Linden Avenue, this description. Is that approximately the same as Hornblower Avenue? A. Well, our records at the office show Hornblower Avenue and—

30 Mr. Davey: It is conceded it is practically the same.

The Court: It is conceded it is practically the same.

Q. Now, then, is there a recital in that mortgage which you copied off? A. Yes, sir.

The Court: As follows.

40 Q. As follows: "being lot marked J. K. L. M. and N. and three lots in the block marked O, on

the map of property belonging to T. B. Coddington, filed December 2, 1863, and conveyed by T. B. Coddington and Elmira, his wife, to Hugh Holmes, by deed dated January 31, 1873"; is that correct?

A. Yes; that mortgage contained that recital.

Q. Now, the reference—

The Court: Put that in evidence.

(Paper marked Exhibit D1.)

Mr. Skinner: I thought I had read it in the record.

The Court: Yes. I guess that is enough.

Q. Now, that refers to a map filed December second. Did we look up the Coddington map while there? A. Yes; we did.

Q. And did you find that it was filed December 22nd, 1863? A. 1863. December 22nd, 1863.

Mr. Skinner: And it is agreed, I think, that there is but one Coddington map on file.

Mr. Davey: There are two, but that is the only one that refers to this property.

Mr. Skinner: I mean, to this property.

Mr. Davey: Yes.

Q. Now, then, later, did you examine the records of a sheriff's deed given by S. W. Hine to Anna D. Holmes? A. I did.

Q. And you had with you, did you not, an abstract of the contents from your Fidelity Company file, did you not? A. I did.

Q. Was that not a deed from S. W. Hine as sheriff to Anna D. Holmes, acting under a writ of execution?

Mr. Davey: One moment, your Honor please, I object to any testimony regarding

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10 this deed, because it was not referred to in the bill and not referred to in the answer. If it be valid for what it purports to convey, it would convey the defendant out of court, or most of his property. In any case, it may result in further proceedings, either in this action or another for this court, but I do not think it is pertinent at all to this issue being tried.

The Court: I will admit it.

Mr. Skinner: I want to have particularly one recital that is in it. It is for that particularly that I refer to it.

20 Mr. Davey: I concede, to save my friend's time, that the recital is in substantially the same wording as the recital read from the other mortgage already in the record.

Mr. Skinner: In that it refers to the deed from Coddington to Holmes before mentioned as being the deed by which this property on the south west corner—Lots J, K, L, M and N on the map of the Coddington property, came into Hugh Holmes' right?

Mr. Davey: I concede it is in the deed.

The Court: You object to its introduction, but you concede it is correct?

30 Mr. Davey: I concede it is in the deed. I object to its force, of course.

The Court: Yes.

Q. Mr. Fischer, did you compare—examine the record of a sheriff's deed given by Henry M. Doremus to Arthur H. Osborn and Joseph H. Osborn?  
A. I did.

40 Q. Did you find that was a conveyance of the premises in question by the correct description as on the north west corner of Prospect and Rutgers Street? A. Yes, I did.

Mr. Davey: I will concede anything you want with reference to that deed, Judge.

Mr. Skinner: Well, I am only getting it in right now.

Q. And that it was in foreclosure of the mortgage that has before been referred to as recorded in A-7, page 457? A. Right. 10

Q. And that there were parties defendant to that foreclosure as follows: Hugh Holmes— A. Yes.

Q. —Anna D., his wife— A. Yes.

Q. —Bloomfield J. Miller?

The Court: Who?

Mr. Skinner: Bloomfield J. Miller. Now, I don't know that this can be agreed. I think Bloomfield J. Miller was made party to that suit as being the eldest son of Elias J. Miller, a former trustee in bankruptcy of Mr. Holmes, who had died, and with the possibility that the legal title might be in the eldest son, who was made a party. At any rate, he was a party and John J. Hoppin, trustee in bankruptcy of Hugh Holmes, was a party, as well, and certain other defendants. 20

Q. Then did you examine the record of the deed by—a deed by Fannie Browning and Mary F. Coddington to Hugh Holmes, recorded in Book B-75, page 42? A. Yes, I did. 30

Q. And did you find that that was a conveyance of this property that we have been referring to by the incorrect description?

Mr. Davey: One moment. That is a point at issue, your Honor please. I have no ob- 40

jection to the contents being stated to the witness, but the quit claim deed—(interrupted).

10 Q. Did you find the property described in this deed was the property that we have been before mentioning by the incorrect description of beginning at the south west corner of Prospect and Rutgers Street, but with a reference to the lots on the Coddington map as before, making it certain where the property was? A. That is the way I found the record.

20 Q. And did you find that that was executed—that that ran in the name of Fannie Browning and Mary F. Coddington individually and as executors of the last will and testament of Thomas B. Coddington, deceased, of New York City?

Mr. Davey: Admitted.

Q. And that it was signed for them by an attorney in fact or one who represented himself to be attorney in fact to Stephen—

Mr. Davy: John McL. Nash.

30 Q. John McL. Nash, that he signed for them as executrix—(interrupted).

The Court: No, oh, yes—as executrix.

Mr. Skinner: As executrix for each of them, I mean.

The Court: Oh, yes.

40 Q. As executrix and acknowledge for each of them that he signed, sealed, delivered the same as their voluntary act and deed individually and as executrices of Thomas B. Coddington? A. I did.

Mr. Davey: That is conceded.

Q. Did you examine the record of a power of attorney recorded in Book A-25 of Deeds, page 129?

A. I did.

Mr. Davey: Conceded that the power of attorney was made— 10

The Court: Let Judge Skinner get this on the record.

Q. Did you find that that was a power of attorney given by Fannie Browning, described as formerly Fannie Coddington, and by Mary F. Coddington to Stephen P. Nash and to John McL. Nash?

A. I did.

Q. And that was dated March sixth, 1888, acknowledged the ninth of March, 1888, and recorded October second, 1889. A. I did. 20

Q. That by deed the said two parties of the first part appointed the two other—Stephen P. Nash and John McL. Nash their true and lawful attorneys whether acting together or separately, whether individually or jointly, as the case may be, or as executors or trustees under the last will and testament of Thomas B. Coddington appointing them and empowering them among other things, to sell and convey any real estate to, or which in the language of the power did, or which may belong to us whether individually or as trustees aforesaid. 30

A. I did.

Mr. Skinner: I offer in evidence the pleadings in the foreclosure suit that is set up in the bill of complaint after the—(interrupted).

Mr. Davey: From the Osborns to—? 40

Mr. Skinner: Yes. After the deed from the sheriff which purports to invest title in the Osborns.

Mr. Davey: That is paragraph 14—no, 16, 17 and following?

10 Q. Have you examined the foreclosure proceedings under which the sheriff's deed to the Osborns that you have already identified were made? A. Yes, I did.

Q. Did you make that examination at the clerk's office in Chancery? A. I did.

20 Q. Did you find that there was in that proceeding a petition asking that the description in the deed from the south west corner as the beginning point, to the north west corner, be allowed to be made—the correction to be made? A. Why, there is a prayer to the amended bill asking that the description as identified in the mortgage be corrected; that the true description was beginning at the north west corner of Rutgers Street and Prospect Street.

Q. And did you find that in the deed that was made by the sheriff after final decree by that court it was described as the northwest corner? A. Yes, sir.

30 The Court: And was there an order changing—

The Witness: The final decree, the corrected description reads the northwest corner.

Q. When you say "corrected" you mean was there any final decree, a clause directing that the description be corrected in that particular? A. Yes, sir.

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*Anthony Fischer—Direct Examination.*

The Court: What I want to know is: There was a petition asking that it be changed. Was there an order on that petition?

Witness: Well, now, I would say in the final decree contained.

Q. Not a separate order apparently? A. Not a separate order, apparently. 10

Q. But in the final decree. A. (No answer.)

The Court: All right.

Mr. Skinner: I offer in evidence then, assignment of the mortgage Defendant's Exhibit 1 from Henry Osborne to Arthur H. Osborne and Joseph H. Osborne, recorded in book 40 of Assignments of Mortgages for Essex County at page 220; also sheriff's deed on the foreclosure of the same mortgage, from the Sheriff of Essex County to Arthur H. Osborne and Joseph H. Osborne, recorded in book 33 of deeds for Essex County, at page 487; also deed from Arthur H. Osborne and wife to John C. Lloyd, recorded in U-75 of Deeds for Essex County, page 234. I will hand them later to the stenographer to be marked. 20

Also deed from Joseph H. Osborn and Ruth Osborn, his widow to—no, strike that out—the deed from William H. Osborn and Ruth Mardel Smith. There are two separate deeds. Deed from William H. Osborn and wife as recorded in U-76 of Deeds for Essex County, page 177, to John C. Lloyd for the premises in question. Another one from Ruth Mardel Smith dated July 21, 1927, and to John C. Lloyd recorded in U-76 of Deeds for Essex County, page 176, conveying the premises in question. A deed of August 5, 1927, from Leroy Smith to John C. Lloyd, 30 40

recorded in W-76 of Deeds for Essex County, page 210, also purporting to convey the premises in question.

And will it be stipulated upon the record that Joseph A. Osborn died intestate?

Mr. Davey: Yes.

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Mr. Skinner: That he left a widow, Ruth, who has since died?

Mr. Davey: Yes.

Mr. Skinner: That his heirs at law surviving him were his son, William H. Osborn, and Ruth Mardell Osborn, that—married LeRoy Smith.

Mr. Davey: All stipulated.

Mr. Skinner: Then I think that is all of this witness.

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Cross Examined by Mr. Davey:

Q. Mr. Fischer, your attention was directed at the register's office to the Record of the deed from Holmes to Hollenbeck, was it not? A. It was, yes.

Q. For a piece of property, a part of lot marked O on the Coddington map, referred to in these descriptions? A. Yes.

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Q. And that deed also contained a recital, did it not? A. It did.

Q. In these words, "Being a part of the property—"

Mr. Skinner: Do not answer the question until I have an opportunity to object.

Q. "Being a part of the property conveyed to the said Hugh Holmes by Thomas B. Coddington by deed dated January 31, 1873, and recorded in Book EB of deeds, pages 598 to 599."

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Mr. Skinner: Before you answer the question, may I just have my objection interposed? I object to this as being irrelevant

and immaterial. It apparently is a declaration contained in another deed for—not for—what do you say, for a part of the premises in question?

Mr. Davey: No. Part of Block O, that has been referred to, which is not property—no part of the premises in question. 10

Mr. Skinner: In which a reference is made by the grantor to the deed from Coddington as being recorded in the book, when you turn to that book you find that that place is where the map is recorded and not the deed, I submit that is not relevant or material in this case.

The Court: I will receive it.

Q. You may answer. A. Yes.

Q. Did you examine the record book—there is no book of EB, is there, in Essex County of Deeds? 20

A. No; that is a mistake.

Q. Did you examine the book E-13 of Deeds at page 598? A. I did.

Q. And did you find there recorded any deed?

A. No, that is the—

Q. What did you find there recorded? A. The record place of the Coddington map.

Q. Under the old system where those old maps were recorded in these books? A. Yes. 30

Q. And that map is, in fact, 566 on file. A. Right.

Q. And that is the map you examined to confirm the description in the change of title to the property now in suit? A. Yes.

Q. And the block—the lot O referred to there has in the description in the mortgage, Holmes to Osborn, three lots in Block O—Lot O? A. Lot O.

Q. Lot O was a large lot, wasn't it? A. Yes, sir. 40

Q. Apparently, from the map, larger than the five which were referred to as J, K, L, M and N? A. Yes.

JOHN C. LLOYD, sworn for defendant.

Direct Examination by Mr. Skinner :

Q. You are the defendant named in this suit? A. I am.

10 Q. Did you pay any taxes upon the property known as Lot 1 in Block 87, Belleville Township map?

Mr. Davey: One moment. That may be answered Yes or No. Of course, I have no objection to that.

A. Yes.

20 Q. I show you what purports to be a receipted bill for those taxes and ask you what it is. A. Ask me to tell you what it is?

Mr. Davey: The question doesn't mean anything to me.

Q. I show you this paper, purporting to be a receipted bill and ask you if you received that, and under what circumstances did you get it? A. I received it by mail.

30 Mr. Davey: I don't want to—(interrupted).

The Court: Wait a minute. You received it?

Q. You received it?

The Court: Under what circumstances? By mail?

40 Q. Yes. Under what circumstances did you receive it? A. By mail. I mailed the collector of

taxes of the Town of Belleville a check for 1925 taxes due by proxy, which I owned, including Lot 1, Block 87, Map 19.

Q. And then after having so mailed that check what—(interrupted). A. I received the bill I hold in my hand, a receipted bill with the other receipted bills.

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Q. Yes. Now, the amount of the tax of 1925 as it appears—(interrupted).

Mr. Davey: Now, one moment. I object to any question regarding the tax in 1925 as being subsequent to the sale.

The Court: Yes, they are.

Mr. Skinner: May I have this in evidence?

The Court: Surely.

Mr. Skinner: I offer the bill in evidence. (Bill marked Exhibit D-6.)

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Mr. Davey: I object to its admission for the same reason.

The Court: I will overrule the objection and allow it to be admitted.

Mr. Davey: Your Honor will grant me an exception.

The Court: No; not in Chancery.

Mr. Davey: You don't have to; I beg your pardon.

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Q. Mr. Lloyd did you attend a sale for taxes advertised by the Town of Belleville in February, 1926? A. I did.

Q. And was any property offered for sale therein in which you were interested? A. There was.

Q. Was this property, Lot 1, Block 87 offered for sale?

Mr. Davey: I object, if your Honor please.

The Court: I will overrule the objection and allow the question.

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A. It was.

Q. And did you—was there any bidding upon it; if so, by whom? A. By myself.

Q. Was there any other bidder? A. There was not.

10 Q. Was there any announcement made by the officer conducting the sale as to your bid or any disposition of it made?

Mr. Davey: Well, now, I object to that, if your Honor please, that characterization. I have no objection to his testifying to what he did or said and what the officer conducting the sale did or said.

The Court: Yes.

20 Q. The question only calls for yes or no. A. Yes, sir.

Q. And, if there was, what was said? A. Taken by—

The Court: Wait a minute. Let me hear that question. Was there an announcement made?

Witness: Yes, sir.

The Court: What was the announcement?

30 Witness: Taken by the Town of Belleville at flat.

Mr. Davey: I didn't catch that.

Witness: Taken by the Town of Belleville at flat.

Q. Has that term "at flat" a meaning in the— (interrupted). A. Well, I don't know just how to describe—

40 The Court: What do you understand "at flat" to mean?

Witness: That the purchaser of the lien so sold would not receive anything except the face of the amount for which it was sold when it was redeemed. In other words, the owner of the property in redeeming it would not have to pay any interest.

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Q. When property—have you attended other tax sales? A. Many of them.

Q. When property is offered for sale, is it not—

Mr. Skinner: Will there be any objection to this?

Mr. Davey: I don't know what it is yet.

The Court: Well, finish the question.

Q. When property is offered for sale in the Town of Bellville, is it not customary for bids to be invited in these terms; the bidders are to name the rate of interest which they will require the owner of the property to pay if he wishes to redeem, which may not, by law, exceed eight percent? A. I so understand it. 20

Q. And then if one bids eight per cent and another one bids six or four or three and the lowest bid is three, or if it gets down to flat, does that mean that the bidder undertakes that whoever comes to redeem the property shall not have to pay any interest at all? 30

Mr. Davey: I object to that, your Honor please, as this witness certainly is not qualified for an expression of that kind.

The Court: I will sustain the objection.

Q. At any rate, that was said? A. Yes.

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Q. And was there anything more said about this property? A. Not a word.

Mr. Skinner: That is all.

Cross Examination by Mr. Davey:

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Q. So that at that sale the property was sold to the Town of Belleville?

Mr. Skinner: I object to that as calling for a conclusion of law. He may say what was said. That is what I have been limited to.

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The Court: Yes. We all know it was sold to the Town of Belleville. We have heard that this morning, and then the Town of Belleville sold it to your client.

Mr. Davey: Without waiving my question as to admissibility of this document, I want to cross examine with reference to it.

Q. Mr. Lloyd, when did you get this bill marked Exhibit D-1? A. A few days after July 14th, 1927.

Q. When did you first get it? A. That is the time I first got it—oh, you mean the bill?

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Q. After you paid it you first got it? A. I asked them when I sent my tax bill in, I asked them to include the taxes for Lots 1, Block 87 of 1925.

Q. That was on July 14, 1927? A. Yes; about July 14th.

Q. 1927? A. That is what it says there.

Q. And was that the date you paid it? A. About that date.

Q. You did not know that it had been paid the year before—two years before. A. I asked them—

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Q. Did you know that it had been paid two years before? A. I did not.

Q. Did you look up at the time the tax duplicate of the entry of those taxes? A. I did not.

Re-direct Examination by Mr. Skinner:

Q. Did you make any inquiry as to whether the tax for 1925 had been paid? A. I did not. 10

The Court: Well, is it a fact that these taxes were paid twice?

Mr. Davey: I don't know. It is a fact they were paid in July, 1926.

The Court: How do you know? There is no proof about that.

Mr. Davey: There is proof of it, your Honor please. The affidavit is here making it, and this morning when the collector was here we had the book and I let him go, supposing it was conceded. I will have him back again. 20

Mr. Skinner: The affidavit that was offered, I asked definitely whether Mr. Davey was offering that as having any probative value as to the facts recited therein as being applicable and he said, "No, not for that purpose, but just to show as the law requires that an affidavit of a certain kind had been filed. 30

Mr. Davey: It was true as far as the—

The Court: As I remember it, this testimony, there is no testimony whatever that these taxes were paid. This gentleman, Brooks, said that he did not know anything about it, he didn't know whether they were paid or not; and then he went further and said they were marked paid, but he did not know who paid them. Now, this man comes along and says, "I paid them". 40

Mr. Davey: I don't think it is material, but I am certain the books show, from my own investigation, that it was paid July 14, 1926. Mr. Lloyd paid them again in 1927, apparently.

10 The Court: I don't think the testimony shows that, as I recollect it. Judge Skinner asked if he had his books here. He said he did not; is that correct?

Mr. Skinner: That is.

Mr. Davey: That is true.

Mr. Skinner: He had a book from which he said searches were made up, or his search book.

20 The Court: But he did not have the collector's book and he was not the collector at that time.

Mr. Davey: That is true.

The Court: Well, all right.

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HENRY W. UNDERWOOD, sworn for defendant.

Direct Examination by Mr. Skinner:

30 Q. Mr. Underwood, you hold some official position in the Town of Belleville, do you not? A. Yes, sir.

Q. What is it? A. Deputy Director of Revenue and Finance.

Q. How long have you held that position? A. Three or four years, yes.

Q. And are the tax maps and tax duplicates in the office of the director of finance? A. Yes, sir.

40 Q. And has the collector of taxes got a portion

of that office fenced off for him? A. He has a cage for collection of moneys.

Q. And another for the assessor? A. The assessor is in an open room adjoining the cage.

Q. The tax duplicates for each year are now retained—preserved, are they not? A. Yes, sir.

Q. And have been for a number of years? A. 10 Yes, sir.

Q. And kept in book form? A. Yes, sir.

Q. One book for each year? A. Yes.

Q. Did you, at my request, or at somebody's request, make an examination of the tax duplicates to see in whose name the property known as Lot 1, Block 87, had been assessed for taxes for a number of years? A. Why, I did partially myself and partially by a clerk.

Q. By the clerk? A. Yes.

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Q. And have you got a statement of that? A. Yes.

Q. Let's see it.

Mr. Skinner: Your Honor please, I subpoenaed the four officers—

Mr. Davey: I have no objection. I will admit it, if you want.

The Court: Let us admit, then, that it states so and so.

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Q. And did you find that the taxes from 1895 to 1911 upon this property were assessed to A. H. and J. H. Osborn? A. Is it written there, Judge?

Q. At the top. A. Yes, at the top, I see.

Q. Right? A. Yes.

Q. Did you find that for the year 1894 it was assessed in the name—appears on the duplicate—assessed in the name of Hugh Holmes in ink and that crossed out in pencil and in pencil written

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in the words A. H. and J. H. Osborn? A. Yes, sir.

Q. And for the year 1893 it appears assessed in the name of Hugh Holmes and on the same line J. H. and A. H. Osborn, all in ink. A. Yes.

Q. And in 1892 in the name of Hugh Holmes? A. Yes.

10 Q. And in the year 1891 in the names of Hugh Holmes and A. H. and J. H. Osborn, all in ink? A. Yes, sir.

Q. And in 1890 Hugh Holmes? A. Yes, sir.

Q. And in 1889 Hugh Holmes with the notation in red ink "Sold to Joseph H. Osborn", entered on page 44 in the book entitled "Unpaid taxes 1878 to 1893, sold to Joseph H. Osborn for 1889 taxes." A. Yes, sir.

20 Q. And for 1888 could you find any assessment? A. Is that the—marked there "Not found"?

Q. Yes. A. Yes.

Q. And then did you find any assessment for the property in eighteen—for how long a time have the duplicates been kept there? A. Why, I couldn't find anything back of 1879.

Q. 1879? A. Prior to 1879.

The Court: I don't think I could myself.

30 Q. Well, you found earlier assessments in the name of T. B. Coddington or the Coddington Estate, did you not? A. Yes. It is stated on there Coddington.

Q. 1887 Coddington, 1886—or the estate, rather. A. 1886.

Q. Estate of T. B. Coddington. A. 1885.

Q. T. B. Coddington, and you say here, a memorandum says, duplicate shows property on the north side of Isaac Street. A. Yes.

40 Q. That is not this property, is it? A. No. The

maps previous to that time, it seems, were made, and at that time, not from the map, but from the location, the east side of a certain street or the north side of the street and I could find nothing.

Mr. Skinner: That is all.

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Cross Examination by Mr. Davey:

Q. Now, Mr. Underwood, as a matter of fact, for a good many years prior to 1912 or thereabouts, Mr. A. H. Osborn was assessor, was he not, in Belleville? A. Collector.

Q. Collector, was it? A. Yes, sir. I think—I don't know the date, Mr. Davey.

Q. Pardon me. A. I don't know when he took the office first.

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Q. He was for a long period of years before 1912 or 1913? A. Yes.

Re-direct Examination by Mr. Skinner:

Q. Mr. Underwood, didn't you find that in the years 1894 and 1891 there were payments of taxes? A. How is that?

Q. Didn't you find in the years 1894 and 1891 there were paid four hundred and fifty dollars and seven hundred dollars respectively for taxes? A. Why, I don't look at that part of it at all, sir.

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Mr. Skinner: We have the man here who made that examination of the record and found that payment and Mr. Underwood has not seen it. That is all.

The Court: That is all.

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A. WILLIAM WANN, sworn for defendant.

Direct Examination by Mr. Skinner :

Q. Mr. Wann, you are employed by the Fidelity Title Company? A. I am.

10 Q. And as a clearer? A. I am.

Q. What is that? A. Why, there are men who read titles, and if there was any defect or anything to be cleared up, that is sent to the Clearing Department. There is a number of men in that department that go out and try to clear up the so-called defects.

The Court: Now, why don't we send this case to the department?

20 Q. Did you on May 26th, 1928, at the request of Mr. Fischer here, make an examination of the tax duplicates and other tax records in the office of the Town Hall at Belleville? A. I did.

Q. Did you find that for the years 1894 and 1891 the lot—property known as Lot 1, Block 87, was assessed to Hugh Holmes and an entry of payment of four hundred and fifty dollars and seven hundred dollars respectively? A. Yes, sir. That is, 30 the book had these lots out in numbers and in red ink was marked "Paid" and after that in that one year where it was four hundred and fifty dollars there was seventy-five dollars each there opposite each lot number, making a total of four hundred and fifty dollars.

Q. Oh. A. On the other year it was marked in red ink "Pd." which I took to be paid. And that was seven hundred dollars, taking in consideration the whole block.

40 Q. Then what you found on record was not a

memorandum in terms of four hundred and fifty dollars, but a memorandum of several payments which you totalled up and they amounted to four hundred and fifty? A. Yes; like an assessment on each street lot totalling that amount.

Q. Now, on each street lot. I don't care anything about other lots, but this one in question, Lot 1, Block 87, was that one of the lots on which there was a memorandum showing payment? A. Yes. 10

Q. Showing seventy-five dollars or some other unit? A. Yes.

Cross Examination by Mr. Davey:

Q. What was that assessment? A. There is assessment to—it was assessed to A. J.— 20

The Court: Was it tax or assessment?

Witness: Well, it was in the tax book.

The Court: It was not an assessment for sewers or streets or anything?

Witness: I didn't see anything in the street book that had anything to do with assessments.

Q. And the land was down as being owned by A. J. Osborn? A. Well, it was assessed to him. 30

Q. Does that indicate ownership as far as the town books indicated it at all? A. As far as that goes, the Osborn name was written in ink. I don't know if I put down the numbers these times it appeared the Osborn name was in ink, and also written the name of Hugh, in pencil.

Re-direct Examination by Mr. Skinner:

Q. Now, your memorandum in this particular has only given a part of what Mr. Wann had found 40

as these particular years 1894 and 1891. The memorandum that you have made at the time, I have before me, says that it was assessed to Hugh Holmes and these payments made and that there appears in pencil over that name the names of A. H. and J. H. Osborn. Is that right? A. That  
 10 is it.

Re-cross Examination by Mr. Davey :

Q. And you haven't any idea from that record who made the payments? A. No. You couldn't tell who made the payments.

Q. You couldn't find anything to indicate who made the payments? A. No. That was—(interrupted).

20 Mr. Davey: That is all.

The Court: That is all.

---

JAMES J. NEARY, sworn for defendant.

Direct Examination by Mr. Skinner :

Q. Mr. Neary, are you a resident of Belleville?  
 30 A. Yes, sir.

Q. How long have you lived there? A. Thirty-four years.

Q. In what part of Belleville? A. Hornblower Avenue, 35.

Q. And how near is that to Hornblower Avenue and Rutgers? A. Right opposite, right on the corner almost.

Q. Which corner, south, west, north, east? A. My house is located at the end of Rutgers, where Rutgers stops and it runs into Hornblower Avenue  
 40 and that is the end of it.

Q. Are you on the south side of Rutgers Street or on the north side? A. I am directly in front of Rutgers Street. I am on the west side of Hornblower Avenue.

Q. You are on Rutgers Street but on the west side of Hornblower, opposite the end of Rutgers Street? A. Yes, sir. 10

Q. All right. Now, then, in your residence there have you had any occasion to inquire as to the ownership of the property on the northwest corner of Prospect and Rutgers or the northeast corner of Hornblower Avenue and Rutgers? A. Yes, sir.

Q. What particular occasion was it? A. Well, a number of years ago—

The Court: No, not what inquiry you made, what occasion you had to make it. 20

Mr. Skinner: That is all he is going to tell. I know what he is going to tell. He is not going to tell the inquiry.

Q. Was there some occasion when you made inquiry, and, if so, tell us what the occasion was, not the inquiry. A. Opening Hornblower Avenue.

Q. Well, did you have any part in that? A. Yes, sir.

Q. What part? A. I took a very active part in that. I was a member of the Hornblower Avenue improvement association. I ain't quite sure whether I was president of it—(interrupted). 30

The Court: When did Hornblower Avenue open?

Witness: About thirty-three years ago. About that time, as near as I can recall.

The Court: You remember that old Hornblower map and Coddington map, don't you? 40

Witness: Yes, sir.

The Court: When was that Hornblower map, about 1850?

Witness: Well, I don't recall back as far as that.

The Court: I don't, either.

10 Mr. Skinner: The Coddington map was in—(interrupted).

Mr. Davey: You mean the Coddington map? Oh, it was way back of that.

The Court: There was a Hornblower map, wasn't there?

Mr. Skinner: Yes. Hornblower and Stevens I think.

The Court: That was probably later than—this is just for my own personal satisfaction.

20 Witness: Your Honor, my land belonged to Hornblower.

Mr. Davey: The Hornblower property, your Honor please, laid entirely on the west side of Hornblower Avenue.

The Court: I am sorry to have interrupted you. I was interested to know about these maps.

30 Q. Well, there was a Hornblower improvement association? A. Yes, sir.

Q. And did that association undertake some improvement of Hornblower Avenue and— A. Yes, sir.

Q. In the improvement of Hornblower Avenue was anything done to widen it? A. Yes, sir.

Q. What proceedings were taken?

Mr. Davey: Well, your Honor please, I haven't any objection to the witness stating

40

what proceedings were taken, but I don't want him to prove the subject matter of proceedings, if they were in court or before the then commission or council or whatever it was.

The Court: I really don't know what this has to do with it. 10

Mr. Skinner: Before the adjournment at noon, I had from Mr. Davy the stipulation that he would agree that a Mr. Hand, Kenneth Hand, of our office had made an examination of the records in the County Clerk's office, diligently, for some proceedings for the opening or widening of Hornblower Avenue, and found by the surveyors of the highway—I mean, and found no such opening of record. 20

Mr. Davey: I so concede.

Mr. Skinner: Now, I want to prove by this gentleman that there was such a procedure, the record being lost.

Mr. Davey: No, no.

The Court: Now, what has that to do with it, anyway?

Mr. Skinner: In that proceeding damages were awarded to J. H. and A. J. Osborn.

The Court: Oh. 30

Mr. Skinner: As owners of this particular property.

The Court: Then it becomes part of it.

Mr. Skinner: Oh, yes.

The Court: I will allow it.

Q. Mr. Neary, what was the proceeding?

Mr. Davey: Now, if your Honor please, notwithstanding your statement, I wish to 40

10 register my objection upon the ground that my friend asked me and I do state there is no record of such a proceeding in the Court House or the County Clerk's office, but there was at that time Township Committee at the Town of Belleville before which such proceedings could have been had for the opening of streets and I don't know, on my soul, where the opening was made or by what proceedings it was made, but I have entered into no stipulation to concede the purport and effect of proceedings taken in an unknown court, at an unknown time by unknown people for opening this street, and I cannot do it.

20 Mr. Skinner: I have no desire to ask it, and the court can take judicial notice, if the fact is as I believe it is, that the proceeding for the opening and widening of the street at the time Mr. Neary speaks of was by surveyors of the highway called out on petition presented to the Common Pleas Court—

The Court: I know all that as well as—not as well as you do exactly—

Mr. Skinner: Well, your Honor knows—

30 The Court: They should have been filed.

Mr. Skinner: They should have been filed in the County Clerk's office and I have proof the condition of the lost record and therefore offer secondary evidence.

The Court: I will allow you to proceed.

40 Q. Just tell the court what proceedings were taken. A. My neighbor and myself called on the property owners on Hornblower Avenue in order to find out who they were. We went to see Mr. Osborn, who was the collector at that time.

Mr. Davey: Just one moment, Mr. Neary. Will you try to fix this time as nearly as may be?

Witness: Yes. I will say it was 1893.

Mr. Davey: 1893?

Witness: Yes. Maybe it was 1894, it may be 1892, but it was right around that.

10

Mr. Davey: All right.

Witness: It is right around that anyway, so we called on Mr. Osborn to get a list of the property owners on both sides of Hornblower Avenue so we could call on them for a subscription, a donation to pay the expenses of calling out surveyors of the highway to have Hornblower Avenue opened. A portion of Hornblower Avenue was opened at that time, north of Academy Street and from Academy Street to John Street was a lane. We called on Mr. Osborn, got the names and called on the people and got a small donation from each one and turned the matter over to Mr. Perry, who was then Town Counsel of Belleville and he called out the surveyors of the Highway, had the property condemned and the street went through and we got it.

20

30

Q. Well, in that proceeding who was dealt with as owner of the property on the northeast corner of Hornblower Avenue and Rutgers Street?

Mr. Davey: I object.

The Court: I will allow the question.

A. Northeast corner?

Q. Yes. A. On the northeast corner of Hornblower Avenue?

40

Q. Yes. A. Osborne.

Q. Which Osborn? A. Henry Osborne, the collector, Howard Osborn, whatever his name was, the collector.

10 Q. Yes. Well, you don't want to get that confused. A. Well, he was the owner. He said he owned it. He told me he owned it.

Q. Now, you are speaking of the collector known as Howard Osborn? A. Yes. Or Henry Osborn, I don't know.

Q. Well, I would like to know. A. Well, I don't know whether his name was Henry or Howard. They used to call him How Osborn. He was the collector, anyway.

Q. What was his business, do you know?

20 The Court: Collector.

A. Druggist.

Q. That was the way he was known in Belleville. He kept a drug store on Main Street in Belleville, didn't he? A. Yes, sir.

Q. That is the Osborn you mean? A. Yes, sir.

Mr. Davey: That was Howard.

Mr. Skinner: That was Howard.

30 Q. And do you know whether any damages were awarded to Mr. Osborn?

Mr. Davey: Yes or no.

A. Of my personal knowledge?

Mr. Davey: I object to that.

The Court: Wait a minute. Do you know personally whether any damages were allowed?

40

Witness: No.

The Court: Well—

Witness: Personally I don't know—

Q. Do you mean by that that you don't know—

The Court: No.

10

Mr. Skinner: I don't think—

The Court: He probably means what he says. We hope he does.

Mr. Skinner: There are two ways it might be understood; that is what I had in mind. I shall ask him the question. May I now indicate to your Honor the kind of question I am going to ask?

The Court: You can ask the question and we will see.

20

Q. I do not ask you now, Mr. Neary, whether you know whether any damages were awarded to Mr. Osborn. I am asking you whether you know that the proceeding got to the point where damages were awarded. Do you know that? A. Yes. That is what they said.

Q. Well. A. But I don't—I can't say that I know that of my own personal knowledge.

Mr. Davey: Did you ever see any of the papers relating—

30

The Court: No, no. Have you finished?  
(Mr. Skinner assents.)

The Court: Cross examine.

Cross Examination by Mr. Davey:

Q. Did you ever see any of the papers in connection with this opening? A. No, nothing.

40

Q. You are quite sure that the time was prior to 1899? A. Oh, yes.

Re-direct Examination by Mr. Skinner:

10 Q. And, Mr. Neary, did you know anything about the ownership of the property on the north east corner of Hornblower Avenue and Rutgers Street by common report in the neighborhood?

Mr. Davey: I object to that, your Honor please.

The Court: I will allow the question.

Q. Did you know about it?

20 The Court: I will allow it.

A. May I answer?

Q. Yes. A. Yes.

Q. And by common report who was the owner of the property on that corner? A. Osborn.

Q. And by "Osborn" you mean A. Howard Osborn? A. Yes.

Re-cross Examination by Mr. Davey:

30 Q. And was that the common report in 1893? A. That was the time that I called him—about that time, yes.

Q. Before 1899? A. Yes.

Q. Sure of that? A. Yes, sir.

Mr. Skinner: May we have on the record the fact that Emily Coddington died?

The Court: Yes.

40 Mr. Davey: Died intestate and without issue.

Mr. Skinner: All I want is that she died.

The Court: This matter is entirely too involved for me to decide from the bench. I will have to have the testimony and the assistance of counsel and memoranda.

Mr. Skinner: In the meantime will your Honor, or will Mr. Davey get from the clerk in Chancery the original papers so that the Vice Chancellor has the papers here? 10

Mr. Davey: Oh, yes, I will do that.

Mr. Skinner: And will you fix the time? A limit, I mean?

The Court: How long do you want for your—

Mr. Davey: For our argument?

The Court: No, for memorandums.

Mr. Davey: Mine is ready.

The Court: Two weeks. Well, the testimony has got to be written out first. 20

Mr. Davey: I will want to redraw it, of course.

Mr. Skinner: I should say, as far as I am concerned, one week or ten days after I receive a copy of the testimony.

The Court: All right; ten days after you receive the testimony.

Mr. Skinner: And shall we then— 30

The Court: Just exchange briefs, then if either side wants an answering brief, you can have it.

Mr. Skinner: A week for that?

The Court: Yes.

### Stipulation as to Exhibits.

10 IT IS HEREBY STIPULATED by and between the solicitors for the respective parties, that the various muniments of title referred to in the amended bill of complaint and offered in evidence at the trial, and the other exhibits below referred to, shall not be printed in full in the State of the Case on Appeal, but that the same are summarized herein, and that the court, in considering the same, may consider that each and all thereof are in ordinary and usual form as indicated, respectively, and that the description in each of the deeds sufficiently describes the property described in the amended bill of complaint herein.

20 IT IS FURTHER STIPULATED that either party at the argument of the appeal herein may present to the court the originals of any or all such exhibits, or may require the other party to produce any or all thereof.

#### Complainant's Exhibit 1 (Offered p. 31).

		Tax Sale Certificate.
	LeRoy F. Vermeule,	Dated February 26,
	Collector of Taxes.	1926.
30		Ack'd. February 26,
	To	1926.
		Rec'd. June 25, 1926.
	The Town of Belleville.	Book D 58 of Mortgages,
		page 252.

Described, among others, Lot #1, Block #87, Map 19, sold for the taxes for 1915 to 1924 inclusive and sidewalk and shade tree assessments amounting, with costs, to \$1,463.80. 8% redemp-

*Stipulation as to Exhibits.*

tion. The said lot being the property described by meets and bounds in the amended bill of complaint herein.

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**Complainant's Exhibit 3 (Offered p. 32).**

<p>THE TOWN OF BELLEVILLE.</p> <p>To</p> <p>JOSEPH A. KRISTEN.</p>	<p>Deed. \$1,959.97 Dated June 23, 1926. Proved June 23, 1926. Rec'd. June 25, 1926. Book O 74, page 369.</p>	<p>10</p>
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Described the property in question, with other land not here in question.

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**Complainant's Exhibit 4 (Offered p. 33).**

Check of Joseph A. Kristen, drawn on the First National Bank of Belleville, to the order of the Town of Belleville, for \$1,959.97 with the note "Lots 1 and 8, Block #87, Map 19." Dated June 14, 1926. Stamped "Paid 6/21/26."

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**Complainant's Exhibit 5 (Offered p. 35).**

<p>Marie F. Codington and Fanny Browning, In- dividually and as Ex- ecutors of Thomas B. Codington, deceased.</p> <p>To</p> <p>JOSEPH A. KRISTEN.</p>	<p>Quit-Claim Deed. \$1.00 Dated March 16, 1928. Ack'd. March 16, 1928. Rec'd. March 20, 1928. Book Z 77, page 37.</p>	<p>30</p>
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Describes the property in question.

40

**Defendant's Exhibit 1 (Offered p. 67).**

10 Hugh Holmes and Anna Mortgage \$14,000.00  
 D. Holmes, his wife. Dated May 6, 1875.  
 Ack'd. May 10, 1875.  
 To Reg'd. November 20,  
 1875.  
 Henry Osborne. Book A-7, page 457.

Describes the property in question, to secure the payment of \$1,400 in two years, with interest at 7%, also contains agreement by Hugh Holmes to pay all taxes assessed on the principal.

Contains the following recital:

20 "Being lots marked J, K, L, M and N and three lots in the block marked O, on the map of property belonging to T. B. Codington, filed December 2, 1863 and conveyed by T. B. Codington and Elmira, his wife, to Hugh Holmes, by deed dated January 31, 1873."

**Defendant's Exhibit 2 (Offered p. 73).**

30 Henry Osborne Assignment of Mortgage  
 \$1.00.  
 To Dated July 20, 1886.  
 Ack'd. July 30, 1886.  
 Joseph H. Osborne and Rec'd. May 13, 1889.  
 Arthur H. Osborne. Book 40, page 220.

Assigns the mortgage Defendant's Exhibit #1.  
 Certifies that there is due thereon the sum of \$1,400 with interest from May 6, 1875.

40

*Stipulation as to Exhibits.***Defendant's Exhibit 3 (Offered p. 73).**

Henry M. Doremus, Sheriff of Essex County	Sheriff's deed. Dated March 18, 1899. Ack'd. March 24, 1899.	
To		
Arthur H. Osborne and Joseph H. Osborne.	Rec'd. April 16, 1900. Book E 33, page 487.	10

Recites final decree for \$2,089.11 in foreclosure of the mortgage Defendant's Exhibit 1, dated January 14, 1899; Fi. Fa. January 25, 1899; and described the property in question.

**Defendant's Exhibit D-4 (Record p. 73).** 20

Arthur H. Osborne and Mary Ella, his wife.	Bargain & Sale Deed \$1.00. Dated January 15, 1927. Ack'd. January 15, 1927. Rec'd. January 17, 1927.	
To		
John C. Lloyd.	Book U-75, page 234.	

Describes the property in question. 30

**Defendant's Exhibit D-5 (Record p. 73).**

William H. Osborne and Elizabeth E. his wife.	Bargain & Sale Deed \$1.00. Dated July 14, 1927. Ack'd. July 14, 1927. Rec'd. July 21, 1927.	
To		
John C. Lloyd.	Book U-76, page 177.	40

Describes the property in question.

*Stipulation as to Exhibits.***Defendant's Exhibit D-6 (Record p. 73).**

10 Ruth Mardell Smith Bargain & Sale Deed  
 \$1.00.  
 To Dated July 21, 1927.  
 Ack'd. July 21, 1927.  
 Rec'd. July 21, 1927.  
 John C. Lloyd. Book U-76, page 176.

Describes the property in question.

**Defendant's Exhibit D-7 (Record p. 73).**

20 LeRoy Smith, husband Bargain & Sale Deed  
 of Ruth Mardell \$1.00.  
 Smith. Dated August 5, 1927.  
 To Ack'd. August 5, 1927.  
 Rec'd. August 5, 1927.  
 John C. Lloyd. Book W-76, page 210.

Describes the property in question.

**Defendant's Exhibit 8 (Offered p. 77).**

30 Tax Bill of the Town of Belleville, for the taxes  
 for the year 1925, for the property described in  
 the amended complaint, Lot #1, Block #87, Map  
 19 made out to "A. & J. Osborn." Valuation \$1,800.  
 Rate \$4.20. Amount of tax \$75.60. Interest \$9.90.  
 Total \$85.50. Paid by John C. Lloyd July 14, 1927.

40



**Complainant's Exhibit 2 (Offered p. 32).****BOARD OF COMMISSIONERS  
TOWN OF BELLEVILLE, NEW JERSEY**

Introduced by Commissioner Nelson.

10 BE IT RESOLVED, by the Board of Commissioners of the Town of Belleville, in the County of Essex, N. J., as follows:

WHEREAS, the Board of Commissioners of the Town of Belleville, on December 22nd, 1925, adopted a resolution authorizing the Director of the Department of Revenue and Finance to assign Tax Sale Certificates relating to lots #1 and #8, in Block 87, Map 19; upon the terms and conditions in said resolution stated; and,

20 WHEREAS, such authority by the terms of the said resolution, was limited, to February 1, 1926; and,

WHEREAS, tender was made to the Town before that date and it was found that no Tax Sale Certificate was in fact held by the Town relating to said lot 1; and thereafter the said lot 1, was included in the Tax Sale held February 25, 1926, and bought in by the Town of Belleville; and,

30 WHEREAS, the amount due on said lot #1, as cited in the said resolution was the total of \$1,436.48 and on said lot #8, the total of \$443.93 making an aggregate of \$1,880.51 (not including old outstanding tax sale certificates held by others) and;

40 WHEREAS, the said offer is now renewed and includes interest, costs, etc., on said lot #1, aggregating \$1,463.80 (the amount for which the said lot

*Stipulation as to Exhibits.*

was bought in by the Town as aforesaid) and \$33.17 interest to June 15th, 1926; and interest amounting to \$19.07 on lot #8 making a total for lot #1 of \$1,496.97 and for said lot #8 of \$463.00 and aggregate of \$1,959.97.

THEREFORE, BE IT RESOLVED, that pursuant to the provisions of Chapter 227 of the Laws of 1922, the Director of the Department of Revenue and Finance, be authorized to sell the said certificates for the said sum of \$1,959.97 being the full receipt thereof, to rebate to the party making such offer the sum of \$250 of the interest on the assessments affecting said lot #1, as provided on the said resolution, and; 10

BE IT FURTHER RESOLVED, that the Mayor and the Town Clerk are hereby, authorized, empowered and directed to execute and acknowledge a deed for the said lots, as provided by the Director of the Department of Revenue and Finance upon the receipt of payment as hereinabove provided. 20

Adopted: June 8, 1926.

FRANK J. CARRAGHER,  
WILLIAM D. CLARK,  
EDWARD NELSON,  
PATRICK A. WATERS,  
S. S. KENWORTHY,  
Commissioners. 30

Attest:

JOHN J. DALY,  
Town Clerk.

Certified to be a true copy.

JOHN J. DALY,  
Town Clerk. 40

**Complainant's Exhibit 6 (Offered p. 53).**

WILLIAM H. K. DAVEY  
 COUNSELLOR AT LAW  
 154 Nassau Street  
 New York

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

20 Joseph A. Kristen, of full age, being duly sworn according to law on his oath deposes and says that he is the holder of Tax Sale Certificate dated February 26, 1926, covering Lot No. 1, in Block No. 87, Map 19, sold for \$1,463.80 to the Town of Belleville on said date; that in addition to the said sum of \$1,463.80 and the interest thereon from the date of sale, deponent paid the taxes assessed against the said lot for the year 1925, \$75.60 and the interest thereon \$9.90, a total of \$85.50 and that deponent has also paid for recording the said Tax Sale Certificate \$2.90 and for recording deed for said lot from the Town of Belleville \$2.40, both recorded June 25, 1926.

30 Sworn and subscribed before me this  
 19th day of July, 1926.

**Complainant's Exhibit 7 (Offered p. 56).**

BOARD OF COMMISSIONERS  
 TOWN OF BELLEVILLE, NEW JERSEY

Introduced by Commissioner Nelson.

40 BE IT RESOLVED, by the Board of Commissioners of the Town of Belleville, in the County of Essex, N. J., as follows:

*Stipulation as to Exhibits.*

WHEREAS, on June 8, 1926, a resolution was adopted by this Board authorizing the Mayor and Town Clerk to execute and acknowledge a deed for lots #1 and #8, in Block 87, on Map 19, of the Tax Maps of the Town of Belleville; and

WHEREAS, there was inadvertently included in the fifth paragraph in said resolution the following words, namely, "to rebate to the party making such offer the sum of \$250 of the interest on the assessments affecting said lot #1,

THEREFORE BE IT RESOLVED, by the Board of Commissioners of the Town of Belleville, in the County of Essex, N. J., that the aforesaid portion of the fifth paragraph of the said resolution adopted on June 8th, 1926, be and the same is hereby rescinded.

Adopted: June 29, 1926.

SAMUEL S. KENWORTHY,  
FRANK J. CARRAGHER,  
EDWARD NELSON,  
Commissioners.

Attest:

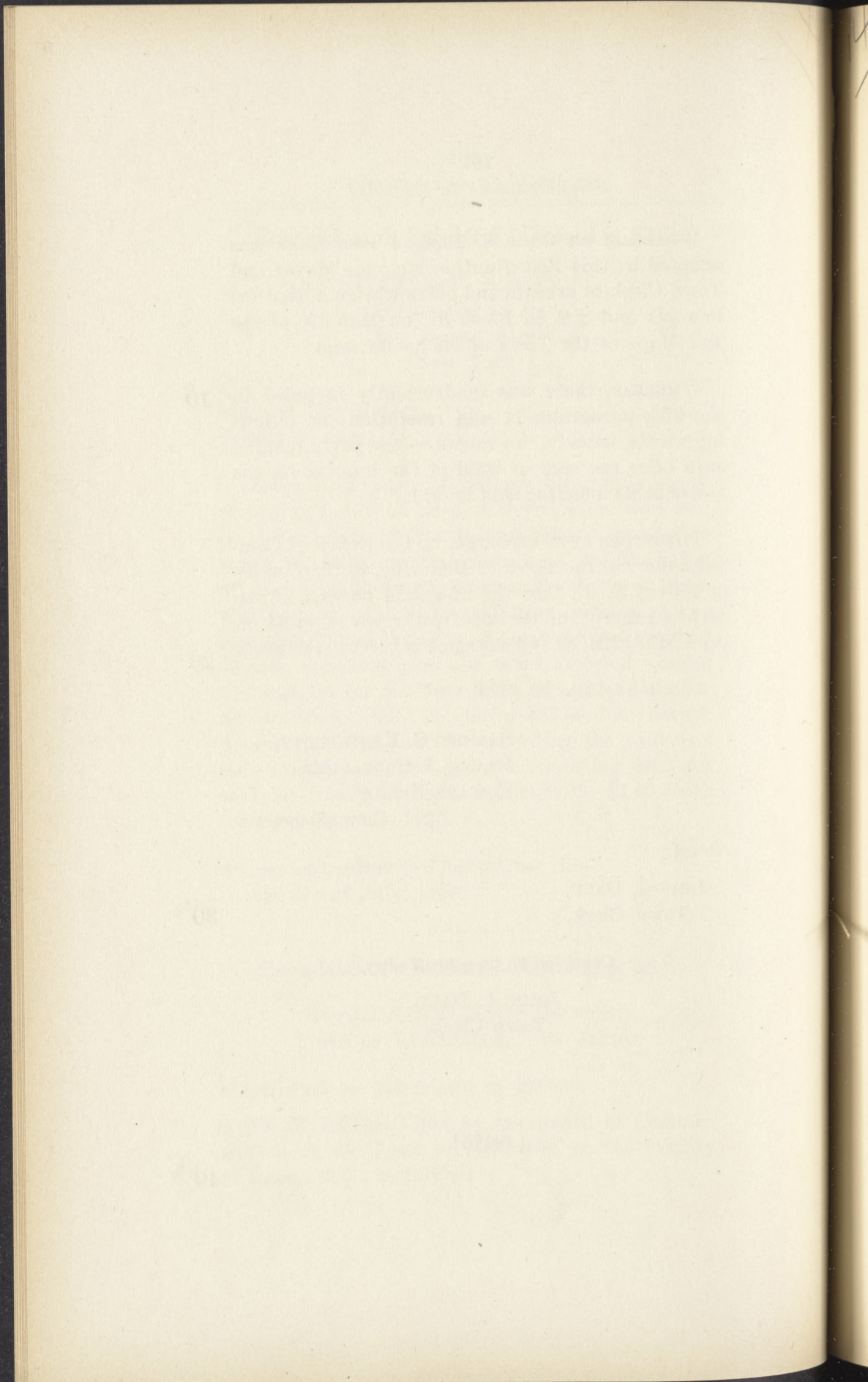
JOHN J. DALY,  
Town Clerk. 30

Certified to be a true copy.

JOHN J. DALY,  
Town Clerk.

[49476]

40



## New Jersey Court of Errors and Appeals

Between

JOSEPH A. KRISTEN,  
Complainant-Appellant,

and

JOHN C. LLOYD,  
Defendant-Appellee.

### BRIEF FOR COMPLAINANT-APPELLANT.

#### Statement.

The action was originally brought by complainant against Marie F. Codington and Fannie Browning, heirs and devisees of Thomas B. Codington, and John C. Lloyd, to foreclose a tax lien against the premises described in the bill of complaint.

After filing the bill of complaint, and before service of process, the two defendants Marie F. Codington and Fannie Browning, executed and delivered to complainant a quit claim deed for the premises in question, and an amended bill of complaint was filed, setting up such quit claim deed, and praying that a mortgage and various mesne conveyances purporting to affect the premises be decreed to be invalid, and that the title of the complainant be quieted and the cloud of such mortgage and conveyances removed, or, in the alternative, for

an accounting of complainant's tax lien and the foreclosure of the right of the defendant John C. Lloyd to redeem.

The fundamental question involved on this appeal is whether an alleged mortgage made by Hugh Holmes and wife to one Henry Osborne on May 6, 1875 (upon which defendant's alleged title depends) was a valid lien on the premises, or was invalid. This may be subdivided into two parts,

1. Whether such alleged mortgage was a valid lien when it was executed and recorded, and

2. if not, whether it was validated by the quit claim deed to its maker executed April 29, 1895, almost twenty years later, and not recorded until August 5, 1926.

The chain of title claimed by defendant begins with a mortgage purporting to cover the premises in question which was made by Hugh Holmes and wife to Henry Osborne, May 6, 1875 (Defendant's Exhibit 1, Case, p. 100), and includes the assignment of that mortgage by Henry Osborne to Arthur H. Osborne and Joseph H. Osborne, July 20, 1886, (Defendant's Exhibit 2, Case, p. 100). A deed by the Sheriff of Essex County on the foreclosure of that mortgage made March 18, 1899 to Arthur H. Osborne and Joseph H. Osborne (Defendant's Exhibit 3, Case, p. 101) and subsequent deeds by Arthur H. Osborne and wife, and the heirs of Joseph H. Osborne, to the defendant, all made in 1927 (Defendant's Exhibits 4, 5, 6 and 7, Case, pp. 101, 102).

The ground on which it is claimed that this paper title is invalid and void is that, at the time of making the mortgage, Hugh Holmes, the mortgagor, had no title to the lands in question; that the land

belonged instead to Thomas B. Codington, and that, therefore, the mortgage was a mere "scrap of paper," and did not constitute a lien on or affect the premises in question, and that being wholly derived through that void mortgage, defendant's alleged title is likewise wholly void.

Another contention of defendant is that title was vested in the mortgagor by a quit claim deed from the heirs (also executors) of Thomas B. Codington to Hugh Holmes, dated April 29, 1895 (Defendant's Exhibit 9, Case, p. 103).

This is met by complainant's assertion that that deed, being a mere quit claim, and running to Hugh Holmes, who had no existent interest in the property, was a nullity, and did not pass title, or validate the mortgage which Holmes had executed almost twenty years before he received the deed.

These questions are raised by the petition of appeal (Case, pp. 26, 27, 28) as follows:

a. That the amended bill of complaint was dismissed with costs.

b. That the evidence does not justify the findings that the alleged mortgage was a valid lien upon the property, that by its assignment, its foreclosure, and the various mesne conveyances defendant was vested with any title in the premises, and thereby entitled to redeem the property from complainant's tax lien.

c. That the evidence justifies a finding that the said mortgage, its assignment, its foreclosure, and all the various mesne conveyances down to the defendant were and are void.

d. That the evidence justifies a finding that the complainant is the sole owner, in fee, of the property in question, and that his title be freed from

the cloud of the said mortgage, and the various mesne conveyances set forth in the amended bill of complaint.

### The Facts.

Thomas B. Codington died in New York City on February 23, 1886, seized of the premises in question, and leaving a will, which was probated in New York County, on March 16, 1886 (Amended Bill of Complaint, Par. 5, Case, p. 11, Admitted in Answer, Par. 3, Case, p. 19). That will made no specific bequest of the property in question, which became a part of his residuary estate which was bequeathed to his two daughters Marie F. Codington and Fannie Codington, to be divided equally between them (Am. Complt., Par. 6, Case, p. 12; Admitted in Answer, Par. 3, Case, p. 19).

Fannie Codington married one Browning, now deceased (Am. Complt., Par. 8, Case, p. 12; Admitted, Answer, Par. 3, Case, p. 19).

The premises were sold by the Collector of the Town of Belleville, on February 26, 1926, being then assessed in the names of "A. H. & J. H. Osborne" for taxes for the years 1915 to 1925, inclusive, amounting, with assessments, interest and costs to \$1,463.80 (Complt's. Ex. 1, Case, p. 98), and on June 23, 1926, the Town of Belleville assigned its Certificate of Sale, and made its deed for the premises to complainant (Complt's. Exhibit 3, Case, p. 98).

Thereupon, after the filing of the original bill of complaint, but before service of process, Marie F. Codington and Fannie Browning executed to complainant their quit-claim deed for the premises in question (Complt's. Ex. 5, Case, p. 99).

That is complainant's chain of title.

Defendant's alleged title, as stated above, rests upon an alleged mortgage made May 6, 1875, by Hugh Holmes and wife to Henry Osborne (Deft's. Ex. 1, Case, p. 100). The assignment of that alleged mortgage by Henry Osborne to Arthur H. Osborne and Joseph H. Osborne, July 30, 1886 (Deft's. Ex. 2, Case, p. 100). A Sheriff's deed on the foreclosure of that alleged mortgage, dated March 16, 1899, to Arthur H. Osborne and Joseph H. Osborne (Deft's. Ex. 3, Case, p. 101) and conveyances—all bargain and sale deeds, from Arthur H. Osborne and wife, and the several heirs of Joseph H. Osborne, to John C. Lloyd, the defendant (Deft's. Exhibits 4, 5, 6 and 7, Case, pp. 101-102).

Defendant also claims under a quit-claim deed by the two daughters of Thomas B. Codrington, acting individually and as executors, to Hugh Holmes, dated April 29, 1895, and recorded August 5, 1926 (Deft's. Ex. 9, Case, p. 103).

That constituted defendant's alleged chain of title.

### Argument.

The right to redeem property sold by a municipality for taxes, under the Tax Act of 1918, is limited to:

“The owner, mortgagee, occupant, or other person having an interest in”

such land (P. L. 1928, Chap. 237, Sec. 37, P. L., p. 893).

Complainant's contention here is that the defendant is neither the owner, mortgagee or occupant of the land in question, and that he has no interest in such land.

The original mortgage made by Hugh Holmes and wife to Henry Osborne on May 6, 1875 was not a valid mortgage on the property in question, because at that time Hugh Holmes did not own that property, but it belonged to Thomas B. Codington.

Facts establishing that proposition are set out in the amended bill of complaint, and admitted in the answer, as follows:

4. The said premises were conveyed, with other lands, to one Thomas B. Codington by deed of Elias N. Miller, Sheriff, dated March 22, 1861, and recorded in Book K 11 of deeds for Essex County, page 458.

5. The said Thomas B. Codington died in the City, County and State of New York, February 23, 1886, seized of the said premises, and leaving a last Will and Testament dated June 11, 1879, which was duly admitted to probate by the Surrogate of the County of New York March 16, 1886, and is recorded in Book L 348 of Wills for said County, page 493.

6. The said Thomas B. Codington in and by said will made no specific bequest of the said premises, but the same became and was a part of his residuary estate which he bequeathed to his daughters Marie F. Codington and Fannie Codington, to be divided equally between them.

7. The said Thomas B. Codington in and by his said will appointed the said Marie F. Codington and Fannie Codington to be executors thereof, and they duly qualified as such, and are still qualified to act as such.

These allegations are admitted in the answer.

"3. He admits the allegations of paragraphs 3, 4, 5, 6, 7 and 8, of the amended bill of complaint" (Answer, Case, p. 19).

There is nowhere in the case a word as to the prior conveyance of the mortgaged premises to Thomas B. Codington to Hugh Holmes except the recital at the foot of the description in the mortgage. On the contrary, it was stipulated on the record at the trial that the property in question was conveyed to Codington in 1861, or at least prior to 1873, and became part of the property bequeathed by him to his daughters Marie F. and Fanny (Case, pp. 64-65).

It therefore follows, by the admissions of the answer, and of defendant's counsel, that Thomas B. Codington owned the property at the time the mortgage upon which the defendant's title depends was made, and it needs no argument to demonstrate that an alleged mortgage executed by Holmes upon property owned by Codington was not a mortgage upon the property, but was a fraud upon Henry Osborne, the mortgagee.

In this connection it is to be noted that the learned Vice Chancellor was misled, or misapprehended the fact, since he states at the beginning of his opinion :

"The following are undisputed facts. On May 6, 1875, Hugh Holmes and wife mortgaged the premises in question to one Henry Osborne \* \* \* " (Osborne, Case, p. 22).

*OPINION*

And after reciting the chain of defendant's alleged title as above stated, the Vice Chancellor held :

"This title, running back over fifty years, is, in my opinion, sufficient to vest in the defendant the right to redeem.

He derives his title from the Osbornes, who, in their turn, derived it from a Sheriff's deed

after the usual proceedings in foreclosure. He represents the mortgagee, and certainly is a 'person having an interest' in the lands. Complainant has not sustained the burden of proof that defendant has under the statute no right to redeem" (Opinion, Case, p. 23).

With all due respect it is respectfully submitted that the premises relied upon by the learned Vice Chancellor are false, and that, therefore, his conclusion from such premise, is erroneous.

It was admitted that the alleged mortgage was executed and recorded, but it was strenuously denied that it was a valid mortgage (Am. Comp. par. 22, Case, p. 15).

It is respectfully submitted that, on the admissions of the answer and of defendant's counsel, it is beyond question that the mortgage at the time of its execution and recording was not a valid mortgage on the premises in question. The only word of evidence—if it can be so called—to the contrary is the recital at the foot of the description in the mortgage itself:

"Being lots marked J, K, L, M and N, and three lots in the block marked O, on the map of property belonging to T. B. Codington, filed December 2, 1863, and conveyed by T. B. Codington and Elmira, his wife, to Hugh Holmes, by deed dated January 31, 1873."

It was argued in the court below, that that recital has the effect of a recital in an ancient deed, and proves that such a deed as there recited was, in fact, made.

It is, however, respectfully submitted that such a recital is, in any event, only presumptive proof

of the fact recited, and that, in this case, such presumption is fully met and overcome by the complainant's proofs.

The proofs conclusively show:

1. That Hugh Holmes, the maker of the mortgage, paid no interest on the mortgage (Assignment, Deft's. Ex. 2, Case, p. 100).

2. That Hugh Holmes, the maker of the alleged mortgage, was never in actual possession of the land (Case, pp. 40, 42, 43, 46).

3. That the Osbornes never took actual physical possession of the land (Case, pp. 40, 42, 43, 46).

4. That for the years since 1915 no taxes had been paid until long after the sale to complainant (Complt's. Ex. 1, Case, p. 98).

5. That after complainant acquired the tax title, the Osbornes made deeds to defendant for the nominal consideration of \$1.00 although the property is worth from \$65 to \$100 a foot (Deft's. Ex. 4, 5, 6 and 7, Case, pp. 101, 102; Testimony of Cooper, Case, p. 45).

6. That a like recital in a deed for the adjoining lot was false (Testy. of Fischer, Case, pp. 74, 75).

7. That the very recital itself is false as to the date of the filing of the Codington map (Testy. of Fischer, Case, p. 67).

To hold that that false recital, establishes the fact that the land in question was conveyed by Codington to Holmes in 1873 (by calling it a recital in an ancient deed), would be to permit a man to lift himself by his boot straps, to establish his title to

land by recital in his deed purporting to convey it. It is respectfully submitted that the recital, false in itself (as to the filing of the map), and practically admitted to be false by the answer and stipulation above referred to, has no force as evidence to establish the fact recited, and does not establish it.

Having thus shown that, when it was executed and recorded, the mortgage which forms the only basis for defendant's title was not a bona fide, valid mortgage upon the land in question, and that Henry Osborne, its holder, was not a "mortgagee" but a defrauded man, we come to the second subdivision, which is whether the quit claim deed to Hugh Holmes by Marie F. Codington and Fanny Browning, executed by their attorney in fact, John McL. Nash, April 29, 1895, sufficed to validate it.

The defense raised by the answer is that title to the premises in question was CONVEYED to HUGH HOLMES by that quit claim deed, and that such deed "WAS VALID IN LAW TO VEST IN THE SAID HUGH HOLMES ALL THE RIGHT, TITLE AND INTEREST WHICH THE SAID MARIE F. CODINGTON, FANNY BROWNING AND THOMAS B. CODINGTON THEN HAD OR LATER ACQUIRED" (Answer, par. 5, Case, p. 20).

The amended complaint (Par. 10, Case, p. 12) set up the quit claim deed by Marie F. Codington and Fannie Browning to complainant, March 16, 1928 (Compl't's. Ex. 5, Case, p. 99). The answer, at paragraph 5, admitted that allegation but denied their right to convey and alleged their prior conveyance of the premises, as follows:

"5. He admits the allegations of Paragraph 10 of the amended bill of complaint, but he al-

leges that the said Mary F. Codington and Fannie Browning, acting individually and as executrices of the said Thomas B. Codington had no right, title or interest in the said premises at that time. He alleges that the right, title and interest of said Mary F. Codington, Fannie Browning and Thomas B. Codington in said premises was conveyed to one Hugh Holmes by said Mary F. Codington and Fannie Browning, individually and as executrices of the last Will of Thomas B. Codington, by their duly constituted attorney in fact, John McL. Nash, by deed dated April 29, 1895, and recorded in Book B 75 of Deeds for Essex County, and that their deed was valid in law to vest in the said Hugh Holmes all the right, title and interest which the said Mary F. Codington, Fannie Browning and Thomas B. Codington then had or later acquired. All the right, title and interest of said Mary F. Codington, Fannie Browning and Thomas B. Codington is now vested in this defendant under the conveyances referred to in the amended bill of complaint."

There is no allegation in the pleadings of any earlier deed by Codington, or his heirs, to Holmes for this property, and there is no testimony of any such in the record, prior to this mere quit claim deed, dated April 29, 1895, twenty years less only seventeen days later than the mortgage. Per contra, it was expressly admitted that there is no deed of record out of Thomas B. Codington (Case, p. 64).

So the question raised is whether, since Hugh Holmes had executed an alleged mortgage to Henry Osborne on May 6, 1875, the title to the property described in such alleged mortgage then being in

Thomas B. Codington, a mere quit claim deed, without words of conveyance, executed almost twenty years later by Codington's heirs, individually and as Executors of Thomas B. Codington, which was not recorded for 31 years more, or over 51 years after the execution of the mortgage, operated retroactively to vest title in Hugh Holmes *nunc pro tunc* as of the date of the mortgage, May 6, 1875, and to validate that mortgage.

The mortgage was foreclosed in 1899, and at that time Hugh Holmes was in bankruptcy (Case, p. 69). The fact is that he went into bankruptcy in December, 1876,—although the date does not appear in this record. It does appear, however, that the son of his original trustee in bankruptcy, and his substituted trustee, were made parties to the foreclosure of the mortgage in 1899.

So that it is evident that when this quit claim deed was made, in 1895, Holmes was bankrupt, and could not take under it any title as of 1875, which could pass to the Osbornes, for if any title as of 1875 was acquired by virtue of that quit claim deed, then it became the property of Holmes Trustee in bankruptcy.

But we are not required to speculate as to the effect of this quit claim deed. The question of the effect of such a deed has recently been decided by this court.

In *Meeks v. Bickford*, 96 N. J. Eq. 331, reversing *id.* 95 N. J. Eq. 177, this court held:

“2. A court of equity will give to a quit-claim deed the effect of a deed or bargain and sale ONLY WHEN THE INTENTION OF THE RELEASOR COUPLED WITH AN INTEREST IN THE PROPERTY FOR WHICH A VALUABLE CONSIDERATION HAS BEEN PAID is established by proof.”

Suffice it to say there is no such proof here. This record is bare of any suggestion that Hugh Holmes paid any consideration at any time for any interest in the land here in question. The language of the court in the Meeks case is specific. After referring to the fact that in some states a quit claim deed is sufficient to convey land, whether or not it contains words of conveyance, the opinion continues:

“Exceeding care, therefore, must be taken before accepting decisions from sister states on the subject in question to ascertain whether or not such decisions are founded upon some statutory regulation. In New Jersey we have no statute relating to the matter. We are, therefore, to be controlled by what has been so forcefully and wisely expressed by Vice Chancellor Van Fleet in the Havens case above cited, by the intention of the grantor to be ascertained from the instrument itself, or from the circumstances surrounding the transaction. For it is only with the aid of a court of equity in a cause to accomplish a just and equitable result that the intention of the releasor, **COUPLED WITH AN INTEREST IN THE PROPERTY FOR WHICH A VALUABLE CONSIDERATION AS BEEN PAID**, that the court will give to a quit claim deed the effect of a deed of bargain and sale.” (Capitals ours.)

Had the quit claim deed been executed after the foreclosure, after the Sheriff's deed to the Osbornes was recorded, and had it run to Arthur H. Osborne and Joseph H. Osborne, then it might have been sufficient to vest in them a perfect title,

but we respectfully submit that having been executed in 1895, twenty years after the execution of the mortgage, and to Hugh Holmes, the maker of that mortgage, who had no color of record or equitable title for which a penny had been paid—and not recorded until August 5, 1926, over 31 years after it bore date and two months after the deed from the Town of Belleville to the complainant was recorded,—it must be held to have been null, void and of no effect.

As to the complainant, this must be true, because the quit claim deed was not recorded until long after complainant's deed from the Town was recorded. Complainant's deed was recorded June 25, 1926. The quit claim deed to Hugh Holmes was not recorded until August 5, 1926.

The law regarding recording of conveyances is found in an "Act Respecting Conveyances" 2 Comp. Stat., page 1553, as follows:

"54. Every deed \* \* \* shall, until duly recorded \* \* \* be void and of no effect against \* \* \* all subsequent bona fide purchasers \* \* \* for valuable consideration not having notice thereof whose deed \* \* \* shall have been first recorded."

It is beyond question that complainant paid due consideration for the deed from the Town; there is none that he had no notice of this quit-claim deed; it is matter of record that his deed was first duly recorded.

It is respectfully submitted that the quit claim deed from the Codington heirs to Holmes, under the doctrine laid down in the Meeks case, supra, did not have the effect of a bargain and sale deed; that it did not vest any title in Holmes as of May

6, 1875, or any other date; that not being recorded prior to the recording of complainant's deed, it is void, as to complainant, under the quoted statute.

There is evidence in plenty to show that Holmes never claimed title to the property, nor his trustee in bankruptcy, nor the Osbornes. It is evident that they all knew that the mortgage was a fraud, and the Sheriff's deed only a paper color of title—not a real title.

The deeds from the Osbornes to defendant are all for mere nominal consideration. They never took actual possession of the land. It was always open, unfenced, uncultivated, without sign of ownership. No taxes had been paid since 1915, although the property had advanced in value to important figures. It is true that the property was assessed in the names of "A. H. & J. H. Osborne," but that, of course, was because they held the Sheriff's deed, and is of no evidential force. It is also true that the witness Neary testified that A. Howard Osborne told him he (Osborne) owned the property, but he admitted this was about 1893, and surely before 1899 (Case, p. 96). Yet the mortgage was not foreclosed till 1899, and the Sheriff's deed bears date in 1900 and was recorded April 16, 1900 (Case, p. 101), so any such statement was obviously untrue.

It is respectfully submitted that defendant's alleged title is a false title; that Hugh Holmes had no title whatever to the lot in question when he executed the original alleged mortgage; that since a stream can rise no higher than its source, the deed from the Sheriff on the foreclosure of that alleged mortgage conveyed no title to Arthur H. and Joseph H. Osborne, and that the series of deeds from the Osbornes to defendant vested no title, legal or equitable, in the defendant.

It is further submitted that the quit claim deed from the Codington heirs to Hugh Holmes twenty years after the execution of the original alleged mortgage did not and could not operate to vest title in Hugh Holmes either at its date in 1895 or nunc pro tunc as of 1875, and that it is void.

The other questions involved require slight consideration.

The Certificate of Tax Sale (Complainant's Ex. 1, Case, p. 98) is presumptive evidence of its validity.

Section 36, of the Tax Act of 1918, P. L. 883, Chapter 337, is as follows:

"The certificate of sale shall be presumptive evidence in all courts in all proceedings by and against the purchaser, his representatives, heirs, and assigns, of the truth of the statements therein, of the title of the purchaser to the land therein described, and the regularity and validity of all proceedings had in reference to said sale. \* \* \*"

The deed by the Town to complainant (Complainant's Exhibit 3, Case, p. 99) was made under the express authority of Chapter 227 of the Laws of 1892, P. L. 392, and of the resolution of the Board of Commissioners of the Town, adopted June 8, 1926 (Exhibit 2, Case, pp. 104, etc.).

This deed was validated and confirmed by Chapter 155 of the Laws of 1927, P. L. 294, as follows:

"All deeds and conveyances heretofore made of lands acquired by any municipality under or by virtue of sales of such lands and premises for delinquent taxes or assessments without first perfecting the title thereto, as well as

where title has been perfected thereto, whether such sales or conveyances of lands and premises by such municipality have been made at public auction or at private sale, and all proceedings had in connection therewith are hereby validated and confirmed."

Approved March 28, 1927.

So, too, the assignment of the tax sale certificate was confirmed by Act of the Legislature of 1928. Chapter 124, P. L. 1928, sec. 2 (P. L. p. 252), is as follows:

"All assignments of certificates of tax sale heretofore authorized and made by the governing body of any municipality and all proceedings had thereunder are hereby ratified and confirmed."

So that even if at the time, the sale was in any detail irregular or defective,—and it is submitted that there is no credible proof that it was,—or the deed from the town to complainant failed in any way to conform to the technical requirements of the tax law, such defects were cured by the above quoted enactments.

So much for defendant's contention of irregularity.

If there were any irregularity in the sale to the Town, or in the assignment of the Tax Sale Certificate, by the Town to the Complainant, or in the deed from the Town to the Complainant, such irregularities are met by validating statutes. It is not conceded that any such irregularities existed. There is no evidence of any such except the statement of defendant that at the sale the Collector announced the sale of the property in question "at

flat", and his expression of his idea of what that meant (Lloyd, Case, pp. 78-79). As against that evidence there is the certificate of the Collector that the property was sold to the Town at an 8% redemption rate of interest (Exhibit 1, Case, p. 98), and the fact that defendant himself, in attempted redemption, tendered check for the principal amount with 8% interest (Complaint, par. 26, Case, p. 16; Answer, par. 9, Case, p. 20).

It is respectfully submitted that no irregularities have been proven, and that if any in fact existed, they are cured by the Legislative enactments above quoted.

As to the attempted redemption by defendant, it is alleged in the amended bill of complaint and admitted in the answer that on February 23, 1928, within the two year redemption period, defendant paid to the Town Collector the sum of \$1,713.01, made up as follows:

Amount paid, as per the Certificate (Exhibit 1, p. 98) was .....	\$1,463.80
Interest for two years, at 8% .....	234.21
Unexplained .....	15.00
	<hr/>
	\$1,713.01

The amount due, if defendant had any right to redeem, or any interest entitling him to redeem, was as follows:

Amount paid .....	\$1,463.80
Interest two years at 8% .....	234.21
1925 taxes paid .....	75.60
Interest Dec. 1, 1925 to Feb. 23, 1928 .....	13.67
Recording Certificate .....	2.90
Recording deed .....	2.40
	<hr/>

A Total of ..... \$1,792.58

Under the Tax law of 1918 (Chap. 237, P. L., p. 883) provides, in Sec. 37, that "the owner, mortgagee, occupant or other person having an interest in lands sold for municipal liens" may redeem the same, and Section 41 specifies the amount required to redeem, after ten days from the date of sale, as (a) The amount paid; (b) Interest from the date of sale; (c) Expenses incurred by purchaser; (d) Subsequent municipal liens (provided [Sec. 43] an affidavit be filed showing such payments).

Such an affidavit was filed, showing payment of the taxes of 1925 (Exhibit 6, Case, p. 106) and the other expenses as listed above. And the amount required in redemption was testified to (Case, p. 53), as being \$1,790.48. (Three days' interest less than the full two years shown in the foregoing tabulation, and that testimony was not denied.)

It is true that defendant testified that he had paid the taxes for 1925, and presented the bill (Exhibit 8) receipted, but that simply indicates a duplicated payment, which is no strange thing either in Belleville or other towns, and he does not deny that the same item was paid by complainant, as shown by the affidavit, Exhibit 6.

It is respectfully submitted that the amount paid in attempted redemption was less than the amount required on that date (February 23, 1928) to redeem the premises, and that, even if defendant had a right to redeem, his tender was futile, and the amount required to redeem should be determined on an accounting, in the usual manner.

The foregoing discussion of the amount required to redeem is not to be in any way considered as an admission that the right to redeem exists, or that any redemption can or should be permitted.

Deliberate frauds perpetrated by sharpers on unsuspecting dupes are, unfortunately, common.

and it is from time to time reported that some unfortunate pays real money for a deed for the Brooklyn Bridge, or the City Hall, or some other property not owned by the person pretending to make the sale.

It is to prevent just such frauds that our system of recording muniments of title exists.

The record in this case shows clearly that Henry Osborne fell a victim to just such a fraud in taking a paper purporting to be a mortgage for \$1,400 on the property in question from Hugh Holmes.

Neither he, as the holder of that mortgage, nor his sons, as assignees of that mortgage, nor as grantees named in the Sheriff's deed on its foreclosure, thereby acquired any title to or interest in the property in question.

It is evident that they fully realized the fraud which had been practiced, but too late, for Hugh Holmes had gone into bankruptcy, and subsequently died. So they permitted taxes and assessments to accumulate against the property; they let it be exposed for sale by the Town, and bought in by the Town, and then, when approached by the defendant, they executed bargain and sale deeds to him for nominal consideration of \$1.00 each.

We submit that defendant, fully aware of all these facts, has no equity requiring the protection of this court; that he stands before this court as a mere speculator trying to run a check for \$1,713.01, which he paid over to the Town in attempted redemption of complainant's tax title, into substantial money by redeeming 188 feet of land, worth from \$65 to \$100 a front foot—from \$12,220 to \$18,800.

We submit that the decree below should be reversed, and the defendant held not to be "the owner, mortgagee, occupant, or other person having an in-

terest in" the premises in question, and as such, entitled to redeem the same from complainant's tax lien, and that the court should direct a decree quieting the title of complainant, and holding that the alleged mortgage, and the various deeds to Hugh Holmes, Arthur H. Osborne and Joseph H. Osborne, and to John C. Lloyd, the defendant, are invalid to vest in the defendant any right, title or interest in the sale premises, and quieting the title of complainant and relieving it of the cloud upon title by reason of the execution and recording of the various documents referred to in paragraphs 11, 12, 14, 15, 16, 19, 20 and 21 of the amended bill of complaint.

Dated, September 12, 1929.

W. H. K. DAVEY,  
Solicitor for and of Counsel for Complainant.



## New Jersey Court of Errors and Appeals

Between

JOSEPH A. KRISTEN,  
*Complainant-Appellant,*

*and*

JOHN C. LLOYD,  
*Defendant-Appellee.*

### BRIEF FOR DEFENDANT-APPELLEE.

Complainant asks for alternative relief (a) that the title be quieted; (b) that defendant's right of redemption be foreclosed. No doubt a decree declaring defendant has no right of redemption will give complainant substantially the same relief that would be given by a decree quieting title, but the bill contains none of the allegations essential to jurisdiction in a bill to quiet title. It does not allege that complainant is in peaceable possession claiming to own the premises in question as required by the statute (Comp. Statute, Vol. 4, p. 5399). All its allegations are such as are proper in a bill to foreclose an alleged equity of redemption, and that we conceive is the way it should be regarded by the Court. It was so considered by the Court below, Vice-Chancellor holding that defendant had a right to redeem, and that he had redeemed by payment of the full amount which complainant was entitled to by reason of his tax lien and the certificate of sale given by the municipality. However, we contend that in either aspect—whether as a bill to quiet title or to foreclose an alleged right of redemption, the bill should have been dismissed.

**ARGUMENT.****POINT I.****The Defendant-Appellee is entitled to redeem.**

The statute gives the right of redemption to "*the owner, mortgagee, occupant, or other person having an interest in lands sold for municipal liens.*" (Tax Sale Revision of 1918, P. L. 1918, Chap. 237, Section 37, Vol. 2, Cum. Supp., p. 3534, Sec. 40.)

The following are undisputed facts:

On May 6, 1875, Hugh Holmes and wife mortgaged the premises in question to one Henry Osborne (Amended Bill, par. 11; Case, p. 65).

In 1886 Henry Osborne assigned this mortgage to Arthur H. Osborne and Joseph H. Osborne, and in 1898 proceedings for the foreclosure of said mortgage in this Court resulted in a decree of sale and sale by the sheriff of the mortgaged premises. Arthur H. Osborne and Joseph H. Osborne were the purchasers and received sheriff's deed in the usual form (Case, p. 73).

In 1927 Arthur H. Osborne and wife conveyed to defendant Lloyd, and in the same year Mr. Lloyd obtained deeds from the heirs at law of Joseph H. Osborne, who had died intestate (Case, p. 73). The lots have been and are vacant and unfenced, except that on the easterly side a fence was erected on the dividing line by the owner of the adjoining premises, Mr. Sleator (Case, p. 46).

The above record title, covering a period of 54 years, is prima facie clear proof. Mr. Lloyd is within the statutory language above quoted as an "owner," as one who stands in the shoes of a "mortgagee," as a "person having an in-

terest" in the lands sold for taxes, and if payment of taxes constitutes for such unoccupied land evidence of possession, he is an "occupant" within the meaning of the act. If he qualifies in any one of these capacities, the statute gives him the right to redeem.

Complainant charges that the mortgage with which this 54-year-old record title starts is "invalid" or "void," and that all of the defendant's title subsequent to the mortgage, the sale of premises under a decree of the Court of Chancery and the subsequent deeds by which the title has been brought into the defendant-appellee, are invalid. To support this charge he points out that no deed appears of record putting title in Hugh Holmes at the time of the mortgage. Holmes, he says, had no title, therefore the mortgage he gave was a fraud on the mortgagee. But one may have a title by deed only executed and delivered though not recorded and even though lost. And the fact of such ownership may be established by many forms of evidence without the production of the deed.

#### POINT II.

The testimony in this case shows an abundance of evidence by which the alleged gap in defendant-appellee's title may be closed.

The mortgage given by Holmes in 1875 contained a recital that the premises therein described were certain designated lots on map of property of T. B. Coddington (and it is stipulated on the record of this case that the record title was in Coddington at the time of said mortgage) (Case, p. 64, ll. 30-40) and was "conveyed by said Coddington and Elmira, his wife, to Hugh Holmes by deed dated January 31, 1873"

(defendant-appellee's Ex. 1, Case, p. 100). Holmes sold to one Hollenbeck property adjacent to the premises in question by a deed which contained practically the same recital as the Coddington deed (Case, p. 74, l. 35). It referred to that deed as being recorded in Book E B of Deeds for Essex County. There was no such book, but the Coddington map is found recorded in Book E 13 of Deeds, p. 598. In all probability this was intended to be a reference to Book E 13, and we submit that it is obviously an error that does not deserve the characterization "false recital" which complainant-appellant's brief gives it, and that there was such error does not affect the value of the recital as showing there had been such a deed.

As we have seen, Holmes borrowed money on this property claiming to be the owner, the Court of Chancery dealt with him or his legal representative, a trustee in bankruptcy, and with Holmes' wife as owning the property, ordered it sold and through the Sheriff gave a deed for the property to the Osbornes, through whom defendant-appellee gets title.

The Town of Belleville dealt with Hugh Holmes and later with Messrs. Osborne as the owners of the property, assessing it for taxes in their names (Case, p. 83, ll. 30 to 40 and p. 84). In that time the taxes were paid (Case, pp. 86 and 87) presumably either by Holmes or the Osbornes. Considering the fact that the land was vacant and waste land, who else would pay them? The Osbornes were recognized by common report as being the owners of the property (Case, p. 46, ll. 30 to 40 and p. 96). A Mr. Neary, who had lived right opposite the premises in question for 34 years says that the property was regarded as belonging to A. H. Osborne and that when Horn-

blower avenue on which the property abuts was widened, Mr. Osborne was recognized as an owner (Case, p. 88 to p. 96). It should be remembered that A. H. Osborne and Joseph Osborne, who bought at the foreclosure sale, were sons of Henry Osborne, the original mortgagee and the assignees of the mortgage and common report should not be expected to be exact in its reference to them or to their interest, whether as mortgagee or owner.

There is no record of the proceedings of the Surveyors of the Highway such as would have been necessary for this widening, but Mr. Neary says that there were such proceedings. His recollection is clear; he is without interest to distort the facts, and such proof is competent in the case of a lost record. Mr. Neary says that the property owners in the vicinity formed the Hornblower Avenue Improvement Association; that he was a member; that A. Howard Osborne, one of the grantors in the deeds to Mr. Lloyd was called on as one of the owners of the property affected by the widening recognized as an owner of this very lot; that he contributed to the raising of funds, and that the matter was then put in the hands of Mr. Perry, the town counsel, who called out the Surveyors of the Highway and had the property condemned, and the widening made legally effective (Case, pp. 93 and 94).

In *Fuller ads. Sexton*, 20 N. J. Law 61, Mr. Justice Nevius, delivering the opinion of the Supreme Court, said:

“A recital in an ancient deed or will of any antecedent deed or document consistent with its own provisions, will after the lapse of such a period be presumptive proof of the former existence of such deed or document, and especially where no deed, declaration,

act or claim is shown to rebut such presumption.”

The period referred to there was twelve years. The recital in the Holmes mortgage was made fifty-three years ago. In the instant case, as in the Fuller case, “no deed, declaration, act or claim is shown to rebut such presumption.”

In the Fuller case, Judge Nevius also pointed to the fact that Daniel Coxe had, by devising the property, made open claim of title, so with the instant case, Hugh Holmes, by mortgaging the property to Henry Osborne, made open claim of title. Just as the devising of the property by Daniel Coxe was treated as evidential, so the Court may treat the fact that Holmes mortgaged the property as evidential.

In *McGrath v. Norcross*, 78 N. J. Eq. 120 (opinion by Leaming, *V.-C.*), recitations of title in a deed were allowed to go to the jury as evidential of the existence of such a deed and the Vice-Chancellor held that in this there was no error, citing *Fuller* and *Sexton* and other cases (see pp. 130 and 131).

Vice-Chancellor Leaming says that the presumption raised by such a recital is not only that there had been such a deed, but that it had been a valid deed.

In *Baeder v. Jennings*, 40 Fed. 199, U. S. Circuit Court for the District of New Jersey, Mr. Justice Bradley held that a survey reciting that it was by warrant from the Board of Proprietors was presumptive evidence that there was such a one “not to be questioned at this late day without some evidence to the contrary.”

He also held that a recital in a deed of a prior quit-claim deed was admissible to prove the existence of such prior deed. In this opinion, too,

Justice Bradley treated the fact that parties had conveyed property as being an act of ownership.

He says:

“Then they made the deed of 1823, and another deed for their right, title and interest in the outstanding quarter. These acts of ownership, taken in connection with the previous history of the property, amount to such proof of possession as to clothe their deeds of 1823 with the character of a deed by parties in possession claiming title, and to confer upon their successors in the title and possession a right to the presumption that the deed of 1772 was executed and did exist as recited in the deed of 1823.”

\* \* \* It seems to me that such a presumption (not of law, but of fact, and liable to be met by opposing proof) may reasonably and justly be raised, against a trespasser having no title, or against the general proprietaries, who parted with their title long before.”

Complainant-appellant's brief calls defendant-appellee “a mere speculator” trying to get valuable property for a comparatively small sum. That reproach hardly comes with good grace from a buyer at tax sale, trying to foreclose equities of redemption, but the better reply is that there is nothing in the evidence to justify it. If there is to be any conjecture, as to Mr. Lloyd's relation to the property, it may as well be that he has intervened under some arrangement to save the property for the Osbornes (who have conveyed to him for nominal consideration) from the complainant.

We respectfully submit that this fifty-four-year record title, supported by the recitals, the acts of ownership and the recognition of defendant-appellee's predecessors in title as owner—especially in the case of unfenced and untitled lands, such as the premises in question, are not

only sufficient under the statute to support a right of redemption in defendant-appellee, but make a good title against the world.

### **POINT III.**

It is stipulated in the record that if Coddington had any interest in the premises in question, it passed by two clauses of his will (1) that gave one-third of his property to his two daughters Mary F. and Fanny, in trust for their sisters, Emily for her life, with remainder to themselves, and the other a gift of all the residue of his estate to them outright (Case, p. 64). The quitclaim deed (B75, p. 42, Case, p. 103) runs from them individually and as executrices of their father's will (Case, p. 70, l. 20). It was signed for them by an attorney in fact, John M. Nash (see power of attorney, Case, p. 103). It might be questioned whether they had any right to delegate to another the execution of any power of sale that they had as executrices but the deed operated to pass their own individual two-thirds in the premises in question and the other one-third, subject to the life estate of their sister, Emily, that terminated by her death (Case, p. 96, ll. 35-40).

Complainant-appellant says that the answer filed for defendant-appellee admits that Thomas B. Coddington died February 23, 1886 "seized of the premises in question" and that at the trial it was admitted by defendant-appellee's counsel that the property in question became and was a part of his residuary estate and passed by his will to his two daughters. If this be so he says the recitals in the Holmes mortgage and the other instruments we have referred to must be false, the mortgage covered nothing and was a fraud upon the mortgagee. He has (no doubt

unintentionally) incorrectly quoted what defendant-appellee's counsel said which was "that it was a part of the premises which *if he had any interest in it, it passed by his will*" (Case p. 64). And that the answer was intended to be understood as saying this and was so understood is clear from the fact that complainant-appellant's counsel says that that is what is charged by the complainant and admitted by the answer (Case, p. 65, l. 10).

Complainant-appellant cites *Meeks against Bickford*, N. J. Eq. 331, reversing the same case 95 N. J. Eq. 177. His application of this case to the present one seems to rest entirely upon his conclusion that the quit claim deed was given to one who had no interest in the property for which a valuable consideration had been paid and this in turn depends upon his assumption that there never had been a conveyance by Codrington to Holmes, that the recitals to that effect were false, and the mortgage was a fraud upon the mortgagee. In the view of the case that we have been presenting, *Meeks v. Bickford* has no application. In this connection we refer to Chapter 322 of the Laws of 1929 (P. L. 1929, p. 738) which makes deeds containing words of release or quit claim in certain forms there set forth, as good as a deed or bargain and sale unless a contrary intention appear. This was passed over a year after the hearing in the instant case, but it applies to prior conveyances as well as later ones. We ask the Court to take judicial notice of it. That it applies to this quit-claim deed will appear from examination of it. It is abstracted—not copied in full—in the State of the Case, but on p. 98 of the Case, is a stipulation that either party may present to the Court the originals of any exhibit that has

been abstracted. Accordingly we submit, herewith, a certified copy of the deed in question, and attach a copy thereof to this brief.

#### POINT VII. III

Complainant's contention that the amount paid by defendant for the redemption of the property is less than the sum required by law is unsupported by the testimony.

Complainant-appellant testified that the amount paid by him to the Town of Belleville was \$1,959.97, but this was for the lot in question "amongst other land" (Case, p. 33). Seventeen hundred ninety dollars and forty-eight cents (\$1790.80) is the amount complainant says we should have paid (Case, p. 53). The difference between that and the \$1,713.01, which we paid is \$77.47 (incorrectly spoken of on page 53 as \$89). In the attempt to justify the larger sum, complainant pointed to the taxes of 1925 as having been paid by him. The affidavit that complainant's counsel introduced as evidence contained the statement that "deponent paid the taxes assessed against the lot for the year 1925" (deponent being the complainant). But complainant's counsel disclaimed any idea that the affidavit was offered for the purpose of establishing to the Court the facts set forth in it (Case, p. 54). When reminded that he had not asked Mr. Kristen whether he had paid the taxes for 1925, he replied that he had overlooked that. He insisted that complainant had paid them although admitting "I did not personally pay them and I have no knowledge that he did" (Case, p. 55).

Mr. Lloyd says that when he paid the taxes in 1925 on a number of properties, he asked

them to include the bill on the premises in question. He received the bill and sent the check, (Case pp. 76, 77 and 80, l. 30) and the receipted bill was produced (Exhibit D. 8, Case, p. 102). We refer the Court to the colloquy between Court and counsel, at pages 81 and 82:

“The Court: Well, is it a fact that these taxes were paid twice?”

“Mr. Davey: I don't know. It is a fact that they were paid in July, 1926.

“The Court: How do you know? There is no proof about that.”

Then Mr. Davey referred to the affidavit as making such proof. He must have then realized that the affidavit was not admissible for that purpose and that he had disclaimed any idea of having it received in evidence for such purpose, for he said that he would have the collector back. He did not get him back nor ask for any time to have him back.

Defendant-appellee paid into the proper official hands the sum of \$1,713.01. As a matter of fact the amount paid in was too much rather than too little (See opinion below, Case, p. 22).

Respectfully submitted,

PITNEY, HARDIN & SKINNER,  
Solicitors for Defendant-Appellee.

ALFRED F. SKINNER,  
Of Counsel.

**ADDENDUM TO BRIEF.**

Fannie Browning et al extrx. &c. to Hugh Holmes:

THIS INDENTURE, made the twenty-ninth day of April, in the year of our Lord one thousand eight hundred and ninety-five, BETWEEN Fannie Browning and Marie F. Coddington, individually and as executrices of the Last Will and Testament of Thomas B. Coddington deceased of the City of New York, in the County of New York and State of New York, of the first part; AND Hugh Holmes of the township of Belleville in the County of Essex, and State of New Jersey, of the second part; WITNESSETH, That the said parties of the first part, in consideration of the sum of One dollar, to them duly paid, before the delivery hereof, have remised, released and forever quit-claimed, and by these presents do remise, release and forever quit-claim to the said party of the second part and to his heirs and assigns ALL that tract or parcel of land and premises, hereinafter particularly described, situate, lying and being in the Township of Belleville in the County of Essex, and State of New Jersey.

BEGINNING at the southwest corner of Prospect and Rutgers Streets, and thence Westerly along the line of Rutgers Street one hundred and twenty-five feet more or less to Linden Avenue; thence Northerly along the line of Linden avenue one hundred and seventy five feet: thence Easterly parallel with Rutgers Street one hundred and twenty five feet more or less, to Prospect Street; thence Southerly along the line of Prospect Street, one hundred and seventy five feet to Rutgers Street and place of beginning. Being lots marked J. K. L. M. N. and three lots in Block marked O. on a map of property belong-

ing to T. B. Coddington filed December 2nd, 1863.

With the appurtenances and all the estate, right, title and interest, of the said parties of the first part therein, To HAVE AND TO HOLD, the above mentioned and described premises, with the appurtenances, unto the said party of the second part, his heirs and assigns forever.

IN WITNESS WHEREOF, the said parties of the first part have hereunto set their hands and seals the day and year first above written.

Fannie Browning (SEAL)  
As Executrix of the Last Will and  
Testament of Thomas B. Cod-  
dington, dec'd.

Marie F. Coddington (SEAL)  
As Executrix of the Last Will and  
Testament of Thomas B. Cod-  
dington, dec'd.

By Jno. McL. Nash  
Their Atty. in Fact.

Signed, Sealed and Delivered  
in the presence of

Frank T. Warburton

STATE OF NEW YORK,  
CITY AND COUNTY OF NEW YORK. } ss.

BE IT REMEMBERED, that on this 29th day of April, 1895, before me, Frank T. Warburton, a Notary Public in and for the State of New York, duly commissioned and sworn, residing in the City and County of New York, personally appeared John McL. Nash, who, I am satisfied is the Attorney in Fact, of Fannie Browning and



well acquainted with the handwriting of such Notary Public and verily believe that the signature to said deposition or certificate of proof or acknowledgment is genuine.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the Seal of the said Court and County, the 2 day of Aug. 1926.

WILLIAM T. COLLINS

Clerk.

[New York Seal.]

Received in the office August 5th, A. D. 1926,  
at 11:20 A. M. No. 25.

Office of  
REGISTER OF DEEDS AND MORTGAGES  
Essex County, New Jersey

(Cut)

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

I, HOWARD S. DODD, Register of Deeds and Mortgages of the County of Essex, State of New Jersey, do hereby certify that the foregoing is a true and correct copy of the record of a certain Deed made by Fannie Browning et al extr. &c. to Hugh Holmes and also of the certificate of acknowledgment thereto annexed, as the same may be found recorded in my office in book B-75 of Deeds for said County on pages 42-43.

(SEAL) IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal this 14th day of October, A. D. 1929.

HOWARD S. DODD,  
Register of Deeds and Mortgages.

