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BILL OF COMPLAINT.

(Filed Apr. 2, 1928.)

IN CHANCERY OF NEW JERSEY.

*To His Honor, Edwin Robert Walker, Chancellor
of the State of New Jersey:*

10

The complainant, Jeanette G. Schaffer, of the City of Elizabeth, County of Union and State of New Jersey, respectfully shows that:

PART I.

1. She is the owner, in fee simple, of that certain lot, tract or parcel of land and premises situate in the City of Atlantic City, County of Atlantic and State of New Jersey, bounded and described as follows: 20

BEGINNING at the southeasterly corner of Porter and Albany Avenues and thence (1) Eastwardly, along the southerly line of Porter Avenue 105 feet; thence (2) Southwardly parallel with Albany Avenue 25 feet; thence (3) Westwardly parallel with Porter Avenue 105 feet to the easterly line of Albany Avenue; thence (4) Northwardly along the said easterly line of Albany Avenue 25 feet to the place of beginning, 30

the title to which became vested in her by virtue of two certain deeds, one a deed from James Cimino, Sheriff of Atlantic County, dated February 16th,

1928, and about to be recorded, and the other a deed from Karl Schaffer, dated February 20th, 1928, and about to be recorded in the Atlantic County clerk's office.

10 2. Complainant has, ever since the delivery of said deeds, been in peaceful possession of the land herein described, and has always claimed, and does now claim, to own the same.

20 3. Complainant's title to said land is denied and disputed by the Realty Realization Company, S. H. Robison Company and the American Bank of Philadelphia, Pa., now known as the American Bank and Trust Company, a banking corporation of the State of Pennsylvania, which claim or are reputed to own the same, or some part thereof, or some interest therein, or to hold some lien or encumbrance thereon.

4. No suit is pending to enforce or test the validity of the title, claim or encumbrance of the said Realty Realization Company, and/or S. H. Robison Company, and/or American Bank and Trust Company's title, claim or encumbrance.

PART II.

30 5. Complainant is the owner, in fee simple, of that certain lot, tract or parcel of land and premises situate in the City of Atlantic City, County of Atlantic and State of New Jersey, bounded and described as follows:

BEGINNING at the southeasterly corner of Filbert Street and Albany Avenue and running

thence (1) Southwardly along the easterly line of Albany Avenue 100 feet; thence (2) Eastwardly, parallel with Filbert Street 55 feet; thence (3) Northwardly, parallel with Albany Avenue 100 feet to the southerly line of Filbert Street; thence (4) Westwardly, along said southerly line of Filbert Street 55 feet to the place of beginning,

the title to which became vested in her by virtue of two certain deeds, one a deed from James Cimino, Sheriff of Atlantic County, dated February 16th, 1928, and about to be recorded, and the other a deed from Karl Schaffer, dated February 20th, 1928, and about to be recorded in the Atlantic County clerk's office. 10

6. Complainant has, ever since the delivery of said deeds, been in peaceful possession of the land herein described and has always claimed, and does now claim to own the same. 20

7. Complainant's title to said land is denied and disputed by the Realty Realization Company, S. H. Robison Company and Chelsea Investment and Development Co., which claim, or are reputed to own the same, or some part thereof, or some interest therein, or to hold some lien or encumbrance thereon. 30

8. No suit is pending to enforce or test the validity of the title, claim or encumbrance of said Realty Realization Company, and/or S. H. Robison Company, and/or Chelsea Investment and Development Co.'s title, claim or encumbrance.

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

1. That Realty Realization Company, S. H. Robison Company, American Bank of Philadelphia, Pa., now known as American Bank and Trust Company, and Chelsea Investment and Development Co., who are the defendants to this suit, may answer this bill of complaint and each statement therein made.

10

2. That the said defendants may set forth and specify their respective title, claim or encumbrance to, or upon, the lands and premises hereinbefore described, and how and by what instrument the same is derived or created.

3. That the rights of all of the parties to this suit in and to the lands hereinbefore set forth may be fixed and settled by this Court, and that complainant may be decreed to have a perfect title thereto, and the said defendants to have no estate, interest or right in, or incumbrance upon, said lands or any part thereof.

20

4. That a writ of subpoena may issue, commanding the said defendants to answer this bill of complaint, and to abide by such decree as this Court may make in the premises.

30

THOMPSON & HANSTEIN,
- Solicitors for and of Counsel
with Complainant.

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

JEANETTE G. SCHAFFER, of full age, being duly sworn according to law, upon her oath deposes and says:

1. I am the complainant in the foregoing bill of complaint named. I have read the same, and am familiar with the contents thereof, and the matters and things therein contained are true. 10

2. I am the owner, in fee simple, of that certain lot, tract or parcel of land and premises situate in the City of Atlantic City, County of Atlantic and State of New Jersey, bounded and described as follows:

BEGINNING at the southeasterly corner of Porter and Albany Avenues and thence (1) Eastwardly, along the southerly line of Porter Avenue 105 feet; thence (2) Southwardly parallel with Albany Avenue 25 feet; thence (3) Westwardly parallel with Porter Avenue 105 feet to the easterly line of Albany Avenue; thence (4) Northwardly along the said easterly line of Albany Avenue 25 feet to the place of beginning, 20

the title to which became vested in me by virtue of two certain deeds, one a deed from James Cimino, Sheriff of Atlantic County, dated February 16th, 1928, and about to be recorded, and the other a deed from Karl Schaffer, dated February 20th, 1928, and about to be recorded in the Atlantic County clerk's office. 30

3. I have ever since the delivery of said deeds been in peaceful possession of the land herein described and have always claimed, and do now claim, to own the same.

10 4. My title to said land is denied and disputed by the Realty Realization Company, S. H. Robison Company and the American Bank and Trust Company, a banking corporation of the State of Pennsylvania, which claim, or are reputed to own, the same, or some part thereof, or some interest therein, or to hold some lien or encumbrance thereon.

20 5. No suit is pending to enforce or test the validity of the title, claim or encumbrance of the said Realty Realization Company, and/or S. H. Robison Company, and/or American Bank of Philadelphia, Pa., now known as American Bank and Trust Company's title, claim or encumbrance.

6. I am the owner, in fee simple, of that certain lot, tract or parcel of land and premises situate in the City of Atlantic City, County of Atlantic and State of New Jersey, bounded and described as follows:

30 BEGINNING at the southeasterly corner of Filbert Street and Albany Avenue and running thence (1) Southwardly along the easterly line of Albany Avenue 100 feet; thence (2) Eastwardly, parallel with Filbert Street 55 feet; thence (3) Northwardly, parallel with Albany Avenue 100 feet to the southerly line of Filbert Street; thence (4) Westwardly, along said southerly line of Filbert Street 55 feet to the place of beginning,

the title to which became vested in me by virtue of two certain deeds, one a deed from James Cimino, Sheriff of Atlantic County, dated February 16th, 1928, and about to be recorded, and the other a deed from Karl Schaffer, dated February 20th, 1928, and about to be recorded in the Atlantic County clerk's office.

7. I have, ever since the delivery of said deeds, been in peaceful possession of the land herein described and have always claimed, and do now claim, to own the same. 10

8. My title to said land is denied and disputed by the Realty Realization Company, S. H. Robison Company and Chelsea Investment and Development Co., which claim, or are reputed to own the same, or some part thereof, or some interest therein, or to hold some lien or encumbrance thereon. 20

9. No suit is pending to enforce or test the validity of the title, claim or encumbrance of said Realty Realization Company, and/or S. H. Robison Company, and/or Chelsea Investment and Development Co.'s title, claim or encumbrance.

JEANNETTE G. SCHAFFER.

Sworn and subscribed before me this 20th day of March, 1928.

MABEL S. GROFF, 30
Notary Public of New Jersey.

Cimino, Sheriff of Atlantic County, to complainant, and deed from Karl Schaffer to complainant, dated February 20th, 1928, are without jurisdiction and the title derived therefrom is null and void, both as to the Realty Realization Company and this defendant.

2. This defendant has no knowledge or information sufficient to form a belief as to the statements 10
in paragraph No. 2.

3. This defendant admits that it denies and disputes the title of complainant and claims an estate or interest in the said premises and to hold a lien or encumbrance thereon, and hereby specifies and sets forth the same and also the manner in which and sources through which its title or encumbrance is claimed to be derived, namely:

(a) That the said Realty Realization Company by indenture of mortgage bearing date April 7, 1913, executed to Walter Wall a mortgage which was duly recorded in Book No. 139 of Mortgages, page 80, &c., to secure the payment of the sum of \$2,500 at any time within three years with interest thereon at 6% and covering the premises described in Part I of the said bill of complaint, together with bond accompanying the same, both of which this defendant offers to produce as may be required. 20

(b) That on or about May 31st, 1913, the said Walter Walls negotiated a loan of \$1,500 with this defendant and as security and collateral for said loan the said Walter Walls assigned and transferred said bond and mortgage by deed of assign- 30

pany, therefore prays that a decree may be entered directing that the said premises be held subject to the lien or encumbrance of the aforesaid mortgage, and that this defendant may be hence dismissed with costs.

SAMUEL P. HAGERMAN,
Solicitor of Defendant American Bank and Trust Company.

10

REPLICATION.

(Filed Aug. 22, 1928.)

IN CHANCERY OF NEW JERSEY.

20

Between

JEANETTE G. SCHAFFER,
Complainant,

and

CHELSEA INVESTMENT
AND DEVELOPMENT Co.,
REALTY REALIZATION
Co., *et al.,*

Defendants.

On Bill to Quiet
Title.
Replication.

30

The reply of Jeanette G. Schaffer to the answer of the American Bank and Trust Company (formerly known as the American Bank of Philadelphia,

Pa.), filed to Part I of the bill of complaint, says that:

1. She denies paragraph 1.

2. She denies paragraph 2.

3(a). She admits the making of the mortgage referred to in paragraph 3(a).

10

3(b). She denies paragraph 3(b), except that this complainant admits that Walter Wall assigned said mortgage to the American Bank of Philadelphia, Pa., now known as the American Bank and Trust Company.

20 3(c). Complainant admits that the defendant, American Bank and Trust Company, is still the owner of said mortgage, but she has no knowledge as to the other allegations of said paragraph and asks that the same be proven.

3(d). She denies paragraph 3(d).

3(e). She denies paragraph 3(e).

4. She admits paragraph 4.

Complainant, further replying, says that:

30

1. Lewis L. Mathis, tax collector of the City of Atlantic City, sold the premises referred to in the first part of the bill of complaint for non-payment of taxes to one Karl Schaffer, for the unpaid taxes for the year 1915.

2. That the said Karl Schaffer, pursuant to the

statute in such case, made and provided, served a notice to redeem upon the American Bank of Philadelphia, Pa., now known as American Bank and Trust Company, and all other parties in interest.

3. That neither said American Bank of Philadelphia, Pa., now known as American Bank and Trust Company, or any of the other parties in interest, took any step to redeem said taxes at any time thereafter, and the said Karl Schaffer filed an affidavit of the service of said notices, and of non-redemption, together with the certificate of tax sale in the office of the clerk of Atlantic County, and did all other things required of him under the statutes of this State, and as a result whereof all the right, title and interest of the American Bank of Philadelphia, Pa., now known as American Bank and Trust Company, was foreclosed. 10

4. At the time of the foreclosure of said tax sale as aforesaid, the said Walter Wall referred to in the answer of the American Bank of Philadelphia, Pa., now known as American Bank and Trust Company, had no interest of record in said premises, and the said American Bank and Trust Company (as the same is now known), appeared of record to be the absolute owner of said mortgage. 20

5. On or about March 23rd, 1927, one Lewis P. Scott obtained divers judgments against the Realty Realization Company, some of which judgments were assigned to Annie E. Gotthelf; that by virtue of an execution issued under certain of said judgments the sheriff of the County of Atlantic sold the premises referred to in Part I of the bill of complaint unto this complainant. 30

1. It admits paragraph No. 1.

2. It denies the service or receipt of the said notice, at any time on it.

3. This defendant admits that it has not prior to the time of the service of notice making this defendant a party to this suit, taken any steps to redeem, and avers that it had at no times any knowledge or notice thereof; further, it alleges that the affidavit of the said service annexed to the deed with the tax sale certificate is invalid and of no effect; further, that said alleged purported notice is insufficient, and further denies that the effect of such proceedings was such as to foreclose the right to redeem of this defendant, and that all proceedings thereunder are null and void so far as affects the interest of this defendant. 10

4. Paragraph No. 4 is admitted. 20

5 and 6. Defendant has no information as to paragraphs Nos. 5 and 6 and demands proof if the same is material.

SAMUEL P. HAGERMAN,
*Solicitor for American Bank
and Trust Co., Defendant.*

[ENDORSED.]

30

We consent to the filing of this plea out of time.

Thompson & Hanstein,
Solicitors for Comp't.

TESTIMONY.
IN CHANCERY OF NEW JERSEY.

10	Between JEANETTE G. SCHAFFER, <i>Complainant,</i> and CHELSEA INVESTMENT & DEVELOPMENT COM- PANY, <i>et als.</i> , <i>Defendants.</i>	}	On Bill, etc. Final Hearing.
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20 Atlantic City, New Jersey, February 15, 1929.

TESTIMONY.

Before HONORABLE ROBERT H. INGERSOLL, Vice-
Chancellor.

30 APPEARANCES:
 For the complainant, MESSRS. THOMPSON & HAN-
 STEIN.
 For the defendants, SAMUEL P. HAGERMAN, ESQ.

Mr. Hagerman: I would like to amend, if your Honor please, my answer, so far as it says that formerly the American Bank of Philadelphia, so far as that title is concerned, I find only this morning, and I am having sent here a certified copy of the charter of Philadelphia, to show that the title is the American Bank, and I want to amend my answer to read "formerly the American Bank," and make no admissions as to its name, the former being the American Bank of Philadelphia, and further that applies throughout any reference that I may make to the American Bank of Philadelphia, and then further in paragraph 3C, where I state that the interest of the American Bank and Trust Company is \$1500, that should have been \$1000, as there had been a payment on account, so I would like to amend in those three respects. 10

Mr. Hanstein: What was the first one? 20

Mr. Hagerman: Throughout my answer wherever I refer to the American Bank of Philadelphia, Pa., that should be just the American Bank.

Mr. Hanstein: I don't know what you do mean.

Mr. Hagerman: I mean the official title of the company is the American Bank, and it is referred to in your complaint, and I was misled by answering as to the American Bank of Philadelphia, and I find the corporate title is the American Bank. 30

Mr. Hanstein: May I ask if you claim that the defendant is a different defendant or that it is merely a misnomer of the exact title?

Mr. Hagerman: You have joined the American Bank and Trust Company, therefore I am defending so far as you have joined the American, so far as you have made the name of the American Bank of Philadelphia, it is not our corporation, never was our title, and I don't know anybody of that kind.

Mr. Hanstein: Then I take it you consent to my amending the bill to say American Bank, not known
10 as the American Bank and Trust Company?

The Court: In nomenclature, that is all.

Mr. Hanstein: I offer in evidence, the deed from the sheriff, James Cimino, Sheriff, to Jeanette G. Schaffer, dated February 16, 1928, recorded in the Atlantic County clerk's office, book 895, page 16, for the premises in question.

20 (Deed admitted in evidence and marked Exhibit C1.)

Mr. Hanstein: I offer in evidence deed bearing date the 20th of February, 1928, from Karl Schaffer to Jeanette G. Schaffer, recorded book 893 of deeds, page 204 and so forth, of the premises in question.

(Deed admitted in evidence and marked Exhibit C2.)

30

STEPHEN F. DAMICO, SWORN.

Direct examination.

By Mr. Hanstein:

Q. Mr. Damico, you are connected with the county clerk's office of Atlantic County? 10

A. I am.

Q. In what capacity?

A. I hold the position of special deputy county clerk.

Q. And I ask you if you produce from the files of the Atlantic County clerk this certificate of tax sale, together with the notices ad affidavits otherwise appended, which was recorded and filed in book 7888 of deeds, page 100, September 28, 1925?

A. I did. 20

(Certificate of tax sale offered, received in evidence and marked Exhibit C3.)

KARL SCHAFFER, SWORN.

Direct examination. 30

By Mr. Hanstein:

Q. Mr. Schaffer, you are the grantor in a deed from Karl Schaffer to Jeanette Schaffer?

A. I am.

Q. You are the Karl Schaffer whose affidavits are

included in the tax deed which has just been produced?

A. Yes, sir.

Q. Do you know the property in question referred to in that tax deed?

A. I do.

Q. Where is the property?

A. Chelsea Heights.

10 Q. What inquiry, if any, did you make as to the whereabouts and mailing address, and so forth, of the Bank of Philadelphia?

Mr. Hagerman: I object.

The Court: What is the objection?

20 Mr. Hagerman: The objection is that the affidavits to the tax sale deeds are the only evidence that can be given as to the inquiry and which can become presumptive evidence. We are not affected by any omissions whatsoever, or can that be helped by any outside evidence. I refer you to the Tax Sale Act of 1913, to Section 59, which says: "A notice and affidavits and the record thereof shall be presumptive evidence of the service and facts therein stated."

30 The Court: At the present time I will sustain the objection. Their presumptive evidence has not been questioned as yet.

Mr. Hanstein: I don't think the question went to mailing of the notice at all. I think the question went to his inquiry as to the whereabouts of this bank.

The Court: You are anticipating the defense.

Mr. Hanstein: I will withdraw the question.

Mr. Hanstein: Vice-Chancellor, the purpose of the question was directed towards showing an inquiry that proved who was the president of this bank to which the notice was mailed.

The Court: Yes, but you are anticipating the defense. You have made your prima facie case.

10

Mr. Hagerman: It seems to me there ought to be a motion to dismiss because they haven't given any evidence of possession. They aver they are in possession, and my answer is that this defendant has no information or belief from which to form a belief.

Mr. Hanstein: Vice-Chancellor, I am thoroughly surprised by any such suggestion. I had a very definite agreement with Mr. Hagerman who came to our office and told us his defense was that Mr. Wall had an interest in this thing, and he told us that their defense was want of notice, and I said all right, we will go to the trial strictly on that issue and we will not discuss anything about possession or anything else, and we had that very definite agreement. Now, your Honor, I must say that —

20

The Court: Under those circumstances, I will permit you to show possession, if you can.

30

Mr. Hanstein: Your Honor, the situation is with regard to possession in this case —

Mr. Hagerman: May I have an opportunity to answer, reflection on me?

The Court: You may do so.

Mr. Hagerman: If your Honor please, in order to clear up, as I always like to do before trial, any question that can be cleared up readily or by agreement, I called on Mr. Hanstein's office four times, and most unfortunately I was unable to find him in. I had a talk over the phone with him with reference to an adjournment, which I appreciate, because I
10 was tied up, and then he spoke about whether I was going to raise the question of possession. I told him I didn't think so, that I didn't know anything about it. I then called down here last Saturday and learned for the first time that this particular property is enclosed within the limits of the airport and in the possession of the city, apparently. Two days ago Mr. Hanstein called me, and I called at the office, and I then told him this new information I
20 had found, and I had to proceed just where I could, so whatever I am doing he has two day's notice. However, I don't want to embarrass Mr. Hanstein or this case, and I am willing to pass it temporarily, if I may, and go into the merits of the case because I think the merits of the case are what should be heard.

The Court: Then the plaintiff rests.

MRS. EDITH BROWN, SWORN.

Direct examination.

By Mr. Hagerman:

Q. Mrs. Brown, by whom are you employed?

A. American Bank and Trust Company.

10

Q. What position do you occupy?

A. Confidential bookkeeper.

Q. How long have you been in their employ?

A. Since December, 1917.

Q. As confidential bookkeeper what do your duties consist of, among other things?

A. I discount notes. I keep all the note records, both the liability ledger, have all the collateral securities under my keeping, make an audit of them at a stated period to show that they are in form, and all papers and everything pertaining to collateral would come to me.

20

Q. Are you acquainted with Mr. Walter Walls?

A. I know Mr. Walls.

Q. Is he a customer of your bank?

A. He is.

Q. Is this Mr. Walls here?

A. This is Mr. Walls.

Q. Can you tell—have you with you any records of the bank?

A. I have all the records of Mr. Wall's loan.

30

Q. You have all the records of Mr. Walls, now did Mr. Walls have any transaction with you on or about May or June of 1913?

A. He did.

Q. Of what nature?

A. He discounted a note —

Mr. Hanstein: Please your Honor, I don't see the relevancy of this transaction of Mr. Walls. There is no suggestion in this case that Mr. Walls had any record interest here at all in this case whatever. They set up in the answer —

The Court: That he held a mortgage upon the property.

10 Mr. Hanstein: Which mortgage in paragraph 3B it says he negotiated a loan with the defendant, and assigned the bond and mortgage by assignment bearing date May 31st, 1913, and recorded in June 4, 1913, in book 39, assignments of mortgages, page 248, to the defendant American Bank of Philadelphia, which assignment the defendant offers to produce as may be required. There is no suggestion that there was anything of that assignment showing that it was a collateral assignment.

20

The Court: There is the next clause which makes that suggestion.

Mr. Hanstein: As a matter of fact, the assignment is absolute on its face.

The Court: Most of them are, I take it. You may answer the question.

30 (Question repeated.)

A. Mr. Walls discounted a collateral note on June 3rd, 1913.

Mr. Hanstein: I would like to ask that that testimony be stricken because it is obviously not within

her knowledge, she having gone to that bank in December of 1917.

The Court: Yes, as it stands, it must be done.

Q. Have you any papers with you relating to the transaction with Mr. Walls in 1913?

A. I have the records of the books with the original note.

Q. Will you produce the original note? 10

A. (Note produced.)

Q. What have you in your hand, Mrs. Brown?

A. I have the collateral note dated June 3rd, 1913, \$1500, on demand after date—shall I read it?

Q. Payable to whom?

A. To the American Bank.

Q. Is it in the form of a regular collateral note?

A. This is the regular collateral form.

Q. Has that note ever been renewed or is that original note still in effect? 20

A. This is the original note, a demand note.

Q. Is it still in effect?

A. Yes.

Q. Did you have any collateral with that note?

A. Collateral is stated with the note assigned —

Mr. Hanstein: That is not answering the question.

The Court: You are asked if you have the collateral. 30

A. We have the collateral.

Q. Is there any endorsement on that note as to payments?

A. There is.

- Q. What?
 A. Paid on account on May 10th, 1923, \$500.
 Q. Therefore, there is a present indebtedness of
 Mr. Walls to the bank of how much?
 A. \$1,000.
 Q. With interest from when?
 A. From the 11/30/1928.
 Q. Do you have any collateral there with you?
 A. Yes, I have the bond and mortgage.
 10 Q. Bond and mortgage made by whom to whom?
 A. Realty Realization Company to Walter Walls.
 Q. Bearing date what?
 A. April 7th, 1913.
 Q. For how much?
 A. For \$2500.
 Q. Recorded?
 A. 26th day of April, 1913.
 Q. In what book?
 A. Number 139 of mortgages, page 80.
 20 Q. Will you look at the inside of the mortgage and
 see what property it refers to?
 A. Shall I read the description?
 Q. Just tell us, if you can, the general location.

Mr. Hanstein: Please, your Honor, I have let this go along but it seems to me the mortgage is the best evidence and if it is admissible it ought to be offered in evidence.

- 30 The Court: Is it or is it not upon the same property in question?

Mr. Hanstein: There is no dispute this mortgage covers the property in question, is there?

Mr. Hagerman: No dispute it covers the southwest corner of Porter and Albany Avenues.

The Court: It is admitted to be upon the same property.

Q. Now, have you any papers relating to that mortgage which you say is made to Mr. Walls?

A. I have the assignment of mortgage.

Q. What is that assignment's date and by whom to whom?

A. It is dated May 31st, 1913, Walter Walls of the City and County of Philadelphia, State of Pennsylvania. 10

Q. To whom was it assigned?

A. To American Bank.

Q. Just made to American Bank?

A. Yes, sir.

Q. What mortgage is assigned by it?

A. Realty Realization Company to said Walter Walls. Recorded in the clerk's office of Atlantic City, Mays Landing, New Jersey, in book 139 of mortgages, on pages 80 and so forth. 20

Mr. Hagerman: I desire to offer in evidence the original note, the bond, the mortgage and the assignment.

Mr. Hanstein: I concede that the bond and mortgage are properly evidential. I don't see the relevancy of this note, in view of the fact, Vice-Chancellor, that the assignment is absolute on its face. 30

The Court: I will permit it.

(Note, bond, mortgage and assignment received in evidence and marked Exhibits D1, D2, D3 and D4 respectively.)

Q. What was the title of the bank in 1917, when you went there to work?

Mr. Hanstein: Just a moment. I don't think that the lady in her position is qualified to answer that question.

The Court: Gentlemen, is there any question here except the allegation on the note itself as the
10 American Bank of Philadelphia?

Mr. Hagerman: Your Honor, please, we have sent to Philadelphia, and there is on the way here a copy of the charter so the title of the company is the American Bank.

The Court: As a matter of physical fact, it is of Philadelphia, located in Philadelphia?

20 Mr. Hagerman: Located in Philadelphia, yes, but that is not part of its title.

Mr. Hanstein: The assignment of mortgage is without the common description of the City and County of Philadelphia.

The Court: I see that. I will return these four exhibits to the witness.

30 Cross-examination.

By Mr. Hanstein:

Q. Mrs. Brown, you were employed at the bank on the 15th of April, 1919?

A. Yes.

Q. You have been there since 1917?

A. 1917, yes.

Q. Was Thomas S. Boyle the president of the bank in 1919?

A. Yes.

Q. And the bank was located at Broad and Passyunk Avenue, Philadelphia?

A. Yes.

By Mr. Hagerman:

10

Q. Of what bank was Mr. Thomas S. Boyle president?

A. The American Bank.

By the Court:

Q. Have you any other papers concerning this transaction with you?

A. I have the discount journal sheet and liability 20 ledger sheet, showing that a loan was negotiated.

Q. Do you know personally of any notice received by the bank concerning this land?

A. I do not.

WALTER WALLS, SWORN.

Direct examination.

30

By Mr. Hagerman:

Q. Mr. Walls, are you the party who originally held the mortgage which has just been offered in evidence as Exhibit D3?

A. I am.

Mr. Hanstein: I want to object to that. I think it is immaterial and irrelevant whether he ever owned a mortgage or not.

The Court: I will permit it.

Q. Have you had any dealings with the American Bank and Trust Company?

A. I have.

10 Q. On or about June, 1913?

A. Yes.

Q. Of what nature?

Mr. Hanstein: I object to that, Vice-Chancellor. I don't see, I presume the purpose is to show that this mortgage was assigned solely as collateral.

The Court: Yes, that is building a presumption and replication to that pleading. No application has
20 been made to strike it. I will permit it. I say it makes no difference between the complainant and defendant, but it may make a difference between two of the defendants under certain circumstances and I think I should hear it. I will permit the question.

Q. Of what nature was your transaction with the bank on or about June 3rd, 1913?

30 A. I was a depositor at the bank and I also borrowed money from them.

Q. I show you the note which has been offered as Exhibit D1, and ask you if that is the note, that is the evidence of your transactions on the date stated.

A. Yes.

Mr. Hanstein: Vice-Chancellor, I would like a general objection.

The Court: You may have your general objection.

Q. Did you then borrow \$1500 from them?

A. I did.

Q. What security, if any, did you give?

A. I gave them this mortgage that is referred to here, made an assignment of that, and also gave them some shares in the Sanitary Company of America along with it, I think it was thirty shares, as I recall it, but the note will show the number of shares. 10

Q. I show you the assignment of mortgage which is marked Exhibit D4, and ask if that is the assignment that you executed?

A. That was right here, yes.

Q. Now, that assignment on its face states that it was for the sum of \$2500. For what purpose was that assignment made?

20

Mr. Hanstein: I object to that on the further ground, Vice-Chancellor, that he is varying the terms of his own agreement.

The Court: Yes, that is technically so, but I can't conceive how it can harm you at all. I will permit it.

A. I borrowed \$1500 on the mortgage.

Q. And for what purpose did you assign this mortgage to the bank? 30

A. As security for that loan.

Q. And they held it then merely as collateral?

A. Absolutely.

Q. Do you have any interest in that mortgage?

A. I surely have.

Q. How much?

A. I have the interest above the thousand dollars, the present amount that is due on it.

Q. That is how much is due—do I understand that you owe the bank a thousand dollars and some accrued interest?

A. From November 30th, 1911.

Q. And that your interest in that mortgage is all in excess of that?

10 A. All in excess of that.

Q. Has any notice of redemption ever been sent to you, Mr. Walls?

Mr. Hanstein: I object to that.

The Court: How can that be admissible? A man who has divested himself by record of all title. I would like to hear you.

20

Mr. Hagerman: If your Honor pleases, this is a proceeding under the Tax Sale Act of 1903, Section 57, and that Act has been amended so that at the time these alleged notices were given in 1917 and 1919, the Act in effect was 1916 Pamphlet Laws, page 580, which states as follows, among others:

30 “The owner, mortgagee, occupant or other person having an interest in the land sold for taxes may redeem the same at any time within two years from the date of sale or at any time thereafter until the right to redeem has been cut off in the manner hereinafter set forth by paying, etc. —”

Now notice, occupant or other person having interest in the land. Under the Martin Act this permits confusion and necessity for notice to holders of legal interest such as appearing of record and binding those claiming through or under them. The

present Act of 1903 contains no such limitations and the wide significance and definite character of the language employed and the mutuality of the rights of notice of redemption which forbid a limitation in the manner directed without a corresponding curtailment in the other, leave no such suggestion, and it is doubtful if it can be elsewhere implied.

The Court: The objection to the question will be sustained. I have permitted the testimony as to the relations between the bank and Mr. Walls as a matter between themselves. I cannot conceive that the Act applies in a case where a man has under seal duly acknowledged and recorded, divested himself of record of all his interest and then that it would become necessary to serve him with notice because the assignor and the assignee should agree that other conditions exist than exist in the absolute assignment made by the assignor to the assignee.

10

20

Mr. Hagerman: I desire to make a motion, if I may, and that is that it having been shown that Mr. Walls has a valid and vital interest in these premises, that he should be made a party to it, and I move that he be made a party defendant in these premises based on the following facts, the facts are the showing of his interest and the law. In Court Rules No. 12 it is stated: "The Court at any stage of the proceeding, either with or without application, may upon terms permit any party improperly joined to be dropped or any party improperly omitted or whose presence is necessary to a complete determination of a controversy to be added, etc. —"

30

The Court: The Court having already ruled to the effect that Mr. Walls having divested himself

of the rights under the facts existing in this case, he therefore is not a proper party to be made a defendant at this time, and I will overrule the motion.

I take it, of course, that the only purpose of making him a party at this time would be to show that he never received notice. Having already ruled that it is not necessary for him to receive notice, the Court overrules the motion.

10 (No cross-examination.)

HUGH GENOE, SWORN.

Direct examination.

20 By Mr. Hagerman:

Q. Mr. Genoe, do you have any official position in the city, if so, what?

A. City assessor.

Q. Do you have with you your official maps and assessment duplicates showing how this lot is situate at the southeast corner of Porter and Albany Avenues, 25 by 125, as it was designated for assessment purposes in the year 1913?

A. Yes, sir.

30 Q. Will you refer to your book and tell us how it was designated?

Mr. Hanstein: I object to that, Vice-Chancellor. The certificate of tax sale is conclusive and can't be attacked, assuming it is wrong. I don't understand the purpose of this at all.

The Court: Like to hear you on that, Mr. Hagerman.

Mr. Hagerman: I want to show that there has been three or four changes during the time and that I am prepared to object to the description of the lot as stated in the notice that is alleged to have been sent. The evidence I propose to offer will show that there have been three or four changes of the designations of these lots during the time, between the time 1913 when we got the mortgage, in 1919, when this alleged notice was sent out there were three different designations on that property. 10

The Court: You mean the number of the lot?

Mr. Hagerman: Yes, sir.

The Court: Do you claim that the number and lot on the tax certificate does not cover your property? 20

Mr. Hagerman: No, sir.

The Court: Then what objection can there be?

Mr. Hagerman: I propose to show that it is not a reliable source of reference under this particular one, and I would like to show this first and then I will explain at length why it does not apply to the certificate. 30

The Court: I thought you just said that the certificate did name the lot.

Mr. Hagerman: Why, it doesn't apply to their notice.

The Court: I will permit it.

Mr. Hanstein: Vice-Chancellor, I merely want to point out to your Honor that he is talking about a different year than the year 1916 was sold.

The Court: Must be related to the year which it was sold for.

10 Mr. Hanstein: The notice is absolutely in accordance with your description in the tax sale.

The Court: It must be limited to tax of 1915. I will limit the question to the year 1915.

Mr. Hagerman: If your Honor please, we took this mortgage in 1913, and if there was any duty on the mortgage to keep trace of all these different taxes, would have to do that every year.
20

The Court: If you desire to show that the tax sale was not upon the land on which your mortgage exists, then I will give you an opportunity to do it.

Mr. Hagerman: I have no fault to find with the tax sale certificate. My fault is with the notice posted and that it does not refer to any map of any kind so far as I can find out.

30 The Court: Block 92 in lot 1, Chelsea Heights.

Mr. Hagerman: What map?

The Court: Doesn't say what map. Was there any 92 block, 1?

Mr. Hagerman: I understand they have various systems there, different sections have the same block and lot number, and this very lot has had three different changes or numbers in the period of six years. It is absurd to think that an outsider living in another city could keep up with those changes. They are made without notice. They are invariably done at the discretion of the engineer, as I propose to show, and, therefore, were made without notice, which does not refer to the tax map at all, as wholly 10 insufficient.

The Court: I will sustain the objection.

Q. How was it assessed in 1914?

The Court: Objection sustained. I have already ruled, Mr. Hagerman, you have a record of that ruling, that 1915 will be permitted, 1913 is overruled and, of course, that carries with it 1914. 20

Mr. Hagerman: If your Honor please, perhaps I didn't make myself just clear what I wanted to show. I am offering these various changes to show that this property is not like a street number and that it is variable and changeable from time to time, and assuming that a man being in Philadelphia had a locality index, which they would change block 92 in 1913, in 1914 it changed, 1919 it changed.

The Court: Do you offer to show that they had 30 such a map and that the description showed it was a different property and, therefore, they were deceived by that?

Mr. Hagerman: I propose to show that this notice that was sent to them meant nothing to an outsider

at all, my proof is that this changed three or four times, and I thought I should be permitted to show the character and unstableness of these descriptions.

The Court: I will sustain the objection. You have already stated it covered the property upon which you have your mortgage.

By the Court:

10 Q. I will ask you, Mr. Genoe, how was this property assessed in 1915?

A. Property assessed in 1915 as the Realty Realization Company, Albany and Porter, southeast corner, 25 by 105, the land was assessed at \$400, the building at \$700.

By Mr. Hanstein:

20 Q. You are not testifying from the collector's book?

A. The collector gets the book from this. We make out the duplicate.

The Court: Doesn't your book show their block and lot there?

A. Block 92, lot 1, Chelsea Heights.

Mr. Hanstein: Chelsea Heights?

A. Yes, Chelsea Heights section.

30

TESTIMONY CLOSED.

Mr. Hagerman: I don't mean to close without furnishing the certificate and the charter of the American Bank.

The Court: You may do that.

STIPULATION AS TO ABRIDGING EXHIBITS.

IN THE
COURT OF ERRORS AND APPEALS.

JEANETTE SCHAFFER,
Complainant-Appellee,
v.
REALTY REALIZATION COM-
PANY, *et al.,*
Defendants-Appellant.

10

On Appeal.
Stipulation as to
Abridging Exhibits.

It is hereby agreed by the respective counsel for
the above appellee and appellant, American Bank
and Trust Company, that the following exhibits
may be abridged, that the following facts are suffi-
cient for the purposes of this case, namely: 20

Exhibit C1. Deed, James Cimino, Sheriff of At-
lantic County, to Janette G. Schaffer, dated Feb.
16th, 1928, and recorded in the Clerk's Office of At-
lantic County, in Book No. 895 of Deeds, page 18,
&c., recites a Fi. Fa. issued out of the Supreme
Court, dated Dec. 5th, 1927, whereupon the prem-
ises in question, were sold for \$100.00 to grantee, 30
the judgment being in favor of Lewis P. Scott,
Pltff., and against Realty Realization Co., Deft., and
subsequently assigned to Annie E. Gotthelf.

Exhibit C2. Deed, Karl Schaffer to Janette G.
Schaffer, dated Feb. 20th, 1928, and recorded in
said clerk's office in Book No. 893 of Deeds, pages

204, &c., for consideration of one dollar, conveys premises in question.

Exhibit D1, consists of a collateral note, made by Walter Walls, dated June 3rd, 1913, for \$1,500, payable on demand to the American Bank; that endorsed thereon was a receipt on account for \$500, dated May 10th, 1923.

Exhibit D2, consists of a bond and warrant made by the Realty Realization Company to Walter
10 Walls, referred to in Exhibit D3, which is quoted in full.

Exhibit D—, consists of an exhibit consented to be produced subsequent to the hearing, and produced but not numbered; this is the original charter issued by the Commonwealth of Pennsylvania dated April 21st, 1908, under the name and title of "The American Bank."

Dated Sept. 12th, 1929.

20

THOMPSON & HANSTEIN,
Of Counsel for Appellee.
SAMUEL P. HAGERMAN,
Of Counsel for Appellant,
The American Bank and
Trust Company.

EXHIBIT C3.

30 CERTIFICATE OF SALE OF REAL ESTATE.
I, Lewis L. Mathis, Collector of Taxes of the City of Atlantic City, in the County of Atlantic and State of New Jersey do hereby certify that at a public sale of lands, tenements, hereditaments and real estate made at the City Hall in said City, the sixteenth day of August, A. D. one thousand nine

hundred and seventeen for the purpose of making certain taxes on account of which said lands, tenements, hereditaments and real estate were assessed in said city in the year of our Lord one thousand nine hundred and fifteen, all that certain lot of land and premises assessed to Realty Realization Co. and described as follows: to wit, Block 92 lot 1, size of lot 25 x 105 feet as designated on the official maps and duplicates as used by the assessors of the city of Atlantic City, was struck off and sold by me to Karl Schaeffer of Elizabeth, N. J. in fee no one bidding for a shorter term. 10

And I do hereby certify that the consideration of said sale is the sum — twenty eight 88/100 dollars which amount is made up of the tax on said lands and premises and the interest and cost as follows:

Tax (1915)	\$22.32	
Interest	2.96	
Sale Costs	\$—	
Preparing and publishing notice of sale	.25	20
Advertising	1.00	
Selling	.25	
Certificate of Sale	.50	
Acknowledgment	.50	
Clerk's fees for recording report	.10	
Recording certificate of sale	1.00	
	<hr/>	
Total	\$28.88	

And I do further certify that the property hereinbefore described was duly assessed for taxes for the year 1915 in accordance with the provisions of an act of the Legislature of the State of New Jersey entitled "An Act for the assessment and collection of taxes approved April 8th, 1903 and the several amendments and supplements thereof, which taxes on the 20th day of December of said year became a lien on said premises. That on the first Tuesday 30

in February following said assessment there was filed in the office of the Clerk of Atlantic County a list of all unpaid taxes assessed for said year on the real property of the Taxing District of Atlantic City containing, among other properties, the above described property which list was duly signed and sworn to, as required by law. That said taxes, or a part thereof were still due and in arrears on the first day of July in the year following the levying thereof and has continued in arrears up to and including the date hereof that in compliance with the statutes in such case made and provided I did give public notice of the time and place fixed by me for the sale of said real estate, stating the name of the delinquent owner, the land to be sold and the amount of the delinquent taxes due thereon, by advertisement signed by me and published in the Atlantic City Gazette Review and Atlantic City Daily Press newspapers printed and published in the said Taxing District of Atlantic City, once in each week for at least four weeks successively, next preceding the day appointed for said sale. And I do further certify that the right of the owner or owners mortgagee, occupant or any other person or persons having either a legal or equitable interest in the lands or premises to redeem the same will expire on the sixteenth day of August one thousand nine hundred and nineteen provided the proper notice or notices to redeem are served more than sixty days before said August sixteenth one thousand nine hundred and nineteen or within sixty days after the service of said notice or notices if served later or at any time within twenty years from the time said purchaser takes possession of said premises.

NOW THEREFORE, I, Lewis L. Mathis, Collector as aforesaid by virtue of the power and authority

vested in me by law and in consideration of the payment of the sum above specified have granted, bargained, sold and transferred and by these presents do grant, bargain, sell and transfer unto the said Karl Schaeffer, Elizabeth, N. J. the purchaser aforesaid — heirs successors and assigns, the real property hereinbefore described as is herein set forth as I am authorized to sell and transfer by authority of the statutes of the State of New Jersey: TO HAVE AND TO HOLD to him and his heirs 10
 or successors and assigns subject to the provisions of the aforesaid act of the legislature.
 IN WITNESS WHEREOF, I have hereunto set my hand and seal this twentieth day of August, 1917.

ss Lewis L. Mathis (L.S.)
 Tax Collector.

Signed, sealed and delivered
 in the presence of
 R. L. Browne 20

State of New Jersey, County of Atlantic, ss.

BE IT REMEMBERED that on this twentieth day of August in the year of our Lord one thousand nine hundred and seventeen, before me the subscriber an Atty at Law of the State of New Jersey, 30
 personally appeared Lewis L. Mathis, Collector of Taxes in the City of Atlantic City, County of Atlantic and State of New Jersey and I having first made known to him the contents of the foregoing certificate of sale he did thereupon acknowledge that he signed, sealed and delivered the same as

his voluntary act and deed for the uses and purposes therein expressed.

Russell L. Browne

Atty. at law of N. J.

To Realty Realization Company a corporation, Herbert J. Cuthbert, Incorporator.

You are notified that a Public sale held by Lewis L. Mathis Collector of Taxes of the city of Atlantic City, at the City Hall in said City on August 16, 10 1917 under and by virtue of the provisions of an act of the Legislature of the State of New Jersey entitled "An Act for the assessment and collection of Taxes" approved April 8th, 1903 and the several acts supplementary thereto and amendatory thereof.

Karl Schaffer of the city of Elizabeth State of New Jersey bought for the sum of \$28.88 for unpaid taxes for the year 1915 a certain tract and parcel of land assessed in the name of Realty Realization 20 Co. and described as follows:

Block 92 lot 1 Chelsea Heights. And you are hereby notified that you have or appear to have an interest or estate in said land and real estate and a right to redeem the same and that unless said land or real estate be redeemed within two years after the said sale, if this notice be served upon you more than sixty days before the expiration of said time or if not served until the expiration of said two years then within sixty days after the service of 30 this notice your right of redemption will be barred.

Dated —

Karl Schaeffer, Purchaser.

State of New Jersey, County of Union, ss.

Karl Schaffer being duly sworn on his oath deposes and says: That on the fifteenth day of April 1919 he served a duplicate of the within notice on Herbert J. Cuthbert at this office, Guarantee Trust Building, Atlantic City, New Jersey.

Karl Schaffer.

Sworn and subscribed before me this 19th day of 10
April, 1919.

Mabel Seibert —
Notary Public of New Jersey.

To Realty Realization Company, a corporation, Ed-
win H. Cuthbert Incorporator.

You are hereby notified that a Public sale held by
Lewis L. Mathis Collector of Taxes of the City of 20
Atlantic City, at the City Hall in said City on
August 16, 1917, under and by virtue of the provi-
sions of an act of the Legislature of the State of
New Jersey entitled "An Act for the assessment
and collection of Taxes" approved April 8th, 1903
and the several acts supplementary thereto and
amendatory thereof.

Karl Schaffer of the city of Elizabeth, State of
New Jersey bought for the sum of \$28.88 for un-
paid taxes for the year 1915 a certain tract and 30
parcel of land assessed in the name of Realty Real-
ization Co. and described as follows: Block 92 lot
1 Chelsea Heights. And you are hereby notified
that you have or appear to have an interest or es-
tate in said land and real estate and a right to re-
deem the same and that unless said land or real

estate be redeemed within two years after the said sale, if this notice be served upon you more than sixty days before the expiration of said time or if not served until the expiration of said two years then within sixty days after the service of this notice, your right of redemption will be barred.

Dated — Karl Schaffer, Purchaser.

10

State of New Jersey, County of Union, ss.

Karl Schaffer being duly sworn on his oath deposes and says: That on the fifteenth day of April, 1919 he served a duplicate of the within notice on Edwin H. Cuthbert at this office, Guarantee Trust Building, Atlantic City, New Jersey.

Karl Schaffer.

20 Sworn and subscribed before me this 19th day of April, 1919.

Mabel Seibert —
Notary Public of New Jersey.

To S. H. Robison Co. a corp.

30 You are hereby notified that a Public Sale held by Lewis L. Mathis, Collector of Taxes of the City of Atlantic City, at the City Hall in said City on August 16, 1917 under and by virtue of the provisions of an act of the Legislature of the State of New Jersey entitled "An Act for the assessment and Collection of taxes" approved April 8th, 1903 and the several acts supplementary thereto and amendatory thereof, Karl Schaffer of the city of Eliza-

beth, State of New Jersey bought for the sum of \$28.88 for unpaid taxes for the year 1915 a certain tract and parcel of land assessed in the name of Realty Realization Co. and described as follows Block 92 lot 1 Chelsea Heights. And you are hereby notified that you have or appear to have an interest or estate in said land and real estate and a right to redeem the same and that unless said land or real estate be redeemed within two years after the said sale if this notice be served upon you more than sixty days before the expiration of said time or if not served until the expiration of said two years then within sixty days after the service of this notice, your right of redemption will be barred. Dated — Karl Schaffer, Purchaser. 10

State of New Jersey, County of Union, ss.

Karl Schaffer being duly sworn according to law on his oath deposes and says: That on the fifteenth day of April, 1919 he served a duplicate of the within notice on S. H. Robison Co., a corporation c/o Albert DeUnger, Camden, New Jersey. 20

Karl Schaffer.

Sworn and subscribed before me this 19th day of April, 1919.

Mabel Seibert—
Notary Public of New Jersey. 30

To American Bank of Philadelphia, Philadelphia, Pa.

You are hereby notified that a Public sale held by

Lewis L. Mathis, Collector of Taxes of the City of Atlantic City at the City Hall in said City on August 16, 1917 under and by virtue of the provisions of an act of the Legislature of the State of New Jersey entitled "An Act for the assessment and collection of Taxes" approved April 8th, 1903 and the several acts supplementary thereto and amendatory thereof, Karl Schaffer of the city of Elizabeth, State of New Jersey, bought for the sum of \$28.88 for unpaid taxes for the year 1915 a certain tract and parcel of land assessed in the name of Realty Realization Co. and described as follows: Block 92 lot 1, Chelsea Heights. And you are hereby notified that you have or appear to have an interest or estate in said land and real estate and a right to redeem the same and that unless said land or real estate be redeemed within two years after the said sale, if this notice be served upon you more than sixty days before the expiration of said time or if not served until the expiration of said two years then within sixty days after the service of thsi notice your right of redemption will be barred. Dated — Karl Schaffer, Purchaser.

State of New Jersey, County of Union, ss.

30 Karl Schaffer being duly sworn deposes and says: That on the fifteenth day of April, 1919 he mailed a duplicate of the within notice to the American Bank of Philadelphia c/o Thomas S. Boyle, President, Broad and Passyunk Avenue, Philadelphia, Pennsylvania.

Karl Schaffer.

Sworn and subscribed before me this nineteenth day of April, 1919.

Mabel Seibert —
Notary Public of New Jersey.

State of New Jersey, County of Union, ss.

10

Karl Schaffer being duly sworn deposes and says. That he was the purchaser of premises described as Block 92 lot #1 Chelsea Heights map that the above mentioned premises was purchased by him at a Tax Sale held by Lewis Matthis, Collector of the city of Atlantic City on the 16th day of August, 1917 for the unpaid taxes of 1915 that he ascertained that the parties having or appearing to have an interest in the above mentioned premises were Realty Realization Company, a corporation, American Bank of Philadelphia, S. H. Robison Co., a corporation and that he served notices to redeem on the above mentioned parties as required by law that more than two years expired since the date of said sale and that more than sixty days expired since the date of service of said notices, and that the said premises have not been redeemed, from said sale.

20

Karl Schaffer

30

Sworn and subscribed before me the 17th day of September, 1925.

Chas. E. Allen (seal)
Notary Public in and for the
County of Union and State
of New Jersey.

Received and recorded and filed September 21, 1925,
at 8 A. M.

William A. Blair, Clerk.

Deed Book No. 788 page 100.

STATE OF NEW JERSEY
COUNTY OF ATLANTIC

10

I, William A. Blair, Clerk of the County of Atlantic, and also Clerk of the Common Pleas Court holden therein, said court being a court of record, having a common seal, do hereby Certify, That the foregoing is a true copy of a certain Tax Deed—City of Atlantic City to Karl Schaffer as the same is recorded in my said office.

In Testimony Whereof, I have hereunto set my hand and affixed my Official Seal at May's Landing,
20 N. J., this 16th day of June A. D. 1928

(Seal)

Wm. A. Blair,
Clerk.

By
Deputy Clerk.

(Endorsed)

30

CERTIFIED COPY
of
TAX DEED
City of Atlantic City
to
Karl Schaffer

EXHIBIT D3.

2/15/28 L.

THIS INDENTURE MADE THE Seventh day of April in the year of our Lord one thousand nine hundred and Thirteen.

Between REALTY REALIZATION COMPANY, A Corporation existing under and by virtue of the laws of the State of New Jersey, party of the first part, and Walter Walls of the City and County of Philadelphia, and State of Pennsylvania, party of the second part, Whereas, the said Realty Realization Company in and by its certain obligation or Writing obligatory under its corporate seal duly executed, and bearing even date herewith, stands bound unto the said party of the second part, in the sum of FIVE THOUSAND DOLLARS (\$5,000). lawful money of the United States of America, conditioned for the payment of the just sum of TWENTY-FIVE HUNDRED DOLLARS (\$2500). lawful money as aforesaid payable at any time within three years from date hereof. together with interest thereon, payable semi-annually, at the rate of six per cent. per annum, without any fraud or further delay; Provided, however, and it was thereby expressly agreed, that if at any time default should be made in payment of interest as aforesaid, for the space of thirty days after any semi-annual payment thereof should fall due, or should said Obligor, or its successors or Assigns, at any time fail to keep the buildings on the lands described in this the accompanying Mortgage, well and sufficiently insured against loss or damage by fire, and the policy or policies of Insurance, to an amount not less than

Dollars, assigned to, or the loss made payable to the said Obligee, or his heirs, executors, administrators or Assigns, or should the said Obligor, or its successors or Assigns, at any time fail to pay any tax assessed upon the lands described in this the accompanying mortgage and the buildings and improvements thereon for the period of sixty days after the same is due and collectible by law, then, and in the case of any such
10 failure or default, the whole principal debt aforesaid shall become due and payable immediately and payment of said principal debt, and all interest thereon, might be enforced and recovered at once, anything therein contained to the contrary, notwithstanding.

And Provided Further, however, and it was thereby expressly agreed, that if at any time thereafter by reason of any default in payment, either of said principal sum at maturity or of said interest within the time specified, suit should be
20 brought in any Court for the amount of such principal sum and interest or judgment should be obtained by virtue of the warrant of Attorney annexed thereto or proceedings to foreclose this the accompanying Mortgage should be had, an Attorney's fee of _____ per cent. for collection, should be payable, by reason of such suit, judgment or proceedings, and might be recovered in addition to all principal, interest and taxes then due, besides costs
30 of suit as in and by the said recited obligation and condition thereof, relation to the same being had, will more fully and at large appear.

Now this indenture witnesseth, that the said party of the first part, as well for and in consideration of the aforesaid debt or sum of TWENTY-FIVE HUNDRED DOLLARS (\$2500). and for the better securing the payment thereof, unto the said

party of the second part, his heirs, executors, administrators and Assigns, in discharge of the said obligation above recited, as for and in consideration of the further sum of one dollar, in specie, well and truly paid to the said party of the first part, by the said party of the second part, at and before the en-
sealing and delivery hereof, the receipt of which one dollar is hereby acknowledged has granted, bargained, sold, released and confirmed, and by these presents does grant, bargain, sell, release and confirm, unto the said party of the second part, his heirs, executors, administrators and Assigns, all that certain tract or parcel of land and premises hereinafter particularly described, situate in the City of Atlantic City in the County of Atlantic and State of New Jersey, BEGINNING at the Southeast corner of Porter and Albany Avenues and runs thence (1) Eastwardly along the South line of Porter Avenue 105 feet; thence (2) Southwardly along a line parallel with Albany Avenue 25 feet; thence (3) Westwardly along a line parallel with Porter Avenue 105 feet to Albany Avenue; thence (4) Northwardly along the East line of Albany Avenue 25 feet to the Southeast corner of Porter and Albany Avenues the place of beginning.

Together with all and singular, the buildings, improvements, woods, ways, rights, liberties, privileges, hereditaments and appurtenances, to the same belonging, or in any wise appertaining, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof; To have and to hold the said hereditaments and premises above granted, or intended so to be, with the appurtenances, unto the said party of the second part, his heirs, executors, administrators and Assigns forever.

Provided, always, nevertheless, that if the said

party of the first part, its successors or Assigns, do and shall well and truly pay, or cause to be paid unto the said party of the second part, or to his certain Attorney or Attorneys, heirs, executors, administrators or Assigns, the aforesaid debt or sum of TWENTY-FIVE HUNDRED DOLLARS (\$2500). on the day and time hereinbefore mentioned and appointed for the payment thereof together with interest for the same, in like money, in way and manner hereinbefore specified therefor, without any fraud or further delay, and without any deduction, defalcation or abatement to be made, for, or in respect of any taxes, charges or assessments whatsoever; that then and from thenceforth, as well this present Indenture, and the estate hereby granted, as the said obligation above recited, shall cease, determine and become absolutely null and void, to all intents and purposes; anything herein before contained to the contrary thereof in any wise notwithstanding.

And the said party of the first part, for itself, its successors or assigns does covenant and grant to and with the said party of the second part, his heirs, executors, administrators and Assigns, that the said party of the first part, its successors or assigns and Assigns, shall not nor will apply for or claim, any deduction, by reason of this mortgage, from the taxable value of the said lands and premises; and that the said party of the second part, his heirs, executors administrators and Assigns, shall and may from time to time, and at all times after default shall be made in the performance of the proviso or condition herein contained peaceably and quietly enter into, have, hold, use, occupy possess and enjoy all and singular the above granted and bargained premises, with the appurtenances, without the let, suit, trouble, hindrance or denial

of the said party of the first part, its successors or Assigns, or of any other person or persons whatsoever, And it is also further agreed, by and between the parties to these presents, that if the said party of the first part shall fail to keep the buildings erected and to be erected upon the lands above conveyed, insured against loss or damage by fire, in some safe and responsible Insurance Company or Companies to an amount not less than

dollars, and assign the 10
policy and certificate thereof, or have the loss, if any, made payable to the said party of the second part as collateral security for the payment of the principal and interest aforesaid, it shall be lawful for the said party of the second part to effect such insurance, and the premium and premiums paid for effecting the same shall be a lien on the said mortgaged premises, added to the amount of the said bond or obligation, and secured by these presents, and payable on demand with legal interest. 20

In Witness Whereof, the said party of the first part has hereunto caused its corporate seal to be affixed, attested by its Secretary, and these presents to be signed by its President, the day and year first above written.

REALTY REALIZATION COMPANY.

(Seal) E. H. Cuthbert, President.

Signed, Sealed and Delivered
in the presence of

Attest.

H. J. Cuthbert

Secretary.

30

STATE OF New Jersey. }
Atlantic COUNTY, } ss.

Be it Remembered, that on this Eighth day of
April in the year of our Lord one thousand nine
10 hundred and Thirteen. before me, the subscriber,
a an Atty at Law of New Jersey personally ap-
peared H. J. Cuthbert who, being by me duly sworn
according to law, did on his oath say that he is the
Secretary of the Realty Realization Company the
grantor mentioned in the foregoing indenture; that
he knows the seal of said Corporation; that the seal
affixed to the said indenture is the common seal of
the said Corporation; that E. H. Cuthbert is the
20 sign, seal and deliver the said indenture as its vol-
untary act and deed in the presence of said depon-
ent; and that the said deponent did, at the execu-
tion thereof subscribe his name as a witness thereto.

H. J. Cuthbert
Sec.

Sworn and subscribed before me the
day and year aforesaid.

Russell L Browne

30 Atty. at Law of N. J.

of Philadelphia, and State of Pennsylvania, at and before the ensembling and delivery of these presents, the receipt whereof is hereby acknowledged, have granted, bargained, sold, assigned, transferred and set over, and by these presents do grant, bargain, sell, assign, transfer and set over unto the said American Bank its administrators, successors and assigns a certain Indenture of Mortgage, bearing date the Seventh day of April in the year of our
10 Lord one thousand Thirteen. made and executed by Realty Realization Company to the said Walter Walls, and recorded in the Clerk's Office of Atlantic County at May's Landing, New Jersey, in Book #139 of Mortgages, on pages 80 &c. together with Together with the lands in and by the said Indenture of Mortgage particularly described and the covenants and stipulations therein contained and Together with the Bond and Obligation in said Indenture of Mortgage mentioned and thereby intended to be secured, and all moneys due and to
20 grow due thereon and the Warrant of Attorney to confess judgment thereto annexed; and all estate, right, title, interest, property, claim and demand in and to the same.

To Have and to Hold the same unto the said American Bank, its administrators, successors heirs, executors, administrators, and assigns to its and their proper use, benefit, and behoof forever; subject nevertheless to the equity of redemption of
30 said Realty Realization Company, the Mortgagor in the said Indenture of Mortgage named and its heirs and assigns therein.

And I do hereby make constitute and appoint the said party of the second part my true and lawful attorney, irrevocable, in my name or otherwise, but at his proper cost and charges, to have, use and take all lawful ways and means for the recovery

of the said money and interest, and in case of payment, to discharge the same as fully as I might or could do if these presents were not made.

In Witness Whereof, I have hereunto set my hand and seal the thirty-first day of May in the year of our Lord one thousand nine hundred and thirteen.

Walter Walls (Seal)

Signed, Sealed and Delivered

in the presence of

Carrie Keser

Wilmer S. Baum

10

State of Pennsylvania }
Philadelphia County, } ss.

Be it Remembered, that on this Third day of June in the year of our Lord one thousand nine hundred and thirteen (1913) before me Edward H. Cloud, a foreign Commissioner of Deeds for the State of New Jersey, resident at the City of Philadelphia, Pennsylvania, personally appeared, at the City of Philadelphia, Walter Walls who, I am satisfied, is the grantor in the within instrument named, and I having first made known to him the contents thereof, he acknowledged that he signed, sealed and delivered the same as his voluntary act and deed, all of which is hereby certified.

20

(Seal) Edw. H. Cloud,
A foreign Commissioner of Deeds for the State of New Jersey, resident at the City of Philadelphia, Pennsylvania.

30

20589

6/4/13 9—\$1.00 pd.

Dated May 31st, 1913.

WALTER WALLS

TO

AMERICAN BANK.

John A. Spence

of Atlantic City

ASSIGNMENT OF MORTGAGE

10

Received June 4, 1913 at 9 00 A. M.,
and recorded in the Clerk's Office of
Atlantic County, at May's Landing in
Book #39 of Assg. of Mortgages,
Folio 248 &c.

Wilson Senseman, Clerk.

(Seal)

Per F. R.

Chg.

West Jersey Title and Guaranty Company

20

30

DEFAULT DECREE.

(Filed Oct. 3, 1928.)

IN CHANCERY OF NEW JERSEY.

10

Between

JEANETTE G. SCHAFFER,
Complainant,
 and
 REALTY REALIZATION COM-
 PANY, *et al.,*
Defendants.

} On Bill to Quiet Title.
 } Default Decree.

20

This matter being opened to the Court by Thomp-
 son & Hanstein, solicitors of the complainant, and
 it appearing that process of subpoena calling upon
 the defendants to answer the complainant's bill of
 complaint, has been issued and returned served upon
 the defendants: Realty Realization Company, S. H.
 Robison Company and Chelsea Investment and De-
 velopment Company; and

That on April 30th, 1928, an order of publication
 against the defendant, American Bank of Philadel- 30
 phia, Pa., now known as American Bank and Trust
 Company, was allowed and notice thereof duly pub-
 lished and mailed in accordance with said order;
 and

That said defendants: Realty Realization Com-
 pany, S.H. Robison Company, Chelsea Investment

and Development Company, have not filed any answer to the said bill of complaint within the time required by law, but has wholly failed and neglected so to do;

It is, thereupon, on this 1st day of October, 1928, on motion of Thompson & Hanstein, solicitors of the complainant, ordered that said complainant's bill of complaint be and the same is hereby taken as confessed against the said defendants, Realty
10 Realization Company, S. H. Robison Company, and Chelsea Investment and Development Company; and

It is further ordered, adjudged and decreed that the said defendants above named have no estate or interest in, or encumbrance upon said lands and premises, or any part thereof;

It is further ordered, adjudged and decreed that the said lands and premises described in said bill of complaint, to wit:

20 ALL that certain lot, tract or parcel of land and premises situate, lying and being in the City of Atlantic City, County of Atlantic and State of New Jersey;

BEGINNING at the southeasterly corner of Porter and Albany Avenues and thence (1) Eastwardly, along the southerly line of Porter Avenue 105 feet; thence (2) Southwardly, parallel with Albany Avenue 25 feet; thence (3)
30 Westwardly, parallel with Porter Avenue 105 feet to the easterly line of Albany Avenue; thence (4) Northwardly along the said easterly line of Albany Avenue 25 feet to the place of beginning,

so far as relates to any claim thereon by or on behalf of the said defendants, Realty Realization Com-

pany, S. H. Robison Company and Chelsea Investment and Development Company, or any of them, the title of the said complainant, Jeanette G. Schaffer, in and to the same and every part thereof is hereby determined, fixed and settled and declared to be good.

E. R. WALKER,
C.

Respectfully advised,
WM. J. BACKES,
A. M.

10

CONCLUSIONS.

(Filed Mar. 23, 1929.)

IN CHANCERY OF NEW JERSEY.

20

Between

JEANNETTE G. SCHAFFER,
Complainant,
and
REALTY REALIZATION COM-
PANY, *et al.,*
Defendants.

} On Bill to Quiet Title.
On Final Hearing.
Conclusions.
(Not for Print.)

30

MESSRS. THOMPSON & HANSTEIN, for the complainant.

MR. SAMUEL P. HAGERMAN, for the defendant,
American Bank and Trust Company.

INGERSOLL, V. C.:

This is a bill to quiet title to certain premises in the bill particularly described. No defense was made as to one of the tracts. The tract in question is situate at the southeast corner of Porter and Albany Avenues, in the City of Atlantic City.

10 The former owner, the Realty Realization Company, executed a mortgage to one Walter Walls, which was duly recorded in the clerk's office of Atlantic County in Book No. 139 of Mortgages, page 80, &c.

20 Walls executed an assignment of this mortgage to The American Bank, which assignment was duly recorded in said clerk's office. That, although absolute upon its face, said assignment was made by Walls and accepted by the bank as collateral security for a loan; that Walls is still indebted to the bank in the sum of one thousand dollars, and that Walls is the equitable owner of all right, title and interest in said mortgage over and above the amount of the indebtedness of Walls to the bank. The name of said bank is now the American Bank and Trust Company.

Taxes duly assessed upon said property remaining unpaid the statutory period, Lewis L. Mathis, tax collector of the City of Atlantic City, sold the same to one Karl Schaffer.

30 The question reserved for decision and upon which briefs were filed, is the sufficiency of the description of the premises in the notice served upon the bank, which notice reads as follows:

"To American Bank of Philadelphia, Philadelphia, Pa. You are hereby notified that a public sale held by Lewis L. Mathis, collector of taxes of the City of Atlantic City, at the City Hall in said city on August 16, 1917, under and by virtue of the provisions of an act of the

Legislature of the State of New Jersey entitled 'An act for the assessment and collection of taxes' approved April 8th, 1903, and the several acts supplementary thereto and amendatory thereof, Karl Schaffer of the City of Elizabeth, State of New Jersey, bought for the sum of \$28.88 for unpaid taxes for the year 1915 a certain tract and parcel of land assessed in the name of Realty Realization Co. and described as follows: Block 92, Lot 1, Chelsea Heights. And you are hereby notified that you have or appear to have an interest or estate in said land and real estate and a right to redeem the same and that unless said land or real estate be redeemed within two years after the said sale, if this notice be served upon you more than sixty days before the expiration of said time or if not served until the expiration of said two years then within sixty days after the service of this notice your right of redemption will be barred." 10 20

This land was assessed and described in the tax sale as Block 92, Lot 1, size of lot 25 x 105 feet as designated on the official map and duplicates as used by the assessors of the City of Atlantic City.

The notice specified that the tax sale was held by the collector of taxes of the City of Atlantic City, that the taxes were assessed in the name of Realty Realization Company and were described as Block 92, Lot 1, Chelsea Heights. 30

This notice fulfills all the demands of the statute.

Simonton's Tax Sales in New Jersey, Second Edition, page 101, says: "There does not seem to be the same necessity, however, for such precise particularity in the description of the land, as is required in the case of the certificate or in prior pro-

ceedings, and mere inaccuracies in this respect * * * or other minor defects of this character, not operating to the prejudice of the parties served, it is held, will not be fatal," and cites *Welles v. Schaffer*, 98 N. J. Eq. 31. He proceeds, "but any errors or false statements in the notice, although of unnecessary matters, which tend to contradict it and mislead the redemptioner, will render it ineffectual."

10 This was the situation in *Welles v. Schaffer, supra*, where the notice called for the redemption of Lots 1, 2, 3, 4, 5 and 6, which it should have been for parts of these lots. This was held fatal.

The notice to the redemptioner contained all requisites and was sufficient.

A decree will be advised accordingly.

Determined: March 19th, 1929.

20

30

FINAL DECREE.

(Filed Apr. 2, 1929.)

IN CHANCERY OF NEW JERSEY.

10

Between

JEANETTE G. SCHAFFER,
Complainant,
 and
 REALTY REALIZATION COM-
 PANY, *et al.,*
Defendants.

} On Bill to Quiet Title.
 } Final Decree.

20

This cause coming on to be heard in the presence of Walter Hanstein, of Thompson & Hanstein, solicitors of complainant, Jeanette G. Schaffer; and Samuel P. Hagerman, Esquire, solicitor of defendant, American Bank and Trust Company;

And the Court having read the pleadings, and having taken proofs orally in open court, and having heard and considered the arguments of counsel thereon; and

It appearing to the satisfaction of the Court that the defendant, American Bank and Trust Company, set up and relied on claims to and estates and interests in the land and premises described in the bill of complaint in this cause; and

It further appearing to the Court that the land and premises described in the bill of complaint, by

reason of their being unimproved land, is not such land as is in the actual peaceable possession of the complainant, or subject to actual peaceable possession;

And the defendant having consented that this Court has jurisdiction to settle the title to the premises in question, and clear up all doubts and disputes concerning the same; and

10 It further appearing that the claim of the said defendant, American Bank and Trust Company, in and to the said lands and premises, which it claims and insisted on as aforesaid, is not valid, and that the said defendant has not any such estate or interest therein as was so by it claimed or set up in this cause; and no further claim being set up by said defendant, or now appearing, and it further appearing that the complainant has taken a default decree against the S. H. Robison Company and Realty Realization Company, the other defendants herein;
20 and the complainant appearing to be entitled to the relief prayed in her bill;

It is, on this 2nd day of April, 1929, ordered, adjudged and decreed that as to all of said lands and premises described in said bill of complaint, that the said defendant, American Bank and Trust Company, has no estate or interest in or encumbrance upon said lands and premises or any part thereof.

30 It is further ordered, adjudged and decreed, that as to all of the said lands and premises described in said bill of complaint, situate, lying and being in the City and County of Atlantic, State of New Jersey, bounded and described as follows:

BEGINNING at the southeasterly corner of Porter and Albany Avenues and thence (1) Eastwardly, along the southerly line of Porter Avenue 105 feet; thence (2) Southwardly parallel with Albany Avenue 25 feet; thence (3)

Westwardly, parallel with Porter Avenue 105 feet to the easterly line of Albany Avenue; thence (4) Northwardly along the said easterly line of Albany Avenue 25 feet to the place of beginning.

so far as relates to any claim thereon by or on behalf of the said defendant, American Bank and Trust Company, the title of the said complainant, Jeanette G. Schaffer, in and to the same and every 10 part thereof is hereby determined, fixed and settled, and declared to be good.

It is further ordered that said defendant, American Bank and Trust Company, pay to said complainant the costs of this suit to be taxed.

E. R. WALKER,
C.

Respectfully advised,
R. H. INGERSOLL,
V. C.

20

30

NOTICE OF APPEAL.

(Filed July 1, 1929.)

IN CHANCERY OF NEW JERSEY.

67/664.

10

Between

JEANETTE G. SCHAFFER,
Complainant,

and

REALTY REALIZATION Co.,
AMERICAN BANK AND
TRUST COMPANY, *et al.*,
etc.,

20

*Defendants.*On Bill, &c.
Notice of Appeal.

The defendant, American Bank and Trust Company, hereby appeals from the final decree made by the Chancellor on the advice of Vice-Chancellor Ingersoll, in the above-entitled cause, on April 2nd, 1929, and from the whole and every part thereof to the Court of Errors and Appeals in the last resort

30 in all causes.

Dated, June 28th, 1929.

SAMUEL P. HAGERMAN,
*Solicitor for and of Counsel
with American Bank and
Trust Company, one of
the Defendants.*

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

SAMUEL P. HAGERMAN,
Of Counsel with Defendant.

PETITION OF APPEAL.

(Filed July 19th, 1929.)

10

NEW JERSEY COURT OF ERRORS
AND APPEALS.

JEANETTE G. SCHAFFER,
Complainant-Appellee,

v.

REALTY REALIZATION COM-
PANY and AMERICAN BANK
AND TRUST COMPANY, *et*
als.,

Defendants-Appellant.

On Appeal from
Court of Chan-
cery.
Petition of Appeal.

20

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

30

The petition of The American Bank and Trust Company, the appellant in the above-entitled cause, respectfully shows that:

1. Petitioner finds itself aggrieved by a final decree made in the Court of Chancery, by his Honor, Edwin

Robert Walker, Chancellor of the State of New Jersey, on the advice of the Honorable Vice-Chancellor bearing date April 2nd, 1929, in a certain cause in said Court of Chancery, wherein the said Jeanette G. Schaffer is complainant, and the American Bank and Trust Company, is defendant (the other defendants not appearing or defending in this case), in this respect, to wit: that the said decree adjudges that the said American Bank and Trust Company
10 has no estate or interest in the real estate described in said decree, as was claimed by it or set up in this cause, by way of mortgage or otherwise, and that the title of the said complainant so far as relates to the said American Bank and Trust Company was thereby determined, and settled and held to be good.

2. And petitioner appeals from the decree of the Chancellor which decrees as aforesaid, upon the
20 ground that the same is erroneous in that the Chancellor erred in finding for complainant in that no possession in complainant was shown to exist.

3. And petitioner appeals from the decree of the Chancellor which decrees as aforesaid, upon the further ground that the same is erroneous in that the learned Vice-Chancellor refused to admit Mr. Walter Walls as a party to the suit, the facts showing that he had an interest or title to the mortgage covering
30 said premises which the decree will affect:

4. And petitioner appeals from the decree of the Chancellor which decrees as aforesaid, upon the further ground that the same is erroneous in that the learned Vice-Chancellor refused to permit Mr. Walls to testify whether he had received any notice of the notice of cutting out the right to redeem, it being

shown that he was a "person having an interest in the land sold for taxes."

5. And petitioner appeals from the decree of the Chancellor which decrees as aforesaid, upon the further ground that the same is erroneous in that the learned Vice-Chancellor held that the assignment to the American Bank, which was recorded took any rights of notice which Mr. Walls might have had away, so that he had no such interest requiring him to have notice of right to cut out redemption or interest in the mortgage. 10

6. And petitioner appeals from the decree of the Chancellor which decrees as aforesaid, upon the further ground that the same is erroneous in that it holds as sufficient description in the notice of redemption a description of the lot by block and number without the statutory requirement that the map be referred to. 20

7. And petitioner appeals from the decree of the Chancellor which decrees as aforesaid, upon the further ground that the same is erroneous in that the notice of redemption alleged to have been sent to the defendant mortgagee, this appellant, did not contain any sufficient description of the premises, as it was without any mention of street, number, boundaries, size, municipality, county or state. 30

8. And petitioner appeals from the decree of the Chancellor which decrees as aforesaid, upon the further ground that the same is erroneous in that the notice of redemption alleged to have been sent was described merely by a changeable and arbitrary block and number, that by itself was meaningless

and, by the addition of the words "Chelsea Heights" was misleading.

9. And petitioner appeals from the decree of the Chancellor which decrees as aforesaid, upon the further ground that there was nothing in the said description by block and number, whereby the premises described in said notice of redemption could be identified or connected up with the description of said
10 premises as contained in the mortgage.

10. And petitioner appeals from the decree of the Chancellor which decrees as aforesaid, upon the further ground that the same is erroneous in that testimony was denied to be heard to the effect that the block and number of said lot in 1913, the date of the mortgage held by appellee, was different from that of 1915, the year for which the sale was made, and still different in 1919 when the sale was advertised.

20

11. And petitioner appeals from the decree of the Chancellor which decrees as aforesaid, upon the ground that the same is erroneous, in that the affidavit of mailing of the notice to redeem was insufficient as it did not contain any facts whatsoever showing inquiry, as a condition precedent as provided by the act before mailing.

12. And petitioner appeals from the decree of the
30 Chancellor which decrees as aforesaid, upon the ground that the same is erroneous in that the affidavit of mailing of said notice to redeem does not show that full postage was prepaid on said letter, or where or how the same was mailed.

13. And petitioner appeals from the decree of the Chancellor which decrees as aforesaid, upon the

ground that the same is erroneous in that the alleged notice to redeem was not addressed to the "American Bank," but to a corporation of a different title, to wit "American Bank of Philadelphia, Philadelphia, Pa."

14. And petitioner appeals from the decree of the Chancellor which decrees as aforesaid, upon the ground that the same is erroneous in that the alleged notice of redemption was not to the appellee, nor described it as mortgagee, or any words showing the character of the interest of appellee in the premises in question. 10

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

SAMUEL P. HAGERMAN, 20
*Solicitor for and of Counsel
with Appellant.*

ANSWER TO PETITION OF APPEAL.

(Filed July , 1929.)

NEW JERSEY COURT OF ERRORS
AND APPEALS.

10	JEANETTE G. SCHAFFER, <i>Complainant-Appellee,</i> v. REALTY REALIZATION COM- PANY, <i>et al.,</i> <i>Defendants-Appellant.</i>	}	On Appeal. Answer to Petition of Appeal.
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20 The answer of the above-named respondent to the petition of appeal of the American Bank and Trust Company, appellant.

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, nevertheless, says and admits that a decree was on the 2nd day of April, 1929, 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.

30 And this respondent is advised and believes that the said decree is agreeable to equity, and it prays that the same may be affirmed, with costs to be adjudged to this respondent.

THOMPSON & HANSTEIN,
Solicitors for and of Counsel
with Respondent.

New Jersey Court of Errors and Appeals

Between

JEANETTE G. SCHAFFER,
Complainant-Respondent,

and

REALTY REALIZATION COMPANY and
AMERICAN BANK AND TRUST
COMPANY, *et al.,*
Defendants-Appellants.

ON APPEAL.

BRIEF OF COMPLAINANT-RESPONDENT.

This is a bill to quiet title, involving two tracts of land. As to one tract, namely, that referred to in Part II of the bill, no defenses were interposed, and a decree has accordingly been entered. No further consideration need be given to it.

As to the other tract, described in Part I of the bill, no defense was interposed, except by the defendant, American Bank and Trust Company, the appellant herein. Default decrees were taken as against all of the other defendants. Vice-Chancellor

Ingersoll determined against the answering defendant, and advised a decree in favor of the complainant.

The defendant, American Bank and Trust Company, was made a defendant because the American Bank had been the owner by assignment, of a mortgage covering the premises in question. After the assignment, the name of the American Bank was changed to the American Bank and Trust Company, and it was sued in that way.

The complainant obtained her title from two sources; one, by the perfection by her predecessor in title of a tax sale, and the other by a sheriff's deed to her predecessor in title.

The defendant-appellant, American Bank and Trust Company, contests the validity of the tax proceedings which resulted in the cutting out of its mortgage, on the ground that the notice to redeem served upon the defendant-appellant did not contain a sufficient description. The complainant contended that the mortgage was cut out by a proper notice duly mailed.

The property is described in the bill, of course, by metes and bounds. In the certificate of tax sale it is described as Block 92, Lot 1. There is no contention that the property described in the certificate of tax sale does not cover the property in question.

“The Court: Do you claim that the number of the lot on the tax certificate does not cover your property?”

Mr. Hagerman: No, sir” (S. C. p. 35, l. 19).

The notice complained of is set out, commencing at the bottom of page 47 of the State of the Case, and continuing on page 48. It sets forth that the sale was held by Lewis L. Mathis, Tax Collector of the City of Atlantic City, and that one, Karl

Schaffer bought in the property, "assessed in the name of Realty Realization Co., and described as follows: Block 92, Lot 1, Chelsea Heights." The defendant-appellant called to the witness stand Mr. Hugh Genoe, one of the city assessors, and he testified that the assessors' books showed the premises to be assessed as Block 92, Lot 1, Chelsea Heights.

"The Court: Doesn't your book show their block and lot there?

Answer: Block 92, Lot 1, Chelsea Heights.

Mr. Hanstein: Chelsea Heights?

Answer: Yes, sir, Chelsea Heights section"
(S. C. p. 38, l. 22).

The objection that is made to the notice is that it contains, after the block and lot number, the word "Chelsea Heights." Chelsea Heights is a well-known section of Atlantic City, being meadow-land lying directly across the Thoroughfare from the Chelsea section of Atlantic City. The assessors' maps, as the testimony shows, carry the designation "Chelsea Heights." This is undoubtedly a matter of convenience to the assessors, and to all other persons interested in designating the area in which Block 92, Lot 1 is located.

The appellant contends that the description contained in the notice was *likely* to confuse the mortgagee to whom it was sent, contending that it is difficult for anyone to know where Chelsea Heights is located. The Act does not contain any specific declaration of what must be set forth in the notice. However, it is perfectly obvious to any intelligent person that when the notice refers to a sale by the Tax Collector of the City of Atlantic City, that nothing other than land in the City of Atlantic City could be referred to. Furthermore, the designation used in the notice is the designation used by the tax assessors

and collector. It is difficult for us to see how the notice could have been made any clearer.

The appellant refers to the case of *Trustees of Riverdale Church v. Pugh*, a Maryland case, reported in 140 Atlantic Reporter, 844. That case refers to an advertisement of sale, and is clearly not applicable, in that sales in Maryland are by the county, and without some reference to the city in which the land is located it would obviously be impossible to locate the land. The case clearly has no application.

Wells v. Schaffer, 98 N. J. Equity 31, cited by appellant, clearly has no application, because, as pointed out by the learned Vice-Chancellor, the notice in that case called for the redemption of certain lots; whereas, it should have been for "parts of lots." In other words, the property is mis-described in the notice. It should be pointed out in connection with the Wells case, that the reference is to a sub-division section, namely, Lorraine, which is located in the Borough of Roselle, and the Court made no point of the fact that the description of the lots in the notice did not contain "Borough of Roselle" after the description: "Lots 1, 2, 3, 4, 5, 6, Lorraine."

In *Reimer v. Newell*, 49 N. W. 865, an abstract of which appears in 45 Century Digest "Taxation" Section 1421, the notice of the expiration of the time of redemption from a tax sale described the land as Lot 8, Block 4 of Pennman Addition, without mentioning the State, county or city, but stating it had been sold pursuant to a tax judgment of the District Court of the county. Held—that the notice sufficiently described the property.

In *Drew v. Morill*, 62 N. H. 23, the Court said that it is not required that the notice of sale for taxes on resident land should contain the same descrip-

tion of the land as that in the assessment, and in *French v. Patterson*, 61 Maine 203, it was held that the description in the advertisement of sale of land of non-residents for taxes is sufficient if it describes the land so that it can "be identified with reasonable certainty," and a minute description need not be given.

In this pending case the Vice-Chancellor held, with respect to the notice:

"This notice fulfills all the demands of the statute. *Simonton's Tax Sales in New Jersey*, Section Edition, page 101, says: 'There does not seem to be the same necessity, however, for such precise particularity in the description of the land, as is required in the case of the certificate or in prior proceedings and mere inaccuracies in this respect * * * or other minor defects of this character, not operating to the prejudice of the parties served, it is held, will not be fatal' " (S. C., p. 65, l. 30 to p. 66, l. 5).

II.

The appellant contends that the addition of the words "Chelsea Heights" makes the notice misleading. However, it seems to us that the absence of any proof that the bank was misled fully answers the appellant's argument. There is no suggestion anywhere in the case that the notice was not received. If it had not been received I think we can safely assume that that fact would have been proven. There being no testimony on that score, and there being unqualified proof that the notice had been mailed, it seems to us that it can be assuredly assumed that the notice was actually received.

If the notice was misleading there would have

been some testimony to that effect. If the notice had been misleading the defendant would undoubtedly have gotten in touch with Karl Schaffer, the sender of the notice, to ascertain what property was involved. None of that appears in the case, and it seems to us that it must be assumed that the notice was received, that it was understood and that the bank concluded that the property was not worth protecting.

The mortgage had been assigned to the bank in 1913 for a note of \$1500 discounted in 1913 (S. C., p. 25, l. 12). The notice was mailed on April 15th, 1919, six years later. Nothing was paid upon this note until May 10th, 1923 (S. C., p. 26, l. 2).

It is quite obvious that the bank, holding a mortgage securing a note, upon which no payments had been made during the six years it held the same, up to the time of the receipt of the notice, obviously regarded both the note and the mortgage as of no value, and it obviously concluded that it was not interested in redeeming the property from the taxes.

Objections somewhat similar to those now made by defendant were made as to a notice served under proceedings had under the Martin Act in *Milmoe v. Zimmerman*, 95 Equity 85, 122 Atlantic 600. In that case Vice-Chancellor Backes said that the

“legislation imposes on the owner the burden of overcoming the presumption of title in the purchaser by showing that non-compliance with the provision of the statute is substantial and resulted in injury to him; in other words, that the non-compliance is not a mere irregularity or formal defect in the procedure. The objections to the proofs of service of both sets of notices are purely technical. That service of each set was actually made upon the owners as directed by the statute is not disputed. * * * The things

to which the complainants point, and on which they rely to overcome the presumption, is that the proofs do not set forth the actual facts of service in the precise language of the statute. They do, however, set forth such facts, from which, clearly, can be inferred that service was made in substantial compliance with the statute."

The Vice-Chancellor's opinion was affirmed in 97 Equity 326, 127 Atlantic 157, in which the Court said, "we concur in this decision and in the views relating thereto expressed in the opinion filed by the learned Vice-Chancellor." Despite the fact that the proceedings in *Milmoe v. Zimmerman* were had under a statute different in terms from that involved in the present case, nevertheless, the statute there involved is fundamentally the same type of statute as is the one in this case—that is, both are statutes providing for the assessment and collection of taxes, for the sale of land for the non-payment of taxes, and for the cutting out of delinquent taxpayers from their interest in the land by the service of notices to redeem. Complainant submits, therefore, that *Milmoe v. Zimmerman* affords an analogy which, in the interest of harmonizing the requirements of statutes covering substantially the same subject-matter, should be followed as a precedent in this case. Defendant should be required to show some actual deception resulting from the alleged defects in the notice served upon it before being permitted to contend that because of such defects the notice is a nullity. Such a requirement is, moreover, reasonable.

Defendant made no attempt to show that it was actually deceived and obviously could not, since it

is apparent from an inspection of the notice that it reasonably describes the land to which it relates.

ANSWER TO POINT III.

The appellant's third point relates to the failure of the affidavit of mailing to disclose such things as the source of the deponent's knowledge as to the address of the bank. We conceive that there is no merit whatever to this point.

The affidavit of mailing which appears on page 48 of the State of the Case, says that the notice was mailed to the American Bank of Philadelphia, Pennsylvania, c/o Thos. S. Boyle, President, Broad and Passyunk Avenues, Philadelphia, Pennsylvania. The testimony shows that Thomas S. Boyle was president of the bank in 1919, and that the bank was located at Broad and Passyunk Avenues, Philadelphia, Pennsylvania (S. C., p. 29, ll. 1-9), at the time of the mailing of the notice.

If there was some evidence that the address to which the notice was mailed was the incorrect address, or that there was some evidence that the notice had not been received, we might be able to understand the appellant arguing the point, but when the notice is actually mailed to the correct address, we see no occasion for anything more to be said in the affidavit of mailing. The Chancery practice in mailing notices of publication, it seems to us, is analogous. When the address is known, all that needs to be set out in the affidavit of mailing is the fact of mailing, and there need be no additional proof as to inquiry, &c.

The appellant makes the point that there is no proof from what place the notice was mailed. This

is immaterial. All the statute requires is that it should be mailed.

Appellant makes the point that there is no statement that there was postage prepaid on the notice. The Act does not require that the affidavit should set up the payment of postage. The fact is, the affidavit sets forth that "the notice was mailed."

"'Mailed,' as applied to a letter, means that the letter was properly prepared for transmission by the service of the postal department, and that it was put in the custody of the officer charged with forwarding the mail, and a notary's certificate of protest 'that he personally mailed' notices in the post office on a certain date is not objectionable in not stating that the postage was prepaid, as such would be implied. *Pier v. Henrichshoffen*, 67 Mo. 163, 169, 29 Am. Rep. 501 (cited in *Rolia State Bank v. Pezoldt*, 89 S. W. 51, 53, 95 Mo. App. 404).

The word 'mailed' is usually employed to designate the placing of letters or parcels in a post office to be delivered under the public authority, the delivery of which is prohibited unless the postage thereon is prepaid. When the word 'mailed' appears as a note or memorandum in the official register of a deceased notary, it is consistent with reason and the actual meaning of the term to presume that it described what that act in its common and ordinary performance calls for. *National Butchers' & Drovers' Bank v. DeGroot*, 43 N. Y. Super. Ct. (11 Jones & S.), 341, 344."

The affidavit clearly is in accordance with the Statute.

ANSWER TO POINTS IV AND V.

Point 4 in the appellant's brief argues that Walter Walls, the assignor of the mortgage held by the defendant-appellant, was entitled to be made a party defendant.

Our answer to that proposition is that, assuming in the first place, that he was entitled to be made a party defendant, the only one interested in that is Mr. Walls, and it does not constitute a ground of appeal for the defendant. The defendant's rights were adjudicated in the suit. If Walls has any rights they are unaffected by the decree.

Assuming, that Walls is entitled to be made a party defendant, it is difficult to conceive why the appealing defendant would be entitled to a reversal for the failure to admit Walls for the purpose of taking care of his own interest.

The fact is that Walls borrowed money from the defendant and assigned to the defendant, as security for the loan, the mortgage (Exhibit D3, S. C., p. 51). The assignment of the mortgage is Exhibit D4 (S. C., pp. 57 and 58). The assignment, as will be observed, is absolute on its face, to the American Bank, the defendant. It was recorded June, 1913, and was of record at the time Schaffer mailed his notice, April, 1919.

Obviously, there was no occasion to serve a notice on Walls. He had parted with all of his record interest. There is no occasion to serve notice except upon those having an interest in the property, at the time of the service of the notice. Walls obviously had no interest at the time notice was served. He was not entitled to notice of redemption.

It is quite apparent that this whole case turns upon the question as to whether or not the defen-

dant, American Bank and Trust Company, was cut out by the tax proceedings. We contend that it was. The notice that was served upon it was mailed to the correct address; it contained all the statutory requirements, and an exact description of the property as shown upon the books of the tax assessors. The description in the notice described the premises in question. It was, therefore, a valid notice and effective to cut out all the rights of the American Bank and Trust Company.

There was no occasion to give Walter Walls notice, nor was he entitled to be made a party to this suit. The decision of the Vice-Chancellor is proper, and should be sustained.

THOMPSON & HANSTEIN,
Solicitors for and of Counsel with
Complainant-Respondent.

IN THE

New Jersey Court of Errors and Appeals

Between

JEANETTE G. SCHAFFER,
Complainant-Appellee,

and

REALTY REALIZATION COMPANY, and
AMERICAN BANK AND TRUST
COMPANY, *et als., Appellant,*
Defendants.

POINTS ON BEHALF OF THE AMERICAN
BANK AND TRUST COMPANY, ONE
OF THE DEFENDANTS.

This is an appeal from a decree entered April 2nd, 1929, advised by Honorable Vice-Chancellor Robert H. Ingersoll, on a bill to quiet title, to a lot situate at the southeast corner of Porter and Albany Avenues, in the City of Atlantic City; the bill also contains a Part II, relating to other land, which is not the subject of this appeal, and is in no way connected with this defendant or the questions raised herein.

The pleadings and proofs show that the complainant-appellee claims title by virtue of a tax deed, as

provided by the Tax Act of 1903, that the former owner, Realty Realization Company, executed a mortgage to Walter Walls, bearing date April 7th, 1913, to secure payment of \$2,500 covering premises in question; that on or about May 31st, 1913, the said Walter Walls, borrowed \$1500 from the "American Bank," and assigned this mortgage with other collateral by an assignment bearing said date, and duly recorded; that the said Walls subsequently paid \$500 on account, and is now and has always been debtor to said American Bank, for the balance of \$1,000 with interest; that subsequently the American Bank changed its title to the "American Bank and Trust Company;" that the only interest of the said bank is as security for said loan and that the said Walter Walls is the equitable and beneficial owner of all right, title and interest therein over and above said loan, that the files of the said bank contain no record or statement of the receipt at any time of the alleged notice to redeem; and that the officers of the bank had no knowledge or information of ever having received any such notice.

SPECIFICATIONS OF ERRORS IN DECREE.

The appellant complains that it is aggrieved by reason of the decree entered being erroneous in the following respects:

1. That it is based on a defective or insufficient description of the lot in the notice to redeem.
2. That it is based on a defective and insufficient proof of facts and service of the notice to redeem.

3. In finding that the interest of appellant was cut off and barred by said alleged defective notice and service thereof.

4. In not finding that Walter Walls, the owner of the mortgage assigned to the appellant as collateral security for loan, was a party interested, and thereby denying him the right to be joined as a party, and entitled to both notice to redeem, and the right to redeem.

Let us first compare the various descriptions of the premises involved in this suit, to wit:

(State of case p. 53.)

(P. 1.)
(1) The mortgage, the bill to quiet title, and the notice of publication contain the following:

“All that certain lot, tract or parcel of land, situate in the City of Atlantic City, County of Atlantic, and State of New Jersey, bounded and described as follows:

BEGINNING at the southeasterly corner of Porter and Albany Avenues, and thence (1) Eastwardly along the Southerly line of Porter Avenue, one hundred five feet; thence (2) Southwardly parallel with Albany Avenue, twenty-five feet; thence (3) Westwardly parallel with Porter Avenue, one hundred and five feet to the Easterly line of Albany Avenue; thence (4) Northwardly along the said Easterly line of Albany Avenue, twenty-five feet to the place of Beginning.”

(2) The certificate of tax sale, as well as the tax deed, states the description as follows:

“Described as follows: to wit: Block 92, Lot 1,

4 *Brief of American Bank and Trust
Company, Defendant*

size of lot 25 x 105 feet, as designated on the official maps and duplicates used by the assessors of the City of Atlantic City."

(State of case p. 41)

(3) The notice to redeem according to the copy annexed to the tax sale deed, contains the following description, to wit:

"Described as follows: Block 92, Lot 1, Chelsea Heights." *state of case p. 48)*

Complaint is made that this third description is insufficient according to the provisions of the statute, and is misleading on its own account, taken by itself.

POINT I.

THAT THE DESCRIPTION OF THE LOT IN THE NOTICE TO REDEEM BY BLOCK AND NUMBER, WITHOUT REFERENCE TO THE MAP IS A DEFECTIVE DESCRIPTION, AND INSUFFICIENT TO GIVE NOTICE TO MORTGAGEE.

Chapter No. 175 of the Laws of 1913, entitled "An Act providing for the preparation and use of maps for purposes of taxation in all taxing districts," provides, as follows, to wit:

"1. Each city, borough, village and town, shall provide for the use of the assessor, or other taxing officials, an accurate map of its territory, prepared for purposes of taxation, showing among other things the location and

width of each street, road or avenue, and of each individual lot of land or premises, and cause each parcel or lot of land to be numbered or otherwise designated thereon, AND IT SHALL BE A SUFFICIENT DESCRIPTION OF THE PROPERTY FOR THE PURPOSES OF TAXATION, TO REFER TO SAID MAP BY LOT AND BLOCK NUMBER."

It is to be observed that the tax sale certificate complies with the provisions of the Act, see above description No. 2; on the other hand, description No. 3, which was used in the notice to redeem, states only the block and lot number, and instead of referring to the tax map, as directed by the map, substitutes the words "Chelsea Heights."

It is clear the Act has expressly defined how these artificial or blind designations shall be used, that is, by reference to the map; it would seem to be equally clear, that any use of the block and number alone, is not in compliance with the Act, and is not a "sufficient description of the property for the purposes of taxation." When it is further considered that these designations are made by either the assessor or engineer, without notice to mortgagees, or even to the owner or any one else, and may vary from year to year, as subdivisions, or changes of boundaries may require, the reason behind the Act, requiring that the description be tied up with the taxing map is apparent. Further, although the owner may keep in touch with the changes from year to year, he being primarily liable for the taxes, it certainly would be a hardship to require that all other persons in interest, must annually check up with the tax map, any change of designation; for

instance, the mortgagee does not get the tax bill ordinarily; a bank and trust company would naturally list their holdings by a description of a lot mentioning the streets, as in this case at the southeast corner of Porter and Albany Avenues; and not a changeable local tax designation; here, we have a notice sent to the bank in another State, not containing anything whereby the description can be tied up with their description in the mortgage, but a reference to a block and number, not referring to a tax map, but to some plan, or place described as Chelsea Heights; surely it is only reasonable to require that when a changeable, temporary reference or description by numbers is given, that there should be a reference to the map, or key of which it is a part; assuming the owner might know it, the mortgagee or other person than the owner, has no chance at all; it is respectfully submitted that the Act has, by its express terms, provided that a sufficient notice can only be given by including reference to the map; and that anything less than the statute mentioned is defective and misleading.

POINT II.

THAT THE DESCRIPTION BY BLOCK AND NUMBER, WITHOUT REFERRING TO THE MAP, EVEN WITHOUT THE STATUTORY REQUIREMENT WOULD BE INSUFFICIENT AND THE WORDS "CHELSEA HEIGHTS" MAKE IT MISLEADING.

The words "Chelsea Heights" are meaningless to the average person, although a conveyancer or an

attorney, or perhaps to some owners, or citizens resident in the community, it might suggest a plan; however, we are not told whether it is a subdivision or the name of a community, a map, or anything; and if a plan, whether it is recorded in the county clerk's office, the collector's office, the city plan, or the private plan of some promoter; the words "Chelsea Heights," might have a definite meaning as to location to some one locally acquainted; however, such names are often very misleading to outsiders, for instance, "Atlantic City Heights" is about ten miles from Atlantic City, and outside the municipality; to many persons, the local divisions of Chelsea, Ventnor, Margate and other designations, or variations of such names are very confusing, inasmuch as there is nothing to indicate to a casual visitor who looks on the whole island as the City of Atlantic City, where one begins, and the other ends. Assuming Chelsea Heights to be a subdivision, there is no mention in the description (see No. 1 above), as set forth in the mortgage or bill to quiet title, whatsoever to "Chelsea Heights," which word is apparently a stranger to the title.

A further reason why the notice to redeem should contain an amplified or complete description that is capable of being understood by the public generally, is that the Tax Act of 1902, Sec. 57, provides who are entitled to notice to redeem, to wit:

"The owner, mortgagee, occupant, or other persons having an interest in the land sold for taxes, may redeem the same,"

whereby it directs that persons having all kinds of legal or equitable interest, judgment creditors, etc., on whom is no duty to know the artificial descrip-

tion of the land shall be, however, notified; it is reasonable to assume that this notice means a self-sufficient description, readily located by the public generally, without the necessity of making fine inferences or guesses as to what property is meant. There is nothing in the description to enable a stranger to the locality, such for instance, as the officers and clerks of the American Bank in another city and State to identify the lot.

Although the Act of 1913, provides for a map for special purposes of taxation, nevertheless, many municipalities have not adopted this system, but continue to describe the properties preferably by a reference to familiar number and street locations, so that the fact of block and number cannot be said to be in the nature of constructive notice, unless a taxing map is specially referred to.

The confusion resulting from such incomplete references in a case very similar to this case arose in the case of *Trustees of Riverdale Church v. Pugh & Company* (1928), Court of Appeals of Maryland, 140 Atl. Rep. 844, 848, and the reasoning in that case applies with full application to this case, to wit:

“An examination of the advertisement shows that it fails to state the quantity of land to be sold, or the location of the property, except that the land was designated as lots ‘17, 18, Block 34, Riverdale, Liber 4, folio 174.’ The purpose of such an advertisement has been said to be dual. First, to warn the owner that his property is about to be sold for taxes; and, second, to apprise prospective buyers of what property the treasurer proposed to sell. * * * While the advertisement in this case may conceivably have been sufficient to warn the owner of the fact that his property was about to be sold, it was

certainly insufficient to inform persons who might desire to bid on it, of its area and location. Reference was made as has been stated, to 'Liber 4, folio 174,' but nothing was added to show whether it was a record of the treasurer's office, the county commissioner's office, or a land record of Prince George's County; or indeed what it was. It could be inferred that 'Riverdale' is a district of Prince George's County, and that 'Liber 4,' is a land record of that county, but such an advertisement ought at least be definite enough to IDENTIFY THE PROPERTY ADVERTISED, WITHOUT THE ASSISTANCE OF A CONVEYANCER, AND OUGHT NOT TO REQUIRE ITS IDENTITY TO DEPEND UPON GUESSES OR INFERENCES. 'Block 34,' would mean nothing unless connected by reference WITH SOME PLAN OR PLAT BY WHICH IT COULD BE IDENTIFIED, and the advertisement contained no such reference. In our opinion, the advertisement failed to comply with the plain and obvious intent of the statute in that it failed to give such a description of the property as would afford reasonable information of its location to prospective buyers."

Although the above question was raised on the description of a tax sale, the same reasoning can well apply to the list of persons whom the Act provides shall have notice to redeem. Certainly, the reasoning, that the "Block 92, Lot 1, Chelsea Heights," without more, to quote the above case, "would mean nothing unless connected by reference with some plan or plat by which it could be identified," and the notice contained no such reference.

In the case of *Welles v. Schaffer*, 98 N. J. E. 31, the Court held:

“The certificate of sale of the group of lots sold to Schaffer describes the property as ‘Block 10, lots, parts, 1, 2, 3, 4, 5 and 6, Lorraine.’ The certificate is, no doubt, void for uncertainty. The notice calls on Welles, *et al.*, to redeem lots 1, 2, 3, 4, 5 and 6—not parts of lots. This is fatal to the foreclosure, and complainants are entitled to redeem, as to them.”

The discrepancy held sufficient to be an error in that case was the difference between certificate of tax sale describing parts of lots, and the notice to redeem describing whole lots; in the case at bar, the discrepancy between the certificate of tax sale, describing the lot as Block 92, Lot 1. Referring to tax assessors map, whereas the notice to redeem, describes it as “Block 92, Lot 1, Chelsea Heights”—it not appearing anywhere in the evidence whether “Chelsea Heights” was a private plan, the name of suburb, or what it might be; but it appearing that the name was foreign or not mentioned in the description contained in the mortgage, or the deed, or the bill to quiet title. It is submitted that it, too, was erroneous and misleading.

POINT III.

THAT THE PROOF OF SERVICE OF THE NOTICE TO REDEEM IS DEFECTIVE IN THAT IT FAILS TO SHOW FACTS OR CONDITIONS PRELIMINARY TO MAILING AS PROVIDED BY STATUTE.

The proceedings on which the tax deed is based are under the Act entitled, “An Act for the assess-

ment and collection of taxes," P. L. 1903, p. 394, and provisions for service of notice of redemption are provided as follows:

"Sec. 59. The purchaser of land at tax sale may at any time within twenty years after the purchase give written notice to all persons interested in the land of their right to redeem and that unless they do so, within the term of two years after the sale, if the notice is served more than sixty days before the end of the term, or within sixty days after the service of said notice, if served later, the right of redemption will be barred; this notice shall BE SERVED PERSONALLY, ON PERSONS INTERESTED WHO RESIDE IN THE TAXING DISTRICT, AND ON THOSE WHO RESIDE OUT OF THE DISTRICT, IT MAY BE SERVED PERSONALLY, OR BY MAILING TO THEIR POST OFFICE ADDRESS, IF IT CAN BE ASCERTAINED, and by * * * posting on the premises sold, if it can not be ascertained; * * * the purchaser may after the time to redeem has expired, without redemption, annex the notice and affidavit of service to the certificate of sale, together with an affidavit that the sale has not been redeemed, and record and file the same therewith, in the office of the county clerk or register where the same shall be recorded AS A DEED OR CONVEYANCE, and the SAID NOTICE AND AFFIDAVITS AND THE RECORD THEREOF, SHALL BE PRESUMPTIVE EVIDENCE OF THE SERVICE AND FACTS THEREIN STATED."

The following is a complete copy of the affidavit of service:

“State of New Jersey, County of Union, ss.

Karl Schaffer, being duly sworn deposes and says: That on the fifteenth day of April, 1919, he mailed a duplicate of the within notice to the American Bank of Philadelphia, c/o Thomas S. Boyle, president, Broad and Passayunk Avenue, Philadelphia, Pennsylvania.

Karl Schaffer.

Sworn and subscribed before me
this nineteenth day of April, 1919.

Mabel Seibert,

Notary Public of New Jersey.”

(state of case p48)

It is to be noted that this affidavit merely states the fact of mailing with the address; the Act requires personal service on those who reside in the taxing district, in the first instance; the notice can not be left with some one of the family as is provided for a summons, but like service of subpoena in divorce, can only be personal; the reason being that valuable property rights are subject to become confiscated for a mere pittance of its value; the words “if it can be ascertained” as well as the requiring of personal service if resident in the district, indicate that in all cases, an inquiry must be first made, and then service can be made accordingly; service by mailing can only be made when the party interested resides without the district, and his post office address can be ascertained; as the Act directs that such inquiry in all cases be made, the affidavit of service should contain facts showing how, and by whom and with what result the inquiry was made, so that the reason or preliminary conditions authorizing mailing affirmatively and positively, appear; the affidavit in question is absolutely silent as to any

kind of inquiry at all having been made, and we are left to conjecture that defendant bank was not a resident; if the party giving notice to redeem had personal knowledge as to the American Bank, or if he looked first in the local city directory, or telephone book, or inquired of the department of banking, or otherwise he should have stated the fact; whether he found the American Bank was a single person or a group of persons, trading as the "American Bank," or was a corporation under the laws of New Jersey, or elsewhere, the fact should be stated; was the letter addressed to the post office of the bank? This fact the statute requires specially to be found; we are given an address, care of the president, but why was it not mailed to the bank itself direct? No facts appear to justify the necessity of mailing, or the address to which it was mailed, and no post office address is stated.

Further, we are not told where it was mailed, it might have been in Atlantic City, Camden or Elizabeth; there is no statement that there was full paid or sufficient postage prepaid on it; perhaps, we are to assume this along with all the other facts; however, the Act requires the express statement of required statutory facts to give justification, not guesses or inferences.

"There is a marked distinction between an affidavit which presents some evidence on a vital point but clearly of a character too unsatisfactory to justify an order for publication of summons based upon it, and an affidavit which presents no evidence at all tending to prove the essential fact. In the former case the Judge might be satisfied upon very slender and inconclusive testimony; but there being some appreciable evidence of a legal character, which calls

into action the judgment of the Judge, he has jurisdiction to consider and to pass upon it. He may be wholly and egregiously wrong in his conclusion upon the weight of the evidence, but he has jurisdiction to act upon it, and his action is simply erroneous. If, however, there IS A TOTAL WANT OF EVIDENCE ON ANY POINT necessary to be determined, * * * then there is nothing upon which he is authorized to act; the evidence, which is the very basis of his jurisdiction and upon which he depends, is wanting, and his action is without authority, in one case there is a defective jurisdiction, in the other only an error of judgment." *Forbes v. Hyde*, 31 Cal. 342.

The words of the Court in a discussion of a similar affidavit in *Taylor v. Wright*, 121 Ill. 455, is directly applicable, to wit:

"Plainly, these are facts, and not matters of opinion, and a party either knows what the fact is, or he has no actual knowledge. If he knows what the fact is, he must state it, if he has no actual knowledge he is incompetent, to make the statement."

That the same principles hold true in the construction of notices sent in tax proceedings in New Jersey, has been held by Vice-Chancellor Leaming, in the case of *Compton v. Feldmark*, 82 N. J. E. 112, to wit:

"The proof of service transmitted to the clerk with the notice and forming a part of the record does not disclose that the statutory requirements touching service were complied with. The

statute only authorized service by mail in case the mortgagee cannot be found. Under a provision of that nature 'due proof' of service, which the purchaser is required to transmit to the clerk would seem to NECESSARILY INCLUDE PROOF THAT SOME EFFORT WAS MADE TO MAKE PERSONAL SERVICE. See Gardner v. Small, 17 N. J. L. 162. The affidavit does not even disclose any knowledge of the party making the affidavit touching the last-known post office address of the mortgagee, nor does it specifically state to what address the notice was in fact sent, or that the postage was prepaid as required by the Act. It is clearly impossible to treat this recorded notice and affidavit as evidence of compliance with the statutory requirements of Section 12 of the Act touching service, in the absence of some legislation giving to the record presumptive force."

The appellant denied in its pleading the receipt of said notice; at the hearing, it stated that there was no record of it and no knowledge or information of it by its officers or employes. It is a well known fact that a bank is very careful of any notice or even rumor affecting its collateral, and it might almost be presumed that if such notice as is alleged was actually received, that it would most certainly have received proper attention; as soon as the notice of publication in this case was received containing an intelligible description, the appellant acted forthwith in an effort to protect its security.

The only single fact indicating the notice was mailed is the isolated record as contained in the affidavit; there was nothing in the proofs to corroborate it.

An affidavit very similar to this one has recently been held insufficient by Vice-Chancellor Backes, in the case of *Candless, Inc. v. Schaffer*, 145 Atl. 566:

“The bill raises the single issue that notice to redeem was not served. The statutory method of service is, if the owner resides out of the taxing district, personally or by mailing to his post office address. The affidavit of service of the notice to redeem recorded with a certificate of sale discloses that Ruth Walsh, agent of Schaffer, October 2nd, 1915, ‘mailed a duplicate of the within notice to redeem addressed to Henry McCandless, 835 Summer Street, Elizabeth, N. J.’ The proof of service is defective in that it is not made to appear that 835 Summer Street, Elizabeth, N. J., was the post office address of Henry McCandless, Sections 56 and 59 of the Tax Act provided that after the time to redeem had expired the purchaser may annex the proof of service and of failure to redeem to the certificate of sale and record them as a deed or conveyance, and that the notice and affidavit and the record thereof shall be presumptive evidence of the service and facts therein contained, and that the certificate shall be presumptive evidence of the title of the purchaser. THAT MEANS THAT THE RECORD IN ALL ITS ESSENTIALS MUST BE STATUTORILY PERFECT TO RAISE THE PRESUMPTION. HERE, THE DEFECTIVE PROOF OF SERVICE INVALIDATES THE CERTIFICATE OF SALE AS PRESUMPTIVE EVIDENCE OF TITLE AND RENDERS ABORTIVE SCHAFFER’S RECORD TITLE AS A DEFENSE TO THE RIGHT TO REDEEM.”

Further as to the said affidavit the Court continues:

“The defective affidavit of mailing is not available as evidence *pro tanto* of its contents. The presumptive evidence ‘of the service and facts therein stated’ obtains only where all the statutory requirements have been complied with to constitute the record a deed or conveyance of title. Short of this the affidavit is not evidential.”

In the case at bar, there is no proof that the address to which the letter is sent is the post office address of the bank, and it is respectfully submitted that the ruling so clearly stated in the above case, applies directly to this case as the affidavits appear to be identical in form, differing only in time and name.

POINT IV.

THAT THIS PROCEEDING BEING A CONFISCATORY PROCEEDING AND NOT BASED ON A VALUABLE CONSIDERATION, WALTER WALLS, THE PARTY INTERESTED IN MORTGAGE AFTER PAYMENT OF THE LOAN FOR WHICH IT WAS COLLATERAL WAS ENTITLED TO BE MADE A PARTY ON HIS APPLICATION.

After evidence showing that Mr. Walter Walls was the real owner of the mortgage over and beyond the amount due on the collateral, motion was made on his behalf that he be joined as a party interested

or, affected by the decree. This request was denied by the Court. (*State of case p 33*)

Chancery Rule No. 13, provides, *inter alia*:

“Where a person not a party has an interest or title which the decree will affect, the Court on his application shall direct him to be made a party.”

This principle has been construed in the following cases, to wit:

“In proceedings involving trust estate, defendants having an interest in trust estate which would be affected by Court’s determination were necessary parties, and no decree binding on them can be made unless they are brought into court.”

In re Kiger’s Est., 98 N. J. E. 512.

Mr. Walls certainly had an interest in the mortgage, and as title was in the bank, his position was similar to an interest in a trust estate:

“The rule has a much wider sweep than the superseded Sections 29 and 30, and also than Section 58, of the Chancery Act (1 Comp. St. 1910, p. 432), and lets in parties in all manner of suits whose interests will be affected by the decree, so that they may have their day in court, and be heard in the pending suit and upon all pertinent issues they may present, without limitation or restriction, save only as to convenience of trial, see *Weinberger v. Goldstein*, 99 N. J. E. 1.”

Fisovitz v. Cordosco Const. Co., 140 Atl. 573.

POINT V.

THAT MR. WALLS BEING A "PERSON HAVING AN INTEREST IN THE LAND SOLD FOR TAXES" WAS ENTITLED TO NOTICE TO REDEEM IN HIS OWN CAPACITY.

Not only was Mr. Walls entitled to become a party by reason of the above construction but also by the terms of the Tax Act of 1903, itself. In Section 57, as amended by Chapter 273, of the Laws of 1916, page 580, it is provided, *inter alia*:

"The owner, mortgagee, occupant or other person having an interest in or on the land sold for taxes may redeem the same at any time within two years, from the date of sale, or AT ANY TIME THEREAFTER until the right to redeem has been cut off in the manner hereinafter set forth by paying to the collector * * * and the fees and expenses in ascertaining the owner or owners, mortgagee or mortgagees, occupant or other person having an interest in or on such premises so sold for taxes."

It is to be noted that not only persons whose interests appear of record such as owner, or mortgagee must be notified, but also those outside the record, for instance, occupant, doweress owner of curtesy, "or other person having an interest," so it is no objection to his claim that the assignment of the mortgage by him appears absolute on the record; these proceedings being confiscatory and not based on a valuable consideration place him in a different class, the only requirement by the statute being that

he have an interest "in" the land, or even "on" the land sold for taxes.

This distinction is recognized in the case of *Harrington Co. v. Horster*, 89 N. J. E. 270:

"We are dealing in this case with a certificate or instrument, not *inter partes*, founded upon a consideration, passing from one party in the suit to his opponent; but we are dealing with a certificate whose only right to exist can be found in a statute, which prescribed exactly how that certificate to have validity against the defendants shall be executed, and perfected. The certificate of a stranger claiming to exercise a confiscatory statutory right; and before the complainant can have any remedy in this court, it must know that its statutory right exists by producing a certificate executed according to the statute."

Simonton in his book entitled "Tax Sales in New Jersey, under the Act of 1903 (edition of 1911), states on page 48, as follows:

"The provisions of the Act regarding those who are to be served are liberal in the extreme, the language primarily employed to denote the persons entitled being no less extensive than 'all persons interested in the land,' while secondarily—since the right to redeem is made synonymous with the right to notice ('until cut off in the manner hereinafter provided') they are designated as 'the owner, mortgagee, occupant or other person having an interest in the land, sold for taxes,' an enumeration commensurate in all respects with the initial phraseology.

UNLIKE the 'Martin Act,' which in terms confines the necessity for notice TO THE HOLDERS OF LEGAL INTERESTS AND ESTATES APPEARING OF RECORD, and binding those claiming through or under them, and which notwithstanding has been construed to include 'a tenant having a continuous interest in lands,' which did not so appear, the present Act contains NO SUCH LIMITATIONS, and the wide significance and the definite character of the language employed, and the mutuality of the rights of notice and redemption which forbid a limitation in the one direction without a corresponding curtailment in the other, repel any such suggestion, and it is doubtful if it can be elsewhere implied, much as such a construction is to be desired for its convenience and practical effect.

Occupation, of course, can not be so ascertained, neither can the rights or estates of dower, or curtesy, which are none the less as clearly included as though expressly enumerated, being interest, in which ever aspect they be regarded, adversely affected by the ripening of the tax title, and therefore entitled to redemption and notice, and for the same reason, **EQUITABLE INTERESTS WHICH LIKEWISE CAN NOT BE SO DETERMINED ARE ENTITLED TO THE STATUTORY BENEFITS**, and there is nothing in the provisions of the Act concerning constructive notice, were they of equal application, which they are not, which can consistently be given the effect of producing such a limitation and meeting all its various requirements."

The said Walter Walls is the real owner of the mortgage after satisfying the lien of the bank, and is most substantially a party in interest, and is among those whom the statute intended should not only have notice, but also a right to redeem.

POINT VI.

THAT STATUTES RELATING TO TAX TITLES ARE STRICTLY CONSTRUED, THERE IS NO INTENDMENT IN THEIR FAVOR AND THE COURTS WILL SEIZE UPON THE SLIGHTEST FLAW OF SUBSTANCE, TO RESTORE PROPERTY TO THE OWNER OR PARTY IN INTEREST.

“The Court will seize upon the slightest flaw, of substance, in tax sales, to restore property to the owner. The judicial attitude towards tax sales is reflected in the principle reflected by Vice-Chancellor Lewis in *Harrington v. Forster*, 89 N. J. E. 20.

The sale of land for non-payment of taxes is such an extreme interference with private property that the law guards the rights of the owner with utmost care. The due performance of every step in the proceedings, even in the MOST MINUTE PARTICULARS IS A CONDITION PRECEDENT to the validity of the sale, and the deed to the purchaser must contain, all the statutory requirements.”

Welles v. Schaffer, 98 N. J. E. 31;

See *McCandless, Inc. v. Schaffer*, 142 Atl. 566.

“In order to bar the owner’s right of redemption from a tax sale, the purchaser must strictly comply with all of the requirements of the statutes. Such statutes are strictly construed as against the purchaser, and liberally construed in favor of the owner.

A purchaser at tax sale, who has not fully performed all the statutory requirements for barring the right of redemption, cannot maintain a bill to quiet title against the owner.”

Sichel v. Willett, 145 Atl. 721.

POINT VII.

THAT A GREAT HARDSHIP WOULD BE EN-
TAILED BY DEFENDANT, AND IT WOULD BE
UNFAIR AND UNJUST TO PERMIT COM-
PLAINANT TO TAKE ADVANTAGE OF THE
SITUATION.

In this case the amount paid was \$28.88, and the land sold had an equity over and above the \$2500 mortgage of appellant. In the case of *Harrington v. Bogert*, 144 Atl. Rep. p. 330, the Court states:

“These proceedings, if they stand, would permit the complainant to become owners of property worth more than \$60,000 because of an unpaid tax of \$79.89.” * * * “A great hardship of course, would be entailed if the defendant was to be thus deprived of his property. * * * It seems to be unfair and unjust to permit the complainant to take advantage of the situation. Its attitude shocks the conscience, and a decision in its favor would be highly inequitable and work a grave injustice.”

24 *Brief of American Bank and Trust
Company, Defendant*

It is hereby certified that the cases cited in other than official reports do not appear to be officially reported.

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