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BILL TO FORECLOSE.

Filed January 6, 1927.

In Chancery of New Jersey

Between

ANNA WITTES,

Complainant,

and

MICHAEL REPKO and ANNIE
REPKO, his wife; their heirs,
devisees and personal rep-
resentatives,

Defendants.

*On Bill to
Foreclose.*

*Right of
Equity of
Redemption.*

10

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By a deed of conveyance dated July 7, 1910 and by another deed dated January 27, 1914 and which deeds were recorded in the Register's Office of Union County, in Book of Deeds 562, page 276 and 646, page 537 respectively. The Realty Trust, a corporation of New York, conveyed to Michael Repko and Annie Repko, his wife, the certain premises in the Borough of Linden, Union County, New Jersey and described as follows:

30

"Known and designated as lots No. 4459 and 4460 in Block 77, as shown on a certain map entitled, 'Wood-Linden Realty Trust, Map No 28 of lots at Linden, N. J. surveyed Feb. 1, 1907 by J. L. Bauer, C. E. & Surveyor, Elizabeth, N. J.' and filed in the Union Co. Register's Office, Elizabeth, N. J. October 18, 1907 as map #227-D, and also known as lot No. 72 Block 53 on

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Bill to Foreclose.

the Official Assessment Map of the Borough of Linden.”

The Borough of Linden and Township of Linden have since combined and are known as the City of Linden.

10 Taxes were assessed against the said property in the name of M. Repko by the municipal authorities of the Borough of Linden for the year 1922 amounting to sixteen dollars and twenty-five cents, and the same not having been paid on November 5, 1923, C. Dudley Blancke, Tax Collector of said municipality conducted a sale of land for delinquent taxes under and by virtue of the provisions of an act of the Legislature of the State of New Jersey, “The Tax Sales Revisions Act” approved in 1918 and the
 20 supplements thereto and amendments thereof, said sale was conducted in all things according to the provisions of said act, and at which sale the lands and premises hereinabove described were sold to the Borough of Linden, in fee simple, for the sum of \$20.08, being the unpaid taxes for the year 1922 interests, and costs of said sale. After said sale of taxes, the aforesaid tax collector executed and delivered a Certificate of Sale for the aforesaid premises to the Borough
 30 of Linden. Said certificate was in the form prescribed by the said act of 1918, and after having been duly acknowledged, was recorded in Book of Mortgages 805, page 177 in Union County Register’s Office.

On the 5th day of August, 1926, the City of Linden did assign to Saul A. Wittes, the above-mentioned certificate for the amount of the unpaid taxes, interests and costs as stated in the aforesaid certificate and in addition thereto, have
 40 paid the said City of Linden all the subsequent

Bill to Foreclose.

unpaid taxes and assessments affecting the premises in question which is as follows:

Taxes 1924	\$18.13	
Interest up to Aug. 5, 1926	2.80	
	<hr/>	\$20.93
Taxes 1925	17.78	
Interest up to Aug. 5, 1926.....	1.25	10
	<hr/>	\$19.03
Taxes 1926	20.32	
Interest up to Aug. 5, 192610	
	<hr/>	\$20.42

STATEMENT OF TAX CERTIFICATE.

Taxes 1922	20.08	
Interest	6.15	
Abstract	5.00	
	<hr/>	\$31.23
		20
Total		\$91.61

The aforesaid amount of \$91.61 was paid by the said Saul A. Wittes and he did receive the assignment of the aforesaid tax certificate and which was recorded in Union County Register's Office in Book 95 of assignments, page 569. The said Saul A. Wittes on 30th day of December, 1926, assigned all his right, title and interest in the aforesaid tax sale certificate to Anna Wittes, the complainant herein mentioned, and which was recorded in Union County Register's Office on December 30, 1926 as No. 8770. 30

The aforementioned Michael Repko and Annie Repko, his wife, defendants herein mentioned are still the present owners of premises as the records disclose and as the premises consists of vacant lots and at the time of said sale and at the present time no person is in actual possession 40

Bill to Foreclose.

thereof. Said lands have been abandoned and have continued to be unoccupied. Although more than two years have elapsed since the sale of said lands to the Borough of Linden, the said lands have not been redeemed from the said tax sale.

- 10 Complainant has no knowledge whether the said Michael Repko and Annie Repko, his wife, are still alive, or if dead, whether the survivor has remarried, and if so the name of the respective husband or wife as the case may be, or the names of their respective heirs, devisees or personal representatives.

- 20 Michael Repko and Annie Repko, his wife, their heirs, devisees and personal representatives are the proper parties defendant to this bill.

There is due the said complainant on the aforesaid tax sale certificate, taxes and interest and assessment for the subsequent years as heretofore mentioned totalling the sum of ninety-one dollars and sixty-one cents and in addition thereto, interest on the same from August 5, 1926.

- 30 Complainant prays that the defendants or one of them may be decreed to pay the complainant the amount so found due with interest and costs, and costs of this suit, and in default thereof said defendants stand debarred and foreclosed.

- 40 May it please your Honor the premises considered to grant unto your complainant the State Writ of Subpoena issuing Michael Repko and Annie Repko, his wife, their heirs, devisees and personal representatives, commanding them or each of them to be and appear before your Honor in His Honorable Court, then and there to answer all and singular the premises and to stand to and abide by and perform such order

Bill to Foreclose.

or decree therein as to your Honor shall seem meet, pursuant to the statute in such case made and provided.

WILLIAM STALFORD,
Solicitor of Complainant.

ABRAHAM ALBOUM,
Counsel with and for Complainant.

10

Dated: January 5, 1927.

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

William Stalford, of full age, being duly sworn according to law, on his oath, deposes and says: that he is the solicitor for the complainant in the enclosed bill of complaint; that Michael Repko and Annie Repko, his wife, their heirs, devisees and personal representatives are the proper defendants to this bill of complaint. 20

Deponent further says, that he has made diligent and careful inquiry for the address of the aforesaid defendants as mentioned in said bill and has been informed that they did reside at one time at #68 Green street, New York City.

Deponent further says, that he has made a careful and diligent inquiry and has been unable to ascertain whether the said defendants are still alive or in the case of death of one, whether the survivor has remarried, or is still unmarried, or if both have died, has been unable to ascertain their respective heirs, devisees and personal representatives, their names and addresses or such who would be proper parties defendant to this suit. 30

Deponent has made such inquiry and prosecuted the same in any and every way, manner 40

Affidavit of Sheriff.

and direction, whereby deponent thought it might be possible to gain such information.

WILLIAM STALFORD.

Sworn and subscribed before me
this 5th day of January, 1927.

10 MICHAEL SCHNEE,
 Attorney at Law of the State of New
 Jersey.

A true copy.

FERD GARRETSON,
 Clerk.

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

20 Samuel H. Tool, Sheriff of said County, being
duly sworn according to law, on his oath says that
he has inquired for Michael Repko, Annie Repko,
his wife, their heirs, devisees and personal repre-
sentatives, of the defendants named in the an-
nexed process, for the purpose of serving them
therewith and has not been able to find them in
this County, and this deponent is credibly in-
formed and verily believes that the said defendants
30 cannot be found in this State.

SAMUEL H. TOOL.

Sworn and subscribed this 11th
day of January, 1927, before
me.

HALL B. SINIS,
Notary Public of New Jersey.

A true copy.

FERD GARRETSON,
 Clerk.

40

SUBPOENA AD RESP.

NEW JERSEY, to wit, THE STATE OF
NEW JERSEY, to Michael Repko, Annie
(SEAL) Repko, his wife, their heirs, devisees
and personal representatives GREET-

ING: WHEREAS a bill of complaint has 10
lately been exhibited against you in our Court of
Chancery by Anna Wittes to be relieved touch-
ing the matters therein contained.

THEREFORE, we command you, if you intend to
make a defense, that you file an answer to said
bill in the office of the Clerk of our said court
at Trenton, on or before the expiration of twenty
days from and after the twelfth day of January,
1927, and in default thereof such order or decree
will be made against you as the Court shall think 20
equitable and just.

WITNESS, his Honor, EDWIN ROBERT WALKER,
our Chancellor, at Trenton, the sixth day of
January, in the year of our Lord one thousand
nine hundred twenty-seven.

THOMAS BARBER,
Clerk.

WILLIAM STALFORD,
Solicitor.

62-684 8287

30

Subpoena ad Resp.

IN CHANCERY OF NEW JERSEY.

10	<p><i>Between</i></p> <p>ANNA WITTES, <i>Complainant,</i></p> <p style="text-align: center;"><i>and</i></p> <p>MICHAEL REPKO and ANNIE REPKO, his wife, their heirs, devisees and personal rep- resentatives, <i>Defendants.</i></p>	} <i>Sub. ad Resp.</i>
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Ret'ble Feb 2nd A. D. 1927.

20	<p>WILLIAM STALFORD, Newark, N. J. Solicitor.</p>
----	---

Filed Jan. 17, 1927.

Received, Union County Sheriff's Office, Janu-
ary 11, 10:24 A. M. 1927. Elizabeth, N. J.

January 11, 1927 Affidavit of non-residence an-
nexed as to all defendants.

30	<p>SAMUEL H. TOOL, Sheriff.</p>
----	-------------------------------------

Fees \$1.50.

Subpoena ad Resp.

IN CHANCERY OF NEW JERSEY.

Between

ANNA WITTES,

Complainant,

and

MICHAEL REPKO, ANNIE REP-
KO, his wife, and etc.,

Defendants.

*On Bill to
Foreclose.*

10

SIR:

You are made a party defendant, and subpoenaed to answer the bill of complaint exhibited in the above cause, because you are title holder of record.

20

the premises mentioned and described in the said bill, and by virtue thereof claim to have some lien or interest in the said mortgaged premises.

Your obedient servant,

WILLIAM STALFORD,
Solicitor for Complainant.

Dated: January 6, 1927.

To Michael Repko.

30

40

Subpoena ad Resp.

IN CHANCERY OF NEW JERSEY.

10	<p><i>Between</i></p> <p>ANNA WITTES,</p> <p style="text-align: right;"><i>Complainant,</i></p> <p style="text-align: center;"><i>and</i></p> <p>MICHAEL REPKO, ANNIE REP-</p> <p style="text-align: center;">KO, his wife, and etc.,</p> <p style="text-align: right;"><i>Defendants.</i></p>	} <i>On Bill to Foreclose.</i>
----	--	------------------------------------

SIR:

You are made a party defendant, and subpoenaed to answer the bill of complaint exhibited in the above cause, because you are title holder of record.

the premises mentioned and described in the said bill, and by virtue thereof claim to have some lien or interest in the said mortgaged premises.

Your obedient servant,

WILLIAM STALFORD,
Solicitor for Complainant.

Dated: January 6, 1927.

30 To Annie Repko.

ORDER OF PUBLICATION.

Filed January 17, 1927.

IN CHANCERY OF NEW JERSEY.

Between

ANNA WITTES,

*Complainant,**and*MICHAEL REPKO, *et als.,**Defendants.*

10

*On Bill to
Foreclose.**Order of Pub-
lication.*

The complainant, Anna Wittes, having filed her bill herein wherein Michael Repko and Annie Repko, his wife, their heirs, devisees and personal representatives were made defendants and a subpoena having duly issued against the said Michael Repko and Annie Repko, his wife, their heirs, devisees and personal representatives, to appear in this suit as such defendants;

20

And it having been made to appear by affidavit to the satisfaction of the Chancellor that the said Michael Repko and Annie Repko, his wife, their heirs, devisees and personal representatives be found in this State, that process cannot be served upon the aforementioned defendants within this State;

30

And it appearing by the allegations of the bill of complaint filed herein, duly verified by affidavit thereto annexed, that Michael Repko and Annie, his wife, their heirs, devisees and personal representatives are proper parties defendant to this said bill of complaint;

And it further appearing that the said complainant, after diligent and careful inquiry there-

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Order of Publication.

fore made as in the case of absent defendants, has been unable to ascertain whether the said Michael Repko and Annie Repko, his wife, are still alive and their present residence, and if dead, complainant has been unable to ascertain the names and residences of their heirs, devisees and personal representatives, or such of them as may be proper parties defendant;

10 It is, thereupon on this 17th day of January, nineteen hundred and twenty-seven, ORDERED, that the said Michael Repko and Annie Repko, his wife, their heirs, devisees and personal representatives, appear and answer complainant's bill of complaint, on or before the 19th day of March, next, or that, in default thereof such decree be made against them as the Chancellor shall deem just and equitable.

20 And it is further ORDERED, that the notice prescribed by law and the rules of the Court of Chancery in the case of absent defendants, addressed to said Michael Repko and Annie Repko his wife, their heirs, devisees and personal representatives shall be given to said Michael Repko and Annie Repko, his wife, their heirs, devisees and personal representatives, by publishing the same four times, in the "Linden Observer" one of the public newspapers, printed at the City of Linden, in the County of Union and State of New Jersey, during four consecutive calendar weeks, at least once in each week, and that a copy of such notices addressed to Michael Repko and Annie Repko, his wife, their heirs, devisees and personal representatives, be mailed, prepaid, within twenty days after the date of this order, directed to the post office nearest the last known residence of said Michael Repko and Annie Repko, his wife, or to the last known post

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Proof of Publication.

office at which the said Michael Repko and Annie Repko, his wife, usually received their letters.

E. R. WALKER,

C.

A true copy.

FERD GARRETSON,
Clerk.

10

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

William E. Donahoe being duly sworn according to law, on his oath saith that he is Business Manager of The Linden Observer a newspaper published in Linden, in said County of Union, and that the notice of which the annexed is a copy was published in said paper on January 21, 28, February 4, and 11th, last past.

20

WILLIAM E. DONAHOE.

Sworn and subscribed before me
this 14th day of March, 1927.

WM. PALMER,
Notary Public.

30

To Michael Repko and Annie Repko, his wife,
their heirs, devisees and personal representatives:

By virtue of an order of the Court of Chancery of New Jersey made on the 17th day of January, 1927, in a cause wherein Anna Wittes is complainant and Michael Repko *et als.*, are de-

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Proof of Publication.

defendants, you are required to appear and answer the bill of complainants, on or before the 19th day of March, next, or the said bill will be taken as confessed against you.

10 The said bill is filed to foreclose the right of equity of redemption by reason of a tax certificate of sale held by you, Michael Repko and your heirs, devisees and personal representatives and Annie Repko his wife your heirs devisees and personal representatives are made party defendants because you are the owners of the said premises.

Dated: January 17, 1927.

20 WILLIAM STALFORD,
Solicitor of Complainant.
128 Market Street.

30

40

PROOF OF INQUIRY AND MAILING.

Filed March 24, 1927.

IN CHANCERY OF NEW JERSEY.

Between

ANNA WITTES,

Complainant,

and

MICHAEL REPKO, *et als.*,

Defendants.

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*On Bill to
Foreclose.*

*Proof of In-
quiry & Mail-
ing.*

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

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WILLIAM STALFORD, of full age, being duly sworn according to law, upon his oath, deposes and says:

1. I am the solicitor of the complainant and the persons actually intrusted with the conduct and management of this cause.

2. I have, in good faith, made diligent and careful inquiry in the manner required by the rules of this court, and in every other manner that I supposed would probably give information thereof, if the same could be had, for the purpose of ascertaining the residence and post office address of all of the above defendants.

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3. I was informed by the tax collector's office of the City of Linden that the said defendants resided at #68 Green St., New York City, and to which address I forwarded a copy of the notices of this suit to each of said defendants, but both of these notices were returned "cannot be found." The notices were mailed on January 18, 1927 and were returned to me on January 21, 1927.

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Proof of Inquiry and Mailing.

On January 18, 1927 I looked up the New York City directories from 1910 to 1927 and found parties with similar names to defendants herein mentioned residing at #447 East 78th street, New York City, during the years 1917, 1918 and 1925. I also looked up Newark, N. J. directories and found parties by similar names residing at 20 Belmont avenue aforesaid city, during the years 1925 and 1926. On January 21, 1927 I mailed a notice to each of said defendants to 447 East 78th street, New York City, and 20 Belmont avenue, Newark, N. J., a copy of notice of these proceedings, but these notices were not returned, they having presumably been received by the parties. On January 21, 1927 I also looked up the City Directory of Linden, N. J. for the residence of the defendants and being the place where the premises under foreclosure are located, but could not find anybody located there bearing the same name of defendant.

4. The said Michael Repko and Annie Repko, his wife, was made party defendant to this suit by reason of the fact that they are the title holders of record, and their heirs, devisees and personal representatives were made party defendant for the reason that in the event that both of the defendants are dead, they would acquire the title to the said premises.

WILLIAM STALFORD.

Sworn and subscribed before me
this 22nd of March, 1927.

MICHAEL SCHNEE,
An Attorney at law of the
State of New Jersey.

A true copy.

FERD GARRETSON,
Clerk.

DECREE PRO CONFESSO AND REFERENCE.

Filed March 24, 1927.

IN CHANCERY OF NEW JERSEY.

Between

ANNA WITTES,

*Complainant,**and*MICHAEL REPKO, *et als.*,*Defendants.**On Bill to
Foreclose.**Decree Pro
Confesso and
Reference.*

10

This matter being opened to the Court by William Stalford, the solicitor for the complainant, and it appearing that process of subpoena for the appearance of the defendant, Michael Repko and Annie Repko, his wife, their heirs, devisees and personal representatives, has been duly issued and returned and that due notice of the order of this court made on the 17th day of January, last past, directing the defendants, aforementioned to appear, plead, answer or demur to the complainant's bill of complaint on or before the 19th day of March, then next, has been duly published and directed to the said Michael Repko, and Annie Repko, his wife, their heirs, devisees and personal representatives, and also mailed to the said defendants in the manner and as in the said order directed and prescribed;

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30

And it further appearing that the said defendants have not filed any plea, demurrer or answer to the said bill within the time limited by law and the said order, but has wholly failed and neglected to do so;

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Decree Pro Confesso and Reference.

It is thereupon on this 24th day of March, A. D. Nineteen Hundred and Twenty-seven, ORDERED, ADJUDGED and DECREED, that the said bill be taken as confessed against the said Michael Repko and Annie Repko, his wife, their heirs, devisees and personal representatives, defendants, and that it
 10 be referred to Harry Wiener, Esq. one of the Master's of the court, to compute and ascertain what is due to the complainant upon its tax lien mentioned in the bill in this cause.

And it is further ORDERED and DECREED, that upon the defendants, paying to the complainant the amount which shall be reported due it, together with its taxed costs of suit, within thirty days after the said Master's report shall have been confirmed, at such time and place as he shall appoint, the said complainant do deliver up
 20 possession of the said premises mentioned in the bill of complaint, and held by complainant, by virtue of its tax lien to the said defendants, and cancel and discharge the said tax sale thereof of record, or otherwise dispose of the same as the Court may further direct, and that in default of such payment in the manner and within the time aforesaid, the said defendants, their heirs, devisees and personal representatives stand absolutely debarred and foreclosed of and from all
 30 right and equity of redemption in and to said premises.

E. R. WALKER,

C.

A true copy.

FERD GARRETSON,
Clerk.

MASTER'S REPORT.

Filed March 30, 1927.

IN CHANCERY OF NEW JERSEY.

Between

ANNA WITTES,

*Complainant,**and*MICHAEL REPKO and ANNIE
REPKO, his wife; their heirs,
devisees and personal rep-
resentatives,*Defendants.*

10

*On Bill to
Foreclose
Right of Re-
demption.**Master's Re-
port.*

20

In pursuance of an order and decree of this Court entered in the above cause, bearing date the 24th day of March, 1927, by which it was referred to me, Harry Wiener, Esq., one of the Masters in Chancery of the State of New Jersey, to compute and ascertain what is due to the complainant upon his tax lien and for subsequent taxes paid by him, mentioned in the bill in this cause, and to appoint a time and place for the payment thereof, I do hereby certify and respectfully report to his Honor, the Chancellor, that I have seen and inspected the certificate of tax sale in the bill of complaint mentioned, bearing date 5th day of November, 1923, (marked Exhibit A), and that there is due to the complainant by virtue of his tax lien on account of said tax sale, the sum of \$20.08 as by the schedule hereto annexed will more fully appear. And there is further due the complainant the sum of \$71.53,

30

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Master's Report.

for subsequent taxes and assessments paid by it affecting said premises.

10 And I do hereby appoint Thursday, the 28th day of April, 1927, between the hours of 10 o'clock in the forenoon and 4 o'clock in the afternoon, at my office No. 104 Wood avenue North, in the City of Linden, Union County, as the time and place, when and where the defendants shall make redemption and pay to the complainant the amount due him by virtue of his tax lien as aforesaid, together with his taxed costs of suit.

All of which is respectfully submitted this 28th day of March, 1927.

HARRY WIENER,
Master.

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Master's Report.

SCHEDULE

Certificate of Tax Sale dated November 5th, 1923, for Taxes of 1922 on lot 72, Block 53, assessed to M. Repko, as owner; sold by C. Dudley Blancke, Collector, to the Borough of Linden, at a Sale held November 5th, 1923;		10
Taxes 1922	\$20.08	
Interest to July 21, 1926.....	6.15	
Abstract	5.00	
	<hr/>	\$31.23
Taxes 1924	18.13	
Interest to July 21, 1926.....	2.80	
	<hr/>	20.93
Taxes 1925	17.78	
Interest to July 21, 1926.....	1.25	
	<hr/>	19.03
Taxes 1926	20.32	20
Interest to July 21, 1926.....	.10	
	<hr/>	20.42
Total		<hr/>
		\$91.61

HARRY WIENER,
Master.

A true copy.

FERD GARRETSON,
Clerk.

30

ORDER CONFIRMING MASTER'S REPORT.

Filed March 30, 1927.

IN CHANCERY OF NEW JERSEY.

10	<p><i>Between</i></p> <p>ANNA WITTES, <i>Complainant,</i></p> <p style="text-align: center;"><i>and</i></p> <p>MICHAEL REPKO and ANNIE REPKO, his wife; their heirs, devisees and personal rep- resentatives,</p>	<p><i>On Bill to foreclose Right of Redemption. Order Con- firming Mas- ter's Report.</i></p>
20	<p style="text-align: right;"><i>Defendants.</i></p>	

30

This matter being opened to the court by Wil-
liam Stalford, the solicitor for the complainant,
and it appearing that by the certain decree of
the court, made on 24th day of March, 1927,
it was ordered, adjudged and decreed that it
should be referred to Harry Wiener, Esq., one
of the Master's of the Court, to compute and
ascertain what is due to the complainant upon
his tax lien mentioned in the bill of this cause;
and it further appearing that in pursuance of
said decree, the said Master on the 28th day of
March, 1927, reported that there was due to the
complainant by virtue of said tax lien, the sum
of \$91.61, and that he hath appointed Thursday,
April 28, 1927, between the hours of 10 o'clock
in the forenoon and 4 o'clock in the afternoon
at his office No. 104 Wood ave., North, in the
City of Linden, Union County, N. J. as the time
and place, when and where the defendant shall

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Order Confirming Master's Report.

make redemption and pay to the complainant the amount due him as aforesaid, together with his taxed costs of suit.

It is on this 30th day of March, 1927, by his Honor, Edwin R. Walker, Chancellor of the State of New Jersey, ORDERED, that said Master's report and all matters and things therein contained do stand ratified and confirmed and approved and that the said defendant do pay to the said complainant the said sum of \$91.61 on account of his tax lien as aforesaid at the time and place so appointed by the said Master, together with the taxed costs of suit, and that thereupon the said complainant shall deliver up possession of the said premises mentioned in the bill of complaint, and held by complainant by virtue of his said tax lien to the said defendants, and cancel and discharge the said tax thereof of record, or otherwise dispose of the same as the court may further direct.

E. R. WALKER,
C.

Respectfully advised,

BAYARD STOCKTON,
A. M.

A true copy,

FERD GARRETSON,
Clerk.

MASTER'S FINAL REPORT.

Filed May 4, 1927.

IN CHANCERY OF NEW JERSEY.

10 *Between*

ANNA WITTES,

Complainant,

and

MICHAEL REPKO and ANNIE
REPKO, his wife; their heirs,
devises and personal rep-
resentatives,

Defendants.

*On Bill to
foreclose
Right of
Equity of
Redemption.*

*Master's
Final Report.*

20

To His Honor, EDWIN R. WALKER, Chancellor of
the State of New Jersey:

I, HARRY WIENER, one of the Masters of the
Court of Chancery, do hereby respectfully re-
port that pursuant to the appointment hereto-
fore made by me, I duly attended at my office in
the City of Linden, County of Union and State
of New Jersey, on Thursday, April 28, 1927, be-
30 tween the hours of nine o'clock in the forenoon
and five o'clock in the afternoon, and that I was
then and there attended by William Stalford, the
solicitor of complainant, but that neither said
defendants nor any person or persons acting in
their behalf or in behalf of their heirs, devisees
and personal representatives, appeared before
me at the time or place aforesaid, or at any
other time, and that neither said defendants
nor any other person or persons as aforesaid,
40 paid or offered to pay to the said complainant
or its solicitor, the money due it herein amount-

Master's Final Report.

ing to the sum of \$91.61, as set forth in my previous report, dated March 28, 1927, or the complainant's taxed costs of suit or any part thereof; all of which is respectfully submitted.

Dated: April 28, 1927.

HARRY J. WIENER, 10
Master in Chancery of New Jersey.

A true copy,

FERD GARRETSON,
Clerk.

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FINAL DECREE.

Filed May 6, 1927.

IN CHANCERY OF NEW JERSEY.

10	<i>Between</i>	}	<i>On Bill to Foreclose Right of Equity of Redemption. Final Decree.</i>	
	ANNA WITTES,			<i>Complainant,</i>
	<i>and</i>			
20	MICHAEL REPKO and ANNIE REPKO, his wife; their heirs, devises and personal rep- resentatives,			<i>Defendants.</i>

This cause being opened to the Court by William Stalford, the solicitor, and Abraham Alboum, for and of counsel with the complainant, whereupon, and upon reading a report, on file, made by Harry Wiener, Esq., one of the Masters of the court, bearing date on the 14th day of March, 1927, from which it appears that there was due to the complainant by virtue of her tax lien, on

30 the day of the making of the said report, the sum of \$91.61, and that the said Master had appointed Thursday, the 28th day of April, 1927, between the hours of nine o'clock in the forenoon and five o'clock in the afternoon, at his office in the City of Linden, in the County of Union, as the time and place where and when the defendant should make redemption and pay to the complainant the sum of \$91.61, together with her taxed costs of suit, and when and where the said

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Final Decree.

complainant should deliver up possession of the said premises mentioned in the bill of complaint and held by complainant by virtue of her tax lien, and cancel and discharge the said tax sale thereof of record, or otherwise dispose of the same as the Court might further direct, which report was on the 30th day of March, 1927, duly confirmed and ratified by the said Court; whereupon and upon reading a certain other report on file, made by the said Master, bearing date on the 28th day of April, 1927, by which it appears that the said Master and the complainant's solicitor duly attended at the time and place so appointed as aforesaid, and that neither the said defendants, nor any other person or persons in their behalf, or in behalf of their heirs, devisees or personal representatives appeared at the time and place aforesaid, and that neither the said defendants, nor any other person or persons in their behalf as aforesaid, have paid or offered to pay to the said complainant, or her solicitor, the said sum of money, to wit, \$91.61, so found and reported to be due to said complainant, together with her taxed costs of suit, either at the time and place aforesaid or at any other time and place; it is thereupon on this 5th day of May, 1927; by his Honor, Edwin R. Walker, Chancellor of the State of New Jersey;

ORDERED, ADJUDGED and DECREED, that the said last mentioned Master's report, and all matters and things therein contained, do stand ratified, confirmed and approved, and that the said defendants, Michael Repko and Annie Repko, his wife, their heirs, devisees and personal representatives, stand absolutely debarred and foreclosed of and from all right and equity of

Final Decree.

redemption in and to the premises mentioned
and set forth in the bill of complaint.

E. R. WALKER,
C.

Respectfully advised,

10 BAYARD STOCKTON,
A. M.

A true copy.

FERD GARRETSON,
Clerk.

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PETITION TO OPEN DECREE.

Filed April 19, 1928.

IN CHANCERY OF NEW JERSEY.

Between

ANNA WITTES,

Complainant,

and

MICHAEL REPKO and ANNIE
REPKO, his wife; their heirs,
devises and personal rep-
resentatives,

Defendants.

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On Bill &c.

*Petition to
Open Decree.*

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To the Honorable EDWIN ROBERT WALKER, Chan-
cellor of the State of New Jersey:

The petition of Michael Repko and Annie
Repko, his wife, of the City of Jersey City,
County of Hudson and State of New Jersey,
respectfully shows that:

1. Petitioners are two of the defendants to
the bill of complaint filed herein.

2. Said bill was filed for the purpose of fore-
closing the equity or redemption of a tax certi-
ficate of certain lands and premises, situate in
the Township of Linden, County of Union,
State of New Jersey, to which premises peti-
tioners were seized in fee simple.

3. The said lands and premises described in
the bill of complaint were on November 5, 1923,
sold by the Tax Collector of the Borough of
Linden to the Borough of Linden for the sum
of \$20.08, an amount equal to the delinquent

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Petition to Open Decree.

taxes on the land, at the same time delivering the tax certificate to the Borough of Linden, which certificate is recorded in book 805 of mortgages, page 177, at the office of the Register of the County of Union.

10 4. On August 5, 1926, the City of Linden assigned the above mentioned certificate to Saul A. Wittes, upon the payment by him of the sum of \$91.61, an amount equal to the taxes due on the land to the date of the assignment, which assignment is recorded in book 95 of assignments, page 569.

20 5. On December 30, 1926, the said Saul A. Wittes assigned the said tax certificate to Anna Wittes, complainant in this action which assignment is recorded in the Union County Register's office, December 30, 1926, as number 8770.

6. On January 17, 1927, process of subpoena was issued directed to petitioners, which subpoenas were returned "non est" with an affidavit of non-residence; an Order of Publication was also filed on January 17, 1927.

30 7. On March 24, 1927, William Stalford, solicitor for the complainant filed an affidavit showing inquiry, mailing and publication. In his affidavit he deposes that he was informed by the Tax Collector's office of the City of Linden that the petitioners resided at 68 Green street, New York City, to which address he forwarded a copy which was returned "cannot be found". The solicitor also states in his affidavit that he looked in the New York City Directory and in the Newark, New Jersey Directory and found several parties with names similar to petitioners and mailed notices to these persons never receiving the notices back. The soli-
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Petition to Open Decree.

citor also deposes that he looked in the City directory of Linden, New Jersey, but could not find anybody bearing names similar to petitioners.

8. Petitioners have at all times mentioned herein and for a period of 31 years prior to the filing of this petition been residents of the City of Jersey City, during that time having never resided in the City of New York or Newark, or any other town or city in this State or in any other city or state other than the City of Jersey City. 10

9. Petitioners at all times resided at No. 68 Green street, Jersey City, New Jersey, which address was on file at the office of the Tax Collector in the City of Linden, New Jersey. They had resided there and up until the year 1924, when they removed to 250 Clinton avenue, Jersey City, N. J. at all times advising the postal authorities of the change of address. Petitioners further allege that if notices had been sent to petitioners at the Green street address in Jersey City, the said letters would have been forwarded to petitioners to the Clinton avenue address. 20

10. Petitioners had no notice of or knowledge of the present suit and at no time were they aware of the fact that their premises were being foreclosed and that their equity of redemption was being barred. 30

11. The first time that petitioners had any knowledge of the pendency of the present action was about November 1927, when they learned that a final decree had been entered against them. Immediately thereafter on the 19th day of November, 1927, the petitioners tendered to Anna Wittes, complainant herein, 40

Petition to Open Decree.

any sum that might be necessary in order to redeem the property, which tender was refused and petitioners now stand willing and able to pay to complainant any sum that this Honorable Court may find due and owing to the complainant.

- 10 12. On September 8, 1927, complainant, Anna Wittes and her husband Joseph Wittes, mortgaged the land and premises described in the bill of complaint to the Elizabeth Trust Company, a corporation of New Jersey, for the sum of \$1000.00, which mortgage was on September 9, 1927, recorded in the Register's office of the County of Union in Book 886 of mortgages, page 196, and upon information and belief the said mortgage has been paid by the said complainant.

20 By virtue of said decree, petitioners are greatly prejudiced and injured in that they were deprived of their property without having had an opportunity to comply with the prayers of the bill of complaint filed by complainant in that they were and are at all times ready, willing and able to comply with the prayers as contained in the bill of complaint.

- 30 Petitioners therefore pray that the said decree may be opened, set aside, vacated and for nothing holden to the end that they may be permitted to answer the said bill of complaint and redeem their property.

MICHAEL REPKO,
Petitioner.

ANNA REPKO,
Petitioner.

MEANEY & LIFLAND,
Solicitors of Petitioners.

Affidavit of Michael Repko and Annie Repko.

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

MICHAEL REPKO and ANNIE REPKO, being severally duly sworn according to law, upon their respective oaths deposes and says:

1. We are two of the defendants to the bill of complaint filed herein. 10

2. Said bill was filed for the purpose of foreclosing the equity of redemption of a tax certificate of certain lands and premises, situate in the Township of Linden, County of Union, State of New Jersey, to which premises we were seized in fee simple.

3. The said lands and premises described in the bill of complaint were on November 5, 1923, sold by the Tax Collector of the Borough of Linden to the Borough of Linden for the sum of \$20.08, an amount equal to the delinquent taxes on the land, at the same time delivering the tax certificate to the Borough of Linden, which certificate is recorded in book 805 of mortgages, page 177, at the office of the Register of the County of Union. 20

4. On August 5, 1926, the City of Linden assigned the above mentioned certificate to Saul A. Wittes, upon the payment by him of the sum of \$91.61, an amount equal to the taxes on the land to the date of the assignment, which assignment, is recorded in book 95 of assignments, page 569. 30

5. On December 30, 1926, the said Saul A. Wittes assigned the said tax certificate to Anna Wittes complainant in this action, which assignment is recorded in the Union County Reg- 40

Affidavit of Michael Repko and Annie Repko.

ister's Office, December 30, 1926, as number 8770.

10 6. On January 17, 1927, process of subpoena was issued directed to us, which subpoenas were returned "non est" with an affidavit of non-residence; an order of publication was also filed on January 17, 1927.

20 7. On March 24, 1927, William Stalford, solicitor for the complainant, filed an affidavit showing inquiry, mailing and publication. In his affidavit, he deposes that he was informed by the Tax Collector's Office of the City of Linden, that we resided at 68 Green street, New York City, to which address he forwarded a copy of the notices in this suit, but both of these notices were returned "cannot be found". The solicitor also stated in his affidavit that he looked in the New York City Directory and in the Newark, New Jersey Directory and found several parties with names similar to ours and mailed notices to these persons never receiving the notices back. The solicitor also deposes that he looked in the City Directory of Linden, New Jersey, but could not find anybody bearing names similar to ours.

30 8. We have at all times mentioned herein and for a period of 31 years prior to the filing of this petition been residents of the City of Jersey City, during that time having never resided in the City of New York or Newark, or any other town or city in this State or in any other city or state other than the City of Jersey City.

40 9. We at all times resided at No. 68 Green street, Jersey City, New Jersey, which address was on file at the office of the Tax Collector in

Affidavit of Michael Repko and Annie Repko.

the City of Linden, New Jersey. We have resided there and up until the year 1924, when we removed to 250 Clinton avenue, Jersey City, N. J. at all times advising the postal authorities of the change of address. Deponents further allege that if notices had been sent to us at the Green street address in Jersey City, the said letters would have been forwarded to us to the Clinton avenue address. 10

10. We had no notice of or knowledge of the present suit and at no time were we aware of the fact that our premises were being foreclosed and that our equity of redemption was being barred.

11. The first time that we had any knowledge of the pendency of the present action was about November 1927, when we learned that a final decree had been entered against us. Immediately thereafter on the 19th day of November, 1927 we tendered to Anna Wittes, complainant herein, any sum that might be necessary in order to redeem the property, which tender was refused and we now stand willing and able to pay to complainant any sum that this Honorable Court may find due and owing to the complainant. 20

12. On September 8, 1927, complainant, Anna Wittes and her husband, Joseph Wittes, mortgaged the land and premises described in the bill of complaint to the Elizabeth Trust Company, a corporation of New Jersey, for the sum of \$1000.00, which mortgage was on September 9, 1927 recorded in the Register's Office of the County of Union in book 886 of mortgages, page 196, and upon information and 30

Affidavit of Michael Repko and Annie Repko.

belief the said mortgage has been paid by the said complainant.

10 By virtue of said decree, we are greatly prejudiced and injured in that we were deprived of our property without having had an opportunity to comply with the prayers of the bill of complaint filed by complainant in that we were and are at all times ready, willing and able to comply with the prayers as contained in the bill of complaint.

MICHAEL REPKO,
ANNIE REPKO.

Sworn and subscribed to before me
this 11th day of April, 1928.

20 RAYMOND CHASAN,
Notary Public of New Jersey.

A true copy,
FERD GARRETSON,
Clerk.

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**ORDER TO SHOW CAUSE WHY DECREE
SHOULD NOT BE OPENED.**

Filed April 19, 1928.

IN CHANCERY OF NEW JERSEY.

Between

ANNA WITTES,

Complainant,

and

MICHAEL REPKO and ANNIE
REPKO, his wife; their heirs,
devisees and personal rep-
resentatives,

Defendants.

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On Bill, &c.

*Order to
Show Cause
Why Decree
Should Not
Be Opened.*

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Petition having been filed herein by Michael Repko and Annie Repko, his wife, two of the defendants in the above-entitled suit, wherein it is alleged that they are residents of the City of Jersey City, County of Hudson and State of New Jersey, and that they are parties in interest to the said suit; that process of subpoena was issued against them and that said subpoenas were returned "*non est*"; that an order of publication was subsequently taken; that the said publication was bad, because the letters containing the notices of said suit were sent to petitioners at addresses in New York City and Newark, New Jersey, whereas the petitioners at all times resided in the City of Jersey City, New Jersey, and that petitioners at no time had any knowledge of the pendency of the present action,

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Order to Show Cause.

It is on this 19th day of April, 1928,

ORDERED that Anna Wittes, the above-named complainant, show cause before the Chancellor on the 30th day of April, 1928, at the Chancery Chambers, No. 1 Exchange Place, Jersey City, at 10 o'clock in the forenoon, or as soon thereafter as counsel can be heard, why the interlocutory and final decree of this Court made in this cause should not be opened, set aside, vacated and for nothing holden upon the ground heretofore and in the petition stated.

It is further ORDERED, that true copies certified by the solicitors of the petitioners of this order and of the petition and affidavit whereon it is founded, be served upon the complainant, Anna Wittes, and Joseph Wittes, her husband, or upon William Stalford, their solicitor, and upon the Elizabeth Trust Company, a corporation of the State of New Jersey, or upon Stamler & Koestler, its solicitors, by leaving the same personally with the said Anna Wittes and Joseph Wittes, her husband, or upon William Stalford, their solicitor, and upon the Elizabeth Trust Company or its solicitors, Stamler & Koestler, within five days from the date hereof.

E. R. WALKER,

C.

Respectfully advised,

JOHN J. FALLON,
V.-C.

A true copy.

FERD GARRETSON,
Clerk.

ORDER OF CONTINUANCE.

Filed May 14, 1928.

IN CHANCERY OF NEW JERSEY.

Between

ANNA WITTES,

*Complainant,**and*MICHAEL REPKO and ANNIE
REPKO, his wife, et als.,*Defendants.*

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*On Bill, &c.
Order.*

Upon the annexed consent of William Stalford,
Esq., solicitor of complainant, and Meaney & Lifland, Esq., solicitors of defendants, 20

It is on this 14th day of May, 1928,

ORDERED that the hearing on the order to show
cause in the above-entitled matter be continued
to Monday, May 14, 1928, at the same time and
place.

E. R. WALKER,

C.

Respectfully advised,

JNO. J. FALLON,

V.-C.

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We consent to the above order.

WILLIAM STALFORD,
Solicitor of Complainant.

MEANEY & LIFLAND,
Solicitors of Defendants.

A true copy.

FERD GARRETSON,

Clerk.

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MEMORANDUM OF VICE-CHANCELLOR.

Filed June 6, 1928.

IN CHANCERY OF NEW JERSEY.

10 *Between*

ANNA WITTES,

*Complainant,**and*MICHAEL REPKO and ANNIE
REPKO, his wife; their heirs,
devises and personal rep-
resentatives,*Defendants.*

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62-684.

*On Bill, &c.**On Petition**of Michael**Repko and**Annie Repko**Defts. to**Open Decree,**Etc.**Memorandum.*

(Not to be printed or published.)

William Stalford, solicitor of complainant.

Messrs. Meaney & Liffand, solicitors of defend-
ants.

FALLON, V.-C.

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My consideration of the matter in controversy
actuates me in determining that the decree en-
tered in the above-entitled cause on May 6, 1927,
should be opened for the purpose of enabling the
petitioners, as defendants therein, to avail them-
selves of such rights as the law may afford them
in the premises. Complainant, by her bill, prays
that the defendants, or one of them, may be de-
creed to pay to her the amount due to her under
tax certificate acquired by her by *mesne* assign-
ments from the City of Linden, and for taxes, in-
terest, and other charges, as in said bill set
forth, amounting in all to \$91.61, together with
40 interest thereon from August 5, 1926, and her

Memorandum of Vice-Chancellor.

costs of suit, and that in default thereof said defendants stand debarred and foreclosed of their equity of redemption in and to the lands and premises described in said bill. The petitioners claim that notwithstanding they have been residents of the State of New Jersey continuously for a period of approximately thirty-one years, residing throughout all of said time in the City of Jersey City, they did not receive any notice of the proceedings initiated and prosecuted by the complainant under her aforesaid bill, and they manifest their willingness and desire to make payment to said complainant of all moneys due and owing to her. The petitioners should have their day in court. *Schaffer v. Hurd*, 98 N. J. Eq. 143. In the case cited Vice-Chancellor Ingersoll refers (at page 150) to the case of *Bourgeois v. Risley Real Estate Co.*, 82 N. J. Eq. 211, wherein Vice-Chancellor Backes says: "It seems to me that the complainant must be content with the grant of that prayer for relief" which asks that "The defendants pay the debt"; and to *Wells v. Schaffer*, 98 N. J. Eq. 31, wherein Vice-Chancellor Backes, says, "The Court will seize upon the slightest flaw of substance in tax sales to restore property to the owner. The judicial attitude toward tax sales is reflected in the principle reiterated by Vice-Chancellor Lewis in *Harrington v. Horster*, 89 N. J. Eq. 270." In the latter case Vice-Chancellor Lewis held (at page 273): "The sale of land for non-payment of taxes is such an extreme interference with private property that the law guards the rights of the owner with the utmost care."

An order to reopen the decree will be advised.
Dated Hoboken, N. J., June 5, 1928.

A true copy.

FERD. GARRETSON,
Clerk.

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ORDER OPENING DECREE.

Filed June 11, 1928.

IN CHANCERY OF NEW JERSEY.

10	<i>Between</i>	} <i>On Bill, &c. Order Opening Decree.</i>
	ANNA WITTES,	
	Complainant,	
	<i>and</i>	
	MICHAEL REPKO and ANNIE REPKO, his wife; their heirs, devisees and personal rep- resentatives,	
20		} <i>Defendants.</i>

This matter being opened to the Court by Meaney & Lifland, solicitors of the petitioners, Michael Repko and Annie Repko, his wife, in the presence of William Stalford, solicitor of the complainant, Anna Wittes, and the Court having heard and considered the arguments of counsel in the premises.

30 And it appearing that the order to show cause in this matter has been served in the manner therein directed; and the Court having considered the matter and being satisfied that the interlocutory decree made herein on the 24th day of March, 1927, and the final decree made on the 6th day of May, 1927, were procured without any notice or knowledge on the part of the defendants, Michael Repko and Annie Repko, his wife, of the said decree or proceedings.

It is on this 11th day of June, 1928,

Order Opening Decree.

ORDERED, ADJUDGED and DECREED, that the said interlocutory decree and final decree made in this cause be opened, set aside, vacated and for nothing holden,

AND IT IS FURTHER ORDERED, that the defendants, Michael Repko and Annie Repko, his wife, have ten days after the date of this order in which to answer the complainant's bill of complaint herein. 10

E. R. WALKER,
C.

Respectfully advised,

JNO. J. FALLON,
V.-C.

A true copy.

FERD. GARRETSON, 20
Clerk.

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ANSWER.

Filed June 19, 1928.

IN CHANCERY OF NEW JERSEY.

10	<i>Between</i> ANNA WITTES, <div style="text-align: right;"><i>Complainant,</i></div> <div style="text-align: center;"><i>and</i></div> MICHAEL REPKO, <i>et als.,</i> <div style="text-align: right;"><i>Defendants.</i></div>	}	<i>On Bill, &c.</i> <i>Answer.</i>
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20 The defendants, Michael Repko and Annie Repko, answering the bill of complaint herein say that:

1. They admit the allegations contained in the first paragraph.
2. They admit the allegations contained in the second paragraph.
3. They admit paragraph three except that they deny so much thereof as alleges that the said sale was conducted in all things according to the provisions of the Tax Revision Act of 30 1918.
4. They have no knowledge or information sufficient to form a belief as to the allegations contained in the fourth paragraph.
5. They have no knowledge or information sufficient to form a belief as to the allegations contained in the fifth paragraph.
- 40 6. They admit so much of paragraph six as alleges that the said Michael Repko and Annie

Answer.

Repko, his wife, are still the present owners of record. They further admit that the premises consist of vacant lands and that at the time of the sale and at the present time no person is in actual possession thereof. They deny that the said lands have been abandoned and they further deny that the said lands have not been redeemed from said tax sale. Defendants further allege that on the 18th day of June, 1928, at 2 o'clock in the afternoon, they tendered to the solicitor of the complainant the sum of \$115.65 to redeem said lands and premises. Defendants further allege that the said solicitor of complainant refused to accept the said moneys and defendants thereupon tendered the same to complainant by depositing the money with the clerk of this court.

10

7. Defendants neither deny or affirm the allegations contained in the seventh paragraph and leave complainant to her proof.

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8. They admit allegations contained in the eighth paragraph.

9. They have no knowledge or information sufficient to form a belief as to the allegations contained in the ninth paragraph.

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FIRST SEPARATE DEFENSE.

1. On June 19, 1928, at 2 o'clock in the afternoon the defendants by their solicitors, Meaney & Liffand, attended at the office of William Stalford, solicitor of complainant and there tendered in cash to the solicitor of complainant the sum of \$91.61 together with interest from August 5, 1926, to June 18, 1928, in the sum of \$14.04, together with the sum of \$10.00 costs, pursuant to the prayer of the bill of complaint filed herein.

40

Answer.

The complainant refused the said tender made by defendants.

SECOND SEPARATE DEFENSE.

10 1. On June 19, 1928, the defendants tendered to complainant the sum of \$115.65, representing the moneys due and owing to complainant, in accordance with the prayers of the bill of complaint filed herein by depositing the said sum with the clerk of this court.

THIRD SEPARATE DEFENSE.

Defendants now stand ready, willing and able to comply with the prayers of the bill of complaint filed herein.

20 HEANEY & LIFLAND,
Solicitors of Defendants.

A true copy.

FERD. GARRETSON,
Clerk.

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ORDER TO PAY INTO COURT.

Filed June 19, 1928.

IN CHANCERY OF NEW JERSEY.

Between

ANNA WITTES,

Complainant,

and

MICHAEL REPKO, *et als.,*

Defendants.

10

On Bill, &c.

Order.

This matter being opened to the Court by Meaney & Liffand, solicitors of the defendants, Michael Repko and Annie Repko, his wife, and it appearing to the satisfaction of the Court that these defendants have this day filed an answer to the bill of complaint herein, wherein they allege that they tendered to the solicitor of the complainant the sum of One Hundred Fifteen Dollars and Sixty-five (\$115.65) Cents, to redeem said lands and premises in compliance with the prayers of the bill of complaint and the complainant by her solicitor having refused the said tender.

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It is on this 19th day of June, 1928,

ORDERED that the sum of One Hundred Fifteen Dollars and Sixty-five (\$115.65) Cents tendered to the solicitor of the complainant and refused by him be deposited with the clerk of this court

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Order to Pay into Court.

to await such decree as the Chancellor may make
in the premises.

E. R. WALKER,

C.

Respectfully advised,

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

A true copy.

FERD. GARRETSON,
Clerk.

RECEIPT.

20 Office of Clerk in Chancery, New Jersey.

Trenton, N. J. June 1928

RECEIVED from Messrs. Meaney & Lifland
One hundred and fifteen & 65 Dollars
Wittes vs. Repko 62-684

Thomas Barber Clerk
\$115 65/ per A.B.A.

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NOTICE OF APPEAL.

Filed July 13, 1928.

IN CHANCERY OF NEW JERSEY.

Between

ANNA WITTES,

*Complainant,**and*MICHAEL REPKO, *et als.*,*Defendants.*

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*On Bill &c.
Notice of
Appeal.*To MICHAEL REPKO, *et als.*,*Defendants.*

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Meaney & Lifland, Esqs.,
Solicitors of Defendants.

The complainant hereby appeals from the whole and every part of the Order made in this Court in the above stated cause on the eleventh day of June, A. D. nineteen hundred and twenty-eight, to the Court of Errors and Appeals in the last resort in all causes, upon the following grounds:

30

Because this suit is the foreclosure of a tax sale certificate under the Tax Laws of this State and that the law and rules of the Court of Chancery relating to the foreclosure of mortgages apply to this case, and that the same have been strictly followed, and that the title has been vested in the complainant by virtue of a Final

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Notice of Appeal.

Decree of the Court of Chancery of New Jersey.

WILLIAM STALFORD,
Sol'r for Complainant.

HARRY UNGER,
Of Counsel with Complainant.

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Dated Newark, N. J.
June 21, 1928.

A true copy.

FERD GARRETSON,
Clerk.

Service of a copy of the within Notice of Appeal is hereby acknowledged this 21st day of
20 June, 1928.

MEANEY & LIFLAND,
Sol'rs for Def'ts.

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AMENDED NOTICE OF APPEAL.

Filed July 26, 1928.

IN CHANCERY OF NEW JERSEY.

Between

ANNA WITTES,

Complainant,

and

MICHAEL REPKO and ANNIE

REPKO, et als.,

Defendants.

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On Bill, &c.

*Amended
Notice of
Appeal.*

To MICHAEL REPKO, *et als.*,

Defendants, or

Meaney & Lifland, Esqs.,

Solicitors of Defendants.

20

The complainant hereby appeals from the whole and every part of the Order made in this Court in the above stated cause on the eleventh day of June, A. D. nineteen hundred and twenty-eight, by the Chancellor on the advice of Vice-Chancellor John J. Fallon, to the Court of Errors and Appeals in the last resort in all causes, upon the following grounds:

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Because this suit is the foreclosure of a tax sale certificate under the Tax Laws of this State and that the law and rules of the Court of Chancery relating to the foreclosure of mortgages apply to this case, and that the same have been strictly followed, and that the title has been vested in the complainant by virtue of a Final

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Amended Notice of Appeal.

Decree of the Court of Chancery of New Jersey.

Dated Newark, N. J.

WILLIAM STALFORD,
Solicitor for Complainant.

10

HARRY UNGER,
Of Counsel with Complainant.

A true copy.

FERD GARRETSON,
Clerk.

Service of a copy of the within Amended Notice of Appeal is hereby acknowledged this 19th day of July, 1928.

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MEANEY & LIFLAND,
Sol'rs of Def'ts.

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NOTICE.

Filed July 23, 1928.

IN CHANCERY OF NEW JERSEY.

Between

ANNA WITTES,

*Complainant,**and*MICHAEL REPKO, *et als.,**Defendants.*

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*On Bill, &c.**Notice.*

SIRS:

PLEASE TAKE NOTICE, that on Monday, the
 twenty-third day of July, 1928, at the Chancery
 Chambers, 1 Exchange Place, Jersey City, New
 Jersey, at ten o'clock in the forenoon (daylight
 saving time), or as soon thereafter as counsel
 may be heard, I shall apply to the Chancellor
 for an order staying the further progress and
 trial of the above entitled suit in the Court of
 Chancery, pending the determination of the ap-
 appeal now pending in the Court of Errors and
 Appeals from the Order of the Chancellor made
 the 11th day of June, 1928; and for such fur-
 ther and general relief as the parties at that
 time may be entitled to.

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Notice.

Please take further notice that the application for said stay is based upon the annexed petition.

Newark, N. J.
July 18, 1928.

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Respectfully,
WILLIAM STALFORD,
Solicitor for Complainant.

To:

MEANEY & LIFLAND, Esq.,
Sol'rs of Defendants,
591 Summit ave.,
Jersey City, N. J.

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PETITION.

IN CHANCERY OF NEW JERSEY.

Between

ANNA WITTES,

Complainant,

and

MICHAEL REPKO, *et als.,*

Defendants.

*On Bill, &c.
Petition.*

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

The petition of Anna Wittes, of the City of Linden in the County of Union and State of New Jersey, respectfully shows unto your Honor, as follows:

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1. Your petitioner did, on or about the 5th day of January, 1927, file in this Court her Bill in Chancery, for the strict foreclosure of a tax certificate for lien on certain premises in the Borough of Linden, Union County, New Jersey, described as follows:

“Known and designated as lots 4459 and 4460 in Block 77, as shown on a certain map entitled, ‘Wood-Linden Realty Trust, Map No. 28 of lots at Linden, N. J., surveyed Feb. 1, 1907 by J. L. Bauer, C. E. & Surveyor, Elizabeth, N. J. and filed in the Union Co. Register’s Office, Elizabeth, N. J. October 18, 1907 as map #227-D’ and also known as lot No. 72, Block 53 on the Official Assessment Map of the Borough of Linden.”

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Petition.

The Borough of Linden and Township of Linden have since combined and are known as the City of Linden.

10 2. That petitioner became possessed of said lands and premises in said City of Linden, under and by virtue of a tax certificate assigned to her, and petitioner as assignee under said tax certificate did take possession of said lands and is still possessed of the same.

20 3. Your petitioner further shows unto your Honor that she, as complainant in this suit, through her solicitor did pursue said suit in the usual form and practice of this Honorable Court, and according to the laws and statutes of the State of New Jersey; that Michael Repko and Annie Repko, his wife, defendants in said suit, could not be found so that personal service could be made upon them; but that upon inquiry it was found that persons of that name lived at No. 68 Green street, in the City, County and State of New York, and to that address, notices to them, as absent defendants, already duly published, were sent and returned by the post office authorities.

30 4. Your petitioner further shows that in due season, being entitled to take a final decree in this suit, she, your said petitioner, through her said solicitor, did obtain such decree, said decree being made and filed on the 6th day of May, 1927.

40 5. Your petitioner further shows unto your Honor that the defendants, Michael Repko, and Annie Repko, his wife, through their solicitors, filed a petition in this Court and obtained an Order to Show Cause why said decree should not be opened; said papers were served upon

Petition.

the complainant's solicitor; and the motion was heard in the Court of Chancery, at the Chancery Chambers in the City of Jersey City, before Hon. John J. Fallon, one of the Vice-Chancellors of this Court, and the said Vice Chancellor having considered the matter made a decision, and an order in consonance thereof, whereby the final decree in this suit hitherto obtained by your petitioner was opened, and time prescribed in which the defendants could answer and that the cause should proceed to a hearing; said order of the said Vice-Chancellor was filed in this court on June 11, 1928. 10

6. Your petitioner further shows that the defendants tendered to her solicitor, the sum of \$115.65, which tender was refused, and since which time your said petitioner has been noticed by the solicitors of the defendants that said tender has been deposited with the Clerk of the Court of Chancery, to await such decree as the Chancellor may make in the premises. 20

7. Your petitioner avers that she has in all respects complied with the laws and statutes of the State of New Jersey, in respect to the sale of lands for unpaid taxes, and that when said decree was entered on the 6th day of May, 1927, under the circumstances and facts of this case, said decree became final and incapable of being opened by the order of this court; and that under said decree the property right in the lands so possessed by your petitioner had irrevocably vested in your said petitioner; but the decision of the learned Court was contrary to the proposition as herein stated by your petitioner, in this, that he decided and ordered that said decree should be re-opened and the suit proceed 30

Petition.

to a final hearing, just as if no decree had ever been entered in the suit.

8. Your petitioner further shows unto your Honor that thereafter, on June 21, 1928, through her solicitor and counsel, she, your said petitioner, did give a Notice of Appeal from the entire Order of June 11, 1928, to the Court of Errors and Appeals, and that said Notice of Appeal was filed at the office of the Clerk of the Court of Chancery, at Trenton, on July 12, 1928.

Wherefore, your petitioner prays of your Honor, that pursuant to the statute, rules and practice in such case made and provided, your Honor will now make an order staying the progress of the Chancery suit and its approaching trial, while this appeal is pending and undetermined in the Court of Errors and Appeals; and your petitioner begs leave for greater certainty and detail; to refer from time to time as may be needed to the file of papers filed with the Clerk of this Court, in this suit.

And your petitioner will ever pray, &c.

ANNA WITTES,
Petitioner.

WILLIAM STALFORD,
Solicitor for Petitioner.

HARRY UNGER,
Of Counsel with Petitioner.

Petition.

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

ANNA WITTES, of full age, being duly sworn, according to law, upon her oath deposes and says:

I am the complainant in the above suit and the petitioner named in the foregoing petition. 10

I have read said petition, and the contents thereof, as to facts stated within my knowledge, are true; and as to facts stated within the knowledge of others, I believe to be true; and as to the law of the case, I am advised by counsel that they believe the same is correct; therefore, I have authorized the filing of this petition.

ANNA WITTES. 20

Sworn and subscribed to before me
 this 18th day of July, 1928.

SAUL A. WITTES,
 Att'y at Law of New Jersey.

A true copy.

FERD GARRETSON,
 Clerk. 30

Service of a copy of the within Notice and Petition is hereby acknowledged this 19th day of July, 1928.

MEANEY & LIFLAND,
 Sol'rs for Def'ts.

**NOTICE OF APPLICATION FOR ORDER OF
REFERENCE.**

Filed September 18, 1928.

IN CHANCERY OF NEW JERSEY.

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Between

ANNA WITTES,

Complainant,

and

MICHAEL REPKO and ANNIE
REPKO, his wife; their heirs,
devises and personal rep-
resentatives,

Defendants.

On Bill, &c.

*Notice of
Application
for Order of
Reference.*

20

*To William Stalford, Esq., solicitor of complain-
ant:*

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PLEASE TAKE NOTICE that on Tuesday the 18th day of September, 1928, at the hour of ten o'clock in the forenoon or as soon thereafter as the matter can be heard at the State House at Trenton, N. J., we will apply to the Chancellor for an order referring the above-entitled cause to one of the Vice-Chancellors of this Court to hear the same for the Chancellor, and to report thereon to him and advise what order or decree should be made therein.

MEANEY & LIFLAND,
Solicitors of Defendants.

40

Notice of Application for Order of Reference.

A true copy.

FERD. GARRETSON,
Clerk.

Service of a copy of the within notice is hereby
acknowledged this 12th day of September, 1928.

WILLIAM STALFORD,
Solicitor of Complainant.

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ORDER OF REFERENCE.

Filed September 18, 1928.

IN CHANCERY OF NEW JERSEY.

10	<i>Between</i> ANNA WITTES, <div style="text-align: right;"><i>Complainant,</i></div> <div style="text-align: center;"><i>and</i></div> MICHAEL REPKO and others, <div style="text-align: right;"><i>Defendants.</i></div>	<i>On Bill, &c.</i> <i>Order of</i> <i>Reference.</i>
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20 This matter being opened to the Court by Meaney & Lifland, solicitors of the defendants, and it appearing that due notice of this application has been given to William Stalford, Esq., solicitor of complainant, and no good reason being shown to the contrary,

It is on this 18th day of September, 1928, on motion of Meaney & Lifland, Esqs., solicitors of the defendants.

30 ORDERED that the above-entitled cause be referred to Hon. John J. Fallon, one of the Vice-Chancellors of this court to hear the same for the Chancellor and to report thereon to him and advise what order or decree should be made therein.

E. R. WALKER,

C.

A true copy.

FERD. GARRETSON,
 Clerk.

NOTICE OF APPLICATION FOR ORDER
OF REFERENCE.

Filed October 8, 1928.

IN CHANCERY OF NEW JERSEY.

Between

ANNA WITTES,

Complainant,

and

MICHAEL REPKO, *et als.*,

Defendants.

10

On Bill, &c.
Notice of
Application
for Order of
Reference.

To William Stalford, Esq., solicitor of complainant:

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SIR:

TAKE NOTICE that on Monday, the first day of October, 1928, at the hour of 10 o'clock in the forenoon or as soon thereafter as counsel can be heard, at the Chancery Chambers, No. 1 Exchange Place, Jersey City, N. J., we shall apply to the Hon. John J. Fallon, Vice-Chancellor of this court to whom this matter has been referred, for an order referring the above-entitled cause to one of the Special Masters of this court to hear the same for the Chancellor and to report thereon to him and to advise what order or decree should be made therein.

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MEANEY & LIFLAND,
Solicitors of Defendants.

A true copy.

FERD. GARRETSON,
Clerk.

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Notice of Application for Order of Reference.

Service of a copy of the within notice is hereby
acknowledged this 21st day of September, 1928.

WILLIAM STALFORD,
Solicitor of Complainant.

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ORDER OF REFERENCE TO A MASTER.

Filed October 8, 1928.

IN CHANCERY OF NEW JERSEY.

Between

ANNA WITTES,

*Complainant,**and*MICHAEL REPKO, *et als.,**Defendants.*

10

*On Bill, &c.**Order of
Reference
to a Master.*

This cause being opened to the Court by Meaney & Lifland, solicitors of the defendants, and it appearing that due notice of this application has been given to William Stalford, solicitor of the complainant;

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And it further appearing that by an order of this court made on the 11th day of June, 1928, the interlocutory and final decree in this case was opened, set aside, vacated and for nothing holden, and the defendants given leave to answer the complainant's bill of complaint within ten days from the date of the said order;

And it further appearing that the defendants have answered the said bill of complaint wherein they admit the allegations contained in the bill of complaint, as more fully appears by the said answer;

30

And it further appearing that the defendants by order of this court made on the 19th day of June, 1928, after tender made to the solicitor of complainant, deposited with the clerk of this court the sum of \$115.65 pursuant to the prayers of the bill of complaint.

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Order of Reference to a Master.

And it further appearing by an order made on the 18th day of September, 1928, this cause was referred to the Hon. John J. Fallon, one of the Vice-Chancellors of this court to hear the same for the Chancellor and to report thereon to him;

10 It is thereupon on this 8th day of October, 1928, on motion of Meaney & Lifland, solicitors of the defendants,

ORDERED that the above-entitled cause be referred to Harry Wiener, Esq., one of the Masters of this court, to ascertain and report the amount due to the complainant, pursuant to the prayers of the bill of complaint and that the said Master make his report with all convenient speed.

E. R. WALKER,

20

Respectfully advised,

JNO. J. FALLON,
V.-C.

C.

A true copy.

FERD. GARRETSON,
Clerk.

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ORDER DISMISSING APPEAL.

Filed October 18, 1928.

NEW JERSEY COURT OF ERRORS
AND APPEALS.

ANNA WITTES,

Complainant-Appellant,

vs.

MICHAEL REPKO and ANNIE
REPKO, his wife; their heirs,
devises and personal repre-
sentatives,
Defendants-Appellees.

10

*On Appeal
from Court
of Chancery.*

*Order
Dismissing
Appeal.*

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A petition having been filed herein by the ap-
pellees, Michael Repko, *et als.*, alleging that the
appellant, Anna Wittes, has failed,

1. To make deposit of the sum of \$100.00
with the clerk of the Court of Chancery, as re-
quired and within the time prescribed by the
rules of this court.

2. To serve a copy of the petition of appeal
upon the defendants-appellees.

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3. To notice this cause for argument.

4. To serve the State of the Case within the
time prescribed by the rules of this court.

5. To prosecute the appeal with due dili-
gence.

AND IT APPEARING that due notice of this ap-
plication has been given to said appellant, Anna
Wittes, in the manner and form as prescribed by

40

Order Dismissing Appeal.

the rules of this court; and the Court having considered the matter, and no reason appearing to the contrary;

It is on this 17th day of October, 1928, on motion of Meaney & Lifland, of counsel with the said appellees.

10

ORDERED that this appeal be and the same is hereby dismissed with costs.

A true copy.

FERD. GARRETSON,
Clerk.

A true copy.

20

JOSEPH F. S. FITZPATRICK,
Clerk.

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MASTER'S REPORT.

Filed March 23, 1929.

IN CHANCERY OF NEW JERSEY.

Between

ANNA WITTES,

*Complainant,**and*MICHAEL REPKO, *et als.,**Defendants.*

10

*On Bill, &c.
Master's
Report.*

I, the undersigned, one of the Masters of this Court do respectfully report to the Chancellor, that pursuant to an order of reference in the above matter bearing date the 8th day of October, 1928, I have been attended by William Stalford, solicitor for the complainant, and Hyman Siegel, of the firm of Meaney and Lifland, solicitors for the defendants and have taken depositions of witnesses hereto annexed, and have considered the matters referred to me by said order.

20

And I do report that on the 15th day of November, 1923, the premises mentioned in the bill of complaint were sold by C. Dudley Blancke, collector of taxes of the Borough of Linden, in the County of Union and State of New Jersey, to the Borough of Linden for the taxes for the year 1922 amounting to \$16.25, and interest thereon to July 1, 1923, amounting to \$0.97, and costs of sale amounting to \$2.86, making a total of \$20.08. That said certificate of sale was, on the 5th day of August, 1926, assigned by the City of Linden in the County of Union and State of

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Master's Report.

New Jersey, of which the said Borough of Linden became a part, to Saul A. Wittes, including taxes for the year 1924, amounting to \$18.13, and interest to August 5, 1926, amounting to \$2.80, making a total of \$20.93, taxes for 1925, amounting to \$17.78 and interest to August 5, 1926, amounting to \$1.25, taxes for 1926 amounting to \$20.32 with interest amounting to 10c making a total of \$20.42, in all making a total of \$91.61. That before the commencement of this action, the said Saul A. Wittes assigned his rights in said certificate to Anna Wittes, the complainant.

And I do further find and report that there is due to the complainant, the sum of \$91.61, together with interest thereon at the rate of eight per cent. (8%), from August 5, 1926, to the present date, amounting to \$17.10.

And I do further report that the complainant has proven before me, that the taxed costs in the above-entitled suit is the sum of \$86.76.

And I do further report that the complainant claims to have expended the sum of \$115.00 for the title insurance policy insuring the title to said premises, and in my opinion this amount should not be allowed to the complainant.

And I do therefore report that the amount to be paid to the complainant, in redemption of said tax certificate, is the sum of \$91.61, together with interest at the rate of eight per cent. (8%) from August 5, 1926, amounting to \$17.10, making a total of \$108.71, together with any costs that may be allowed by the Court.

Respectfully submitted,

HARRY J. WEINER,
Master in Chancery.

Deposition of Saul A. Wittes.

IN CHANCERY OF NEW JERSEY.

Between

ANNA WITTES,

Complainant,

and

MICHAEL REPKO, *et als.*,

Defendants.

On Bill, &c.

Depositions.

10

Depositions on behalf of the complainant and defendant taken before me, Harry J. Weiner, one of the Masters in Chancery of this State, at my office, No. 1111 Elizabeth avenue, in the City of Elizabeth, Union County, New Jersey, on the 6th day of December, 1928, in pursuance to an Order of Reference made herein, bearing date the 8th day of October, 1928.

20

Appearances:

WILLIAM STALFORD, Esq.,
Solicitor for Complainant.

HYMAN SIEGAL,
Of the Firm of Meaney & Lifland, Solicitors
for Defendants.

SAUL A. WITTES, a witness produced on behalf of the complainant, being first duly sworn upon his oath according to law, deposes and says:

30

I reside at No. 513 Rahway avenue, in the City of Elizabeth, Union County, New Jersey.

On or about the 5th day of August, 1926, I procured from the City of Linden an assignment of a certificate of sale of real estate for taxes.

Counsel for complainant placed before me a certificate for the sale of real estate made

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Deposition of Saul A. Wittes.

10 by C. Dudley Blancke, Collector of Taxes for the Borough of Linden, in the County of Union and State of New Jersey, to the Borough of Linden, dated November 15th, 1923, for the sale of premises known as lot 72, Block 53, as shown upon the Official Assessment Map of said municipality, which certificate was recorded on the 9th day of August, 1926, in Book 805 of Mortgages for said County, on pages 177 &c., said certificate was marked Exhibit C. 1.

20 Counsel offered in evidence an assignment of certificate of sale of real estate made by the City of Linden to Saul A. Wittes, which assignment is dated August 5th, 1926, and recorded in the Office of the Register of the County of Union in Book 95 of Assignments of Mortgages for said County, on pages 509 &c.

On the presentation to me of this certificate, I paid to the City of Linden, the sum of \$91.61, which includes interest for 1924, 1925 and 1926, and interest and costs. Said certificate is marked Exhibit C. 2.

30 Before the commencement of this action, I assigned all my rights in this certificate to Anna Wittes, the complainant herein. Exhibit marked C. 1, I paid \$1.00 for recording, and Exhibit marked C. 2, I paid \$1.52 for recording.

SAUL A. WITTES.

Sworn and subscribed to before me,
this 6th day of December, 1928.

HARRY J. WEINER.

Deposition of William Stalford.

WILLIAM STALFORD, a witness produced on behalf of the complainant, being first duly sworn upon his oath according to law, deposes and says:

I am an attorney-at-law of the State of New Jersey with offices at No. 130 Market street, in the City of Newark, Essex County, New Jersey, and was the solicitor for the complainant in the above-entitled cause. I commenced the above-entitled action on behalf of the complainant for the foreclosure of the right of redemption of the certificate so held by her. The final decree was entered in favor of the complainant together with taxed costs amounting to \$86.76.

10

Thereafter I procured for the complainant, a title insurance policy insuring the lands and premises described in said bill of complaint affected by the tax certificate, through the New York Title and Mortgage Company, at a cost of \$115.00.

20

Counsel for defendant objects to the testimony with reference to any transaction or payment in connection with the procuring of the title policy on the ground that the same is irrelevant and immaterial and incompetent and is not an element of damage or costs in this suit and is not part of the amount required to be paid in the redemption of the premises from the complainant.

30

WILLIAM STALFORD.

Sworn and subscribed to before me
this 6th day of December, 1928.

HARRY J. WEINER.

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**NOTICE OF MOTION TO FIX COUNSEL FEE
OF DEFENDANTS.**

Filed April 15, 1929.

IN CHANCERY OF NEW JERSEY.

10	<p><i>Between</i></p> <p style="text-align: center;">ANNA WITTES, <i>Complainant,</i></p> <p style="text-align: center;"><i>and</i></p> <p style="text-align: center;">MICHAEL REPKO and ANNIE REPKO, his wife, et als., <i>Defendants.</i></p>	<p><i>On Bill, &c.</i></p> <p><i>Notice of</i></p> <p><i>Motion to Fix</i></p> <p><i>Counsel</i></p> <p><i>Fee of</i></p> <p><i>Defendants.</i></p>
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20 *To William Stalford, Esq., solicitor of complainant:*

SIR:

30 TAKE NOTICE that on the 15th day of April, 1929, at the hour of 10 o'clock in the forenoon or as soon thereafter as counsel can be heard, at the Chancery Chambers, 1 Exchange Place, in the City of Jersey City, N. J., we will apply to the Chancellor for an order directing the complainant to pay to the defendants a reasonable counsel fee in this cause, and in the Court of Errors and Appeals.

MEANEY & LIFLAND,
Solicitors of Defendants.

A true copy.

FERD. GARRETSON,
Clerk.

**NOTICE OF MOTION TO CONFIRM MAS-
TER'S REPORT AND SETTLE FINAL
DECREE.**

Filed April 15, 1929.

IN CHANCERY OF NEW JERSEY.

10

Between

ANNA WITTES,

Complainant,

and

MICHAEL REPKO, *et als.*,

Defendants.

On Bill, &c.

*Notice of
Motion to
Confirm
Master's
Report and
Settle Final
Decree.*

*To William Stalford, Esq., solicitor of complain-
ant:*

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SIR:

TAKE NOTICE that on the 15th day of April, 1929, at the hour of ten o'clock in the forenoon or as soon thereafter as counsel can be heard at the Chancery Chambers, 1 Exchange Place, in the City of Jersey City, New Jersey, we will apply to the Honorable John J. Fallon, Vice-Chancellor, to whom this matter has been referred, to confirm the Master's report made and filed in this cause on the 23rd day of March, 1929, and at the same time and place will also move the Court to settle the form of the final decree to be entered in the above-entitled cause.

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MEANEY & LIFLAND,
Solicitors of Defendants.

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Notice of Motion to Confirm Master's Report, etc.

A true copy.

FERD. GARRETSON,
Clerk.

10 Service of a copy of the within notice of motion
is hereby acknowledged this 5th day of April,
1929.

RIKER & RIKER,
Solicitors of Complainant.

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AFFIDAVIT OF SERVICE.

Filed April 15, 1929.

IN CHANCERY OF NEW JERSEY.

Between

ANNA WITTES,

*Complainant,**and*MICHAEL REPKO, *et als.,**Defendants.*

10

*On Bill, &c.**Affidavit.*STATE OF NEW JERSEY, }
COUNTY OF HUDSON. } *ss.:*

LOUIS BORT, of full age being duly sworn upon his oath, deposes and says: 20

I am associated with the firm of Meaney & Lifland, solicitors of the defendants in the above-entitled action.

On April 8, 1929, at 11:45 o'clock A. M. I served William Stalford, solicitor of record of the complainant in the above-entitled cause with copies of notice of motion to confirm Master's report and settle final decree, proposed final decree and notice of motion to fix counsel fee of defendants, by leaving the same with his secretary in charge of his office at 128-130 Market street, Newark, New Jersey. 30

LOUIS BORT.

40

Affidavit of Service.

Sworn and subscribed to before
me this 8th day of April, 1929.

HYMAN SEGAL,
Attorney-at-Law of New Jersey.

10 A true copy.

FERD. GARRETSON,
Clerk.

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NOTICE TO VACATE ORDER.

Filed April 22, 1929.

IN CHANCERY OF NEW JERSEY.

Between

ANNA WITTES,

Complainant, *On Bill, &c.**and**Notice.*

MICHAEL REPKO and others,

Defendants.

10

To Meaney & Lifland, solicitors for defendants:

PLEASE TAKE NOTICE that on Monday, the 15th day of April, 1929, at ten o'clock in the forenoon, or as soon thereafter as counsel can be heard, at the Chancery Chambers, 1 Exchange Place, Jersey City, N. J., I shall move before Honorable John J. Fallon, Vice-Chancellor, to set aside and vacate the order made in this cause on the 11th day of June, 1928, vacating the final decree heretofore entered and to vacate and set aside all subsequent proceedings herein, including the Master's report, and to reinstate the final decree heretofore entered for the reason that the petition to open said final decree was filed on April 19, 1928, at which time and at all times thereafter this Court was without jurisdiction to open said final decree under the provisions of Chapter 211 of the Laws of New Jersey of 1928 which became effective on April 3, 1928.

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WILLIAM STALFORD,
Solicitor of Complainant.

40

Notice to Vacate Order.

A true copy.

FERD. GARRETSON,
Clerk.

Service of a copy of the within notice is
acknowledged this 9th day of April, 1929.

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MEANEY & LIFLAND,
Solicitors of Defendants.

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STIPULATION.

Filed April 22, 1929.

IN CHANCERY OF NEW JERSEY.

Between

ANNA WITTES,

*Complainant,**and*MICHAEL REPKO, *et als.,**Defendants.*

10

*On Bill, &c.**Stipulation.*

IT IS HEREBY STIPULATED AND AGREED by and between the solicitors of the respective parties hereto, that the notices of motion, returnable the 15th day of April, 1929, be continued to the 6th day of May, 1929, at the same time and place.

20

WILLIAM STALFORD,
Solicitor of Complainant.

MEANEY & LIFLAND,
Solicitors of Defendants.

A true copy.

FERD. GARRETSON,

Clerk.

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SUBSTITUTION OF SOLICITOR.

Filed April 22, 1929.

IN CHANCERY OF NEW JERSEY.

10

Between

ANNA WITTES,

Complainant,

and

MICHAEL REPKO and others,

Defendants.

On Bill, &c.

*Substitution
of Solicitor.*

20

It appearing to the Court that William Stalford, solicitor for the complainant in the above-entitled cause consents hereto,

It is on this 22nd day of April, 1929, ORDERED that Messrs. Riker & Riker be and they are hereby substituted as solicitors for the complainant in the place and stead of said William Stalford.

E. R. WALKER,

C.

Respectfully advised,

JOHN J. FALLON,

30

V.-C.

I hereby consent to the entry of the foregoing order.

WILLIAM STALFORD,

A true copy.

FERD. GARRETSON,

Clerk.

40

AFFIDAVIT.

Filed April 26, 1929.

IN CHANCERY OF NEW JERSEY.

Between

ANNA WITTES,

*Complainant,**and*MICHAEL REPKO and ANNIE
REPKO, his wife; their heirs,
devises and personal rep-
resentatives,*Defendants.*

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*On Bill, &c.**Affidavit.*

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STATE OF NEW JERSEY, }
COUNTY OF HUDSON. } ss.HYMAN SEGAL, being duly sworn upon his oath,
deposes and says:

That he is associated with the firm of Meaney
and Lifland, solicitors for defendants, that on
the 18th day of June, 1928, he, together with
the defendant Michael Repko, attended at the
office of William Stalford, Esq., solicitor of com-
plainant, in the City of Newark, County of Es-
sex, State New Jersey and there tendered in
cash to the said solicitor of complainant, the
sum of \$91.61, together with the sum of \$14.04,
representing interest from August 5, 1926, to
June 18, 1928, the date of the tender, together
with the sum of \$10.00 costs, making a total of
\$115.65.

30

HYMAN SEGAL.

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Affidavit.

Sworn and subscribed to before me
this 25th day of April, 1929.

WILLIAM E. PARKEL,
Attorney at Law of N. J.

10 A true copy.

FERD GARRETSON,
Clerk.

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AFFIDAVIT.

Filed April 26, 1929.

IN CHANCERY OF NEW JERSEY.

Between

ANNA WITTES,

*Complainant,**and*MICHAEL REPKO, *et als.,**Defendants.*

10

*On Bill, &c.
Affidavit.*STATE OF NEW JERSEY, }
COUNTY OF HUDSON. } *ss.*THOMAS F. MEANEY, being duly sworn upon his
oath, deposes and says:

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That on the 16th day of October, 1928, he
appeared before the Court of Errors and Ap-
peals for the purpose of dismissing the appeal
prosecuted by the complainant, which applica-
tion was granted; that the time occupied by him
took up the whole of that day.

THOMAS F. MEANEY.

Sworn and subscribed to before me
this 25th day of April, 1929.

30

WILLIAM E. PARKEL,
Attorney at Law of N. J.

A true copy.

FERD GARRETSON,
Clerk.

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ORDER.

Filed May 6, 1929.

IN CHANCERY OF NEW JERSEY.

10	<i>Between</i> ANNA WITTES, <div style="text-align: right;"><i>Complainant,</i></div> MICHAEL REPKO, <i>et als.,</i> <div style="text-align: right;"><i>Defendants.</i></div>	}	<i>On Bill, &c.</i> <i>Order.</i>
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20 This matter being opened to the Court by Meaney & Lifland, solicitors of the defendants, and it being represented to the Court that Riker & Riker, solicitors of the complainant, have consented thereto;

It Is, on this 6th day of May, 1929, ORDERED, that the motion to settle the form of Final Decree to be entered in the above matter; motion to vacate the proceedings and motion to fix the counsel fees of defendants, be continued to Monday, the 21st day of May, 1929, at the same time and place.

30 E. R. WALKER,
C.

Respectfully advised,

JOHN J. FALLON,
V.-C.

A true copy.

FERD GARRETSON,
Clerk.

FINAL DECREE.

Filed June 6, 1929.

IN CHANCERY OF NEW JERSEY.

Between

ANNA WITTES,

*Complainant,**and*MICHAEL REPKO and ANNIE
REPKO, his wife; their heirs,
devises and personal rep-
resentatives,*Defendants.*

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*On Bill, &c.**Final Decree.*

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This cause coming on to be heard by the court in the presence of Meaney & Lifland, solicitors for and of counsel with the defendants, Michael Repko and Annie Repko, and in the presence of Riker & Riker, solicitors for and of counsel with the complainant, upon motion of the defendants to confirm the Master's report filed herein to fix the form of final decree and for counsel fees, and upon motion of the complainant to vacate the order made in the above entitled cause on the 11th day of June, 1928, and to reinstate the former final decree entered on May 6, 1927, and the Court having heard and considered the arguments of counsel,

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AND IT APPEARING to the satisfaction of the Court that the complainant is the holder by assignment of a certain tax certificate described in said complaint, which tax certificate was made by C. Dudley Blancke, Collector of Taxes for the Borough of Linden, in the County of Union,

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Final Decree.

State of New Jersey to the Borough of Linden, dated November 15, 1923, for the sale of the premises known as Lot 72, Block 53, as shown upon the official assessment map of said municipality, which lands and premises are more fully described in the bill of complaint filed herein, which certificate was recorded on the 9th day of August, 1926, in Book 805 of Mortgages for said County on page 177 etc.;

10 AND IT APPEARING to the satisfaction of the Court that the defendants have the right to redeem from the complainant the lands and premises more fully described hereafter, being the same premises described in the bill of complaint filed herein;

20 AND IT FURTHER APPEARING to the satisfaction of the Court that the defendants, after tender made to the solicitors of complainant, have deposited with the Clerk of this Court, the sum of one hundred and fifteen dollars and sixty-five cents (\$115.65) for the purpose of redeeming the said property from the complainant;

30 AND IT FURTHER APPEARING to the satisfaction of the Court that the said complainant has refused the said tender made, and the Master appointed by this Court having reported that there is due the complainant the sum of one hundred and eight dollars and seventy-one cents (\$108.71) and no objections having been made to the report of the said Master on file in this Court;

AND IT FURTHER APPEARING that on the application for the order entered herein under date of June 11, 1928, the provisions of Chapter 211 of the Laws of 1928 were not raised on behalf of the complainant;

40 IT IS, on this 6th day of June, 1929, ORDERED that the motion of the complainant to vacate and set aside the order of June 11, 1928, and to

Final Decree.

reinstate the former final decree of May 6, 1927, be and the same is hereby denied.

AND IT IS FURTHER ORDERED that the Master's report made and filed in this cause on the 23rd day of March, 1929, be and the same is hereby confirmed.

AND IT IS FURTHER ORDERED, ADJUDGED AND DECREEED that the defendants have the right to redeem the lands and premises described in the certificate of tax sale and in the bill of complaint herein, and more fully described as follows: 10

ALL that tract and parcel of land and premises situate, lying and being in the Borough of Linden, Union County, N. J. and known and designated on a certain map entitled "Wood-Linden Realty Trust Map No. 28 of lots of Linden, N. J. surveyed Feb. 1st, 1907, by J. L. Bauer, Civil Engineer and Surveyor, Elizabeth, N. J." and filed in the Union County Register's Office, Elizabeth, N. J. October 18, 1907, as Map No. 227-D, as and by the lot number forty-four hundred and sixty (4460) in block number seventy-seven (77) on said map. 20

BEING also known as all that tract and parcel of land and premises situate, lying and being in the Township and Borough of Linden, Union County, New Jersey, designated by the lot number, forty-four hundred fifty-nine in block number seventy-seven, shown on a certain map entitled "Wood-Linden Realty Trust, Map No. 28, of lots at Linden, N. J. surveyed Feb. 1, 1907, by J. L. Bauer, Civil Engineer and Surveyor, Elizabeth, N. J." and filed in the Union County Register's office, Elizabeth, N. J., October 18, 1907 as Map No. 227-D. Also known and designated as Lots No. 4459 and 4460 in Block 77, as shown on a certain map entitled "Wood-Linden Realty Trust, Map No. 28 of lots at Linden, N. J. 30 40

Final Decree.

surveyed February 1, 1907, by J. L. Bauer, C. E. and surveyor, Elizabeth, N. J." and filed in the Union Co. Register's office, Elizabeth, N. J., October 18, 1907, as map No. 227-D and also known as lot No. 72, Block 53 on the Official Assessment Map of the Borough of Linden.

- 10 AND IT FURTHER ORDERED, ADJUDGED AND DECREEED that complainant forthwith deliver up possession of the lands and premises hereinbefore described and also deliver up to the defendants the said certificate of tax sale made by C. Dudley Blancke, Collector of Taxes for the Borough of Linden, in the County of Union, State of New Jersey, to the Borough of Linden dated November 15, 1923, for the sale of premises known as Lot 72, block 53, as shown upon
- 20 the official assessment map of said municipality which certificate was recorded on the 9th day of August, 1926, in Book 805 of Mortgages for said County, on pages 177, &c. and also deliver up to the said defendants, the assignment of the said certificate of tax sale, which assignment is dated August 5, 1926, and recorded in the office of the Register of the County of Union in Book 95 of Assignments of Mortgages for said County, on pages 509, &c., and also deliver up to the
- 30 said defendants, the assignment of the said certificate to the complainant herein, which assignment is recorded in the Union County Register's Office, as No. 8770, the certificate of tax sale hereinbefore set forth, and the assignments thereof, all duly endorsed for cancellation;

AND IT IS FURTHER ORDERED, ADJUDGED AND DECREEED that the Clerk of this court do forthwith pay to the complainant or her solicitors the sum of one hundred and eight dollars and

Final Decree.

seventy-one cents (\$108.71) as reported by the Master;

AND IT IS FURTHER ORDERED, ADJUDGED AND DECREED that a counsel fee of two hundred dollars (\$200.00) be allowed to Meaney & Lifland, solicitors for and of counsel with defendants, which sum is to be paid by the complainant simultaneously with the receipt by her of the moneys hereinbefore ordered to be paid by the Clerk of this Court; 10

AND IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the complainant pay the taxed costs of the proceedings herein.

E. R. WALKER,

C.

Respectfully advised,

JOHN J. FALLON,
V.-C. 20

We hereby consent to the form of the foregoing decree.

RIKER & RIKER,
Solicitors of Complainant.

A true copy.

FERD GARRETSON, 30
Clerk.

NOTICE OF APPEAL.

Filed September 5, 1929.

IN CHANCERY OF NEW JERSEY.

10	<p><i>Between</i></p> <p>ANNA WITTES,</p> <p style="text-align: right;"><i>Complainant,</i></p> <p style="text-align: center;"><i>and</i></p> <p>MICHAEL REPKO and others,</p> <p style="text-align: right;"><i>Defendants.</i></p>	<p><i>On Bill, &c.</i></p> <p><i>Notice</i></p> <p><i>of Appeal.</i></p>
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20 The complainant, Anna Wittes, hereby appeals from the final decree made in the above-entitled cause on the 6th day of June, 1929, and from the whole and every part thereof to the Court of Errors & Appeals in the last resort in all causes.

Dated August 29, 1929.

RIKER & RIKER,
Solicitors for and of Counsel with Anna Wittes.

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

30 IRVING RIKER,
Of Counsel with Complainant.

Service of a copy of the within notice of appeal is hereby acknowledged this 30th day of August, 1929.

MEANEY & LIFLAND,
Solicitors of Defendants.

PETITION OF APPEAL.

Filed September 5, 1929.

NEW JERSEY COURT OF ERRORS AND APPEALS.

ANNA WITTES,

Complainant-Appellant,

vs.

MICHAEL REPKO and ANNIE
REPKO, his wife, their heirs,
devises and personal rep-
resentatives,

Defendants-Appellees.

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*On Appeal
from Court
of Chancery.*

*Petition
of Appeal.*

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*To the Honorable, the Court of Errors and Ap-
peals, the Court of Last Resort in all Causes.*

The petition of Anna Wittes, the appellant in the above-entitled cause, respectfully shows:

1. Petitioner finds herself aggrieved of a final decree made in the Court of Chancery by His Honor Edwin Robert Walker, Chancellor of the State of New Jersey, bearing date the sixth day of June, 1929, in a certain cause in said Court of Chancery wherein the said Anna Wittes was complainant, and the said Michael Repko and Annie Repko, his wife, their heirs, devisees and personal representatives were defendants, in this respect, to wit: that the said decree adjudges that the motion of the complainant to vacate and set aside the order of June 11, 1928 vacating the former final decree of May 6, 1927 and to reinstate the said former final decree be denied; that the master's report filed on March 23, 1929 be

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Petition of Appeal.

confirmed; that the defendants have the right to redeem the lands and premises described in the certificate of tax sale and in the bill of complaint and that upon such redemption complainant deliver up the possession of the the said lands and premises and the certificates of tax sale duly endorsed for cancellation.

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2. And your petitioner appeals from the decree of the Chancellor, which decrees as aforesaid, upon the ground that the same is erroneous in that—

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1. The Court of Chancery under the provisions of Chapter 211 of the Laws of 1928 which became effective April 3, 1928 was without power or jurisdiction to enter its order of June 11, 1928 vacating the former final decree of May 6, 1927.

2. The Court of Chancery under the provisions of Chapter 211 of the Laws of 1928 was without power and jurisdiction to enter the final decree of June 6, 1929 and erred in denying complainant's application to reinstate the former final decree of May 6, 1927.

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Petitioner, therefore, prays that the said decree of said Chancellor may be wholly reversed, set aside and for nothing holden; that the former final decree of May 6, 1927 may be reinstated and that the petitioner may have such other relief in the premises as to this Court shall seem proper.

RIKER & RIKER,
Solicitors for and of Counsel with Appellant.

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AMENDED NOTICE OF APPEAL.

Filed September 13, 1929.

IN CHANCERY OF NEW JERSEY.

62/684

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Between

ANNA WITTES,

Complainant,

On Appeal,
&c.

and

MICHAEL REPKO and ANNIE
REPKO, his wife; their heirs,
devises and personal rep-
resentatives,

Amended
Notice of
Appeal.

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Defendants.

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The complainant, Anna Wittes, hereby appeals from the final decree made in the above-entitled cause on the 6th day of June, 1929, by Edwin Robert Walker, Chancellor of the State of New Jersey, on the advice of Vice-Chancellor John J. Fallon, and from the whole and every part thereof to the Court of Errors and Appeals in the last resort in all causes.

RIKER & RIKER,
Solicitors for and of Counsel with
Complainant, Anna Wittes.

Dated September 6, 1929.

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

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IRVING RIKER,
Of Counsel with Complainant.

CONCLUSIONS OF VICE-CHANCELLOR.

Filed October 16, 1929.

IN CHANCERY OF NEW JERSEY.

Between

ANNA WITTES,

Complainant,

and

MICHAEL REPKO and ANNIE
REPKO, his wife, *et als.*,

Defendants.

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62-684.

On Bill, Etc.

Conclusions.

1. In the suit *sub judice* to foreclose right of defendants to redeem a certificate of tax sale, such right exists and continues until barred by decree of court. 20

2. Objection to the authority of the Court to make an order opening an *ex parte* decree, and permitting defendants to answer complainant's bill, should be urged preceding the making of such order, and upon appeal therefrom, and the neglect and failure of the complainant so to do deprives the complainant, who claims to be aggrieved by such order, of such rights as she *may* have been entitled to if seasonably claimed. 30

3. The sale of land for non-payment of taxes is such an extreme interference with private property that the law guards all rights of the owner with the utmost care. A court of equity will seize upon the slightest flaw of substance in tax sales to restore property to the owner. Notice and default are indispensable conditions to the divestiture of title under a tax sale. 40

Conclusions of Vice-Chancellor.

Messrs. Riker & Riker, solicitors for complainant.

Messrs. Meaney & Liffand, solicitors for defendants.

FALLON, V.-C.

10 This is a suit to foreclose defendants' right to redeem a certificate of tax sale. The facts stated herein are based upon the pleadings, and upon conceded facts set forth in briefs of counsel for the respective parties, upon which the matter *sub*
judice was submitted to the Court for determination. The defendants are entitled to redeem, and I will advise a decree accordingly. The complainant's bill prays that the defendants or one of them may be decreed to pay to complainant the
 20 amount found due to her, with interest and costs, and in default thereof the defendants stand debarred and foreclosed. The amount required to redeem, according to Master's report filed March 23, 1929, is \$108.71. The bill of complaint is based upon P. L. 1919, page 564, amending Section 49 of the tax act of 1918 (P. L. 1918, page 897) which provides: "The purchaser, or his heirs or assigns, in addition to the foregoing remedy, and at any time after the expiration of the term of two years, whether notice to redeem
 30 has been given or not, may file a bill in equity to foreclose the right of redemption, but on filing such bill the right to redeem shall exist and continue until barred by the decree of the Court of Chancery, * * *." The complainant must be content with the grant of her prayer for relief wherein she asks that the defendants pay the amount found due to her. *Bourgeois v. Risley Real Estate Co.*, 82 N. J. Eq. 211. The pleadings and briefs aforesaid show that on November 5,
 40 1923, the tax collector of the Borough of Linden

Conclusions of Vice-Chancellor.

sold to said borough the premises described in the bill of complaint for the sum of \$20.08, representing the amount of the unpaid taxes for the year 1922, together with interest and costs of sale. A certificate of sale was delivered to said borough. On August 5, 1926, the (borough) City of Linden assigned said certificate to Saul A. Wittes who subsequently assigned same to the complainant herein. The affidavit attached to the bill, made by the solicitor of the complainant, recites that: "he has made diligent and careful inquiry for the address of the aforesaid defendants as mentioned in said bill and has been informed that they resided at one time at No. 68 Green street, New York City. Deponent further says, that he has made a careful and diligent inquiry and has been unable to ascertain whether the said defendants are still alive or in the case of death of one, whether the survivor has remarried, or is still unmarried, or if both have died, has been unable to ascertain their respective heirs, devisees and personal representatives, their names and addresses or such who would be proper parties defendant to this suit. Deponent has made such inquiry and prosecuted the same in any and every way, manner and direction, whereby deponent thought it might be possible to gain such information." A further affidavit, made by the same solicitor, intended as "proof of inquiry and mailing" in the instant foreclosure suit, recites in part as follows: "I was informed by the tax collector's office of the City of Linden that the said defendants resided at No. 68 Green street, New York City, and to which address I forwarded a copy of the notices of this suit to each of said defendants, but both of these notices were returned "cannot be found." The

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Conclusions of Vice-Chancellor.

latter-mentioned affidavit was filed as a basis of publication proceedings against the defendants, because of the fact that process of subpoena issued on January 17, 1927, directed to the defendants, was returned *non est*. Such affidavits are clearly insufficient in law upon which to

10 predicate divestiture of defendants' title to the lands described in the complainant's bill of complaint. The pleadings and briefs aforesaid likewise disclose that the defendants for a period of approximately 25 years, and until the year 1924, resided at No. 68 Green street, Jersey City, New Jersey, and that in the year 1924 they removed to No. 250 Clinton avenue Jersey City, New Jersey. The aforesaid Green street address of defendants was on file in the office of the

20 tax collector of the (borough) City of Linden. The defendants had no notice or knowledge of the tax sale and proceedings thereunder, nor of the foreclosure suit *sub judice* until after the entry of the *ex parte* decree therein, which, upon petition of the defendants, was opened for the purpose of enabling them to file an answer in the suit, and to redeem the certificate of tax sale as prayed by the complainant. The proceedings followed by the defendants in the case *sub judice*

30 to effect an opening of the *ex parte* decree entered against them appear to be substantially such as followed in the case of *Schaffer v. Hurd*, 98 N. J. Eq. 143. It is clearly manifest to me from the pleadings and briefs aforesaid that if reasonable diligence was exercised by the complainant, or by someone acting in her behalf, the defendants' place of residence could have been readily ascertained and process of subpoena served upon them. A court of equity will seize upon the slightest flaw of substance in tax sales

40 to restore property to the owner. *Welles v.*

Conclusions of Vice-Chancellor.

Schaffer, 98 N. J. Eq. 31, at p. 35; *McCandles v. Schaffer*, 142 Atl. Rep. 566. In *Harrington v. Horster*, 89 N. J. Eq. 271, this Court held: "The sale of land for non-payment of taxes is such an extreme interference with private property that the law guards the rights of the owner with the utmost care * * *." No intendment will be made in favor of the legality of tax sale proceedings; the burden of showing compliance with the law is cast upon the purchaser. *State, Baxter v. Jersey City*, 36 N. J. L. 188, at p. 192. Notice and default are indispensable conditions to the divestiture of title under a tax sale. *Nugent v. Lindsley*, 100 N. J. Eq. 87, at p. 90. It is a well-established rule that every requirement of the law relating to the sale of land for the non-payment of taxes, prescribing the procedure which tends to the security of the property owner, or for his benefit, must be strictly conformed to. It is urged in behalf of the complainant (relying upon P. L. 1928, page 382) that this Court was not warranted in entertaining an application to reopen the *ex parte* decree entered against the defendants in the above-stated cause on May 6, 1927, and permitting the defendants to file an answer to the complainant's bill, because more than three months had elapsed after said decree was entered, and furthermore that the Court was without authority to reopen said decree for the purpose of enabling the defendants to file answer to the complainant's bill, and to redeem the tax sale certificate. I deem it unnecessary in the matter *sub judice* to comment upon the aforesaid legislative act, and its applicability to the case *sub judice*, for the reason that I am of the opinion that this Court was not only clearly within

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Conclusions of Vice-Chancellor.

its right to entertain the defendants' application to reopen the aforesaid *ex parte* decree for the purposes aforesaid, but, in addition thereto, if the complainant considered herself aggrieved by the order bearing date June 11, 1928, granting such relief to the defendants, she was privileged to appeal therefrom. She undertook so to do. A notice of appeal was filed June 21, 1928. An amended notice of appeal was filed July 19, 1928. On October 17, 1928, the Court of Errors and Appeals dismissed the appeal for reasons stated in the order of dismissal. It is now too late for the complainant to question the authority of this Court to make the order complained of, or to urge such questions as she may have urged preceding the making of such order, and upon appeal therefrom. The case *sub judice* is not analogous to the case of *Milmoe v. Zimmerman*, 97 N. J. Eq. 326.

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ANSWER TO PETITION OF APPEAL.

NEW JERSEY COURT OF ERRORS
AND APPEALS.*Between*ANNA WITTES,
Complainant-Appellant,
*and*MICHAEL REPKO and ANNIE
REPKO, his wife; their heirs,
devisees and personal rep-
resentatives,
*Defendants-Appellees.**On Appeal
from Court
of Chancery.**Answer to
Petition of
Appeal.*

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The answer of Michael Repko and Annie Repko, his wife, the above-named appellees, to the petition of appeal of Anna Wittes, above-named appellant.

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

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

MEANEY & LIFLAND,
Solicitors for and of Counsel
with Appellees.

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New Jersey Court of Errors and Appeals

Between

ANNIE WITTES,
Complainant-Appellant,

and

MICHAEL REPKO and ANNIE
REPKO, his wife, their heirs,
devisees and personal rep-
resentatives,
Defendants-Respondents.

On Appeal.

BRIEF FOR APPELLANT.

Statement of Case.

This is an appeal from a final decree entered in the Court of Chancery. The complainant below filed her bill in January, 1927, for the strict foreclosure of a tax sale certificate upon lands in Linden, N. J. The defendants were brought into court by substituted service and on May 6, 1927, a final decree was entered barring and foreclosing the defendants' right and equity of redemption.

On April 3, 1928, Chapter 211 of the Laws of 1929, became effective. This was an amendment to Section 49 of the Act Concerning Unpaid Taxes (Revision of 1918) and it provided that no application should be entertained to open a final decree of foreclosure of a tax sale certificate after three months from the date thereof and then only upon the grounds of lack of jurisdiction or of fraud in the conduct of the suit.

On April 19, 1928, the defendants filed a petition stating that they had never received actual

notice of the foreclosure suit and asking for the vacation of the final decree against them. An order was entered on June 11, 1928, opening the final decree and permitting the defendants to answer the bill of complaint within ten days. The Court in making such order did not consider the effect of the provisions of Chapter 211 of the Laws of 1928 as appears from a memorandum filed at that time (record page 40) and the conclusions later filed (record page 97).

The case proceeded in the regular way with the result that the defendants were given an opportunity to redeem which they attempted to do by payment of the necessary amount to the Clerk in Chancery. Prior to the entry of the final decree dated June 6, 1929 (record page 87) which is appealed from here, a motion was made by the complainant to vacate the order of June 11, 1928, opening the final decree of May 6, 1927, and to reinstate the same on the ground that the Court was without power or jurisdiction under the provisions of Chapter 211 of the Laws of 1928. Such motion was denied (record page 88) and the final decree of June 6, 1929, entered (record page 87). The Court refused to consider the effect of Chapter 211 of the Laws of 1928 because the question was not raised on the original application for the order of June 11, 1928, opening the first final decree (see bottom page 88).

Specification of Errors.

Chapter 211 of the Laws of 1928 took from the Court of Chancery power and jurisdiction to open the first final decree of May 6, 1927, and accordingly there was error in the denial of the motion to reinstate the first final decree and in entering the second final decree of June 6, 1929.

POINT I.

The defendants were properly brought into Court by substituted service and the Final Decree of May 6, 1927, was binding upon them.

The subpoena was returned by the Sheriff of Union County *non est* as to the defendants. Thereupon the solicitor who filed the bill of complaint, as appears from his affidavit (page 15) made diligent and careful inquiry in the manner required by the rules of the Court of Chancery to ascertain the residence and post office address of the defendants. He inquired at the Tax Collector's Office and was given No. 68 Green street, New York City, as the defendants' address. Copies of the notice were sent to the defendants at such address but were returned "cannot be found." He also looked through the New York City directories and Newark directories and sent notices to persons there listed of similar name. He looked in the directory of Linden, N. J., but found no one bearing the defendants' name. This we submit constitutes careful and diligent inquiry as required as a basis for the order of publication. That such inquiry was made to the satisfaction of the Chancellor appears from the recital in the order of publication (page 11). The order of publication was properly complied with and accordingly the defendants were properly brought into court and a decree *pro confesso* taken against them (page 17).

It is stated in the petition (page 29) of the defendants to open the final decree that they had lived in New Jersey for thirty-one years and that their address in Jersey City had been No. 68 Green street and No. 250 Clinton avenue. They state that the address of No. 68 Green street, Jersey City, N. J., was on file in the office of the Tax Collector of Linden, N. J. There is no de-

nial of the fact, however, that the solicitor for the complainant inquired of the Tax Collector for the address of defendants and was given No. 68 Green street, New York City. The mere fact that the defendants were residents in the State of New Jersey does not make the service upon them by publication defective provided diligent and careful inquiry is made as required.

Equitable Life Assurance Co. v. Laird, 24 N. J. Eq. 319;

Leonard v. N. Y. Bay Co., 28 N. J. Eq. 192.

POINT II.

Chapter 211 of the Laws of 1928 took from the Court of Chancery power and jurisdiction to open the Final Decree of May 6, 1927, and to take any action in the said cause thereafter based upon the opening of such decree.

The petition of the defendants to open the final decree of May 6, 1927, does not charge that the defendants were not properly in court, that there was lack of jurisdiction of the persons, that the solicitor for the complainant has failed to make careful and diligent inquiry as required by the rules of Court or that there was any fraud in the conduct of the suit. It merely states that they were residents of Jersey City and had received no notice of the suit and were then ready and willing to redeem (p. 29). The prayer of their petition was granted by the order of June 11, 1928 (p. 42) which was in conformity with the memorandum opinion filed June 6, 1928 (p. 40). That opinion we believe is based principally upon the case of *Schaffer v. Hurd*, 98 N. J. Eq. 143, which stands for the principle that an owner of property who has received no actual notice of a suit to foreclose

a tax sale certificate will be given an opportunity to redeem after final decree against him where no innocent purchaser for value is involved, and where the holder of the tax certificate will receive that for which his bill to foreclose prays—namely—payment of the amount due upon his tax certificate. It is not suggested anywhere in that memorandum of June 6, 1928 that there was any lack of jurisdiction over the person of defendants.

Chapter 211 of the Laws of 1928 became effective April 3, 1928 and the petition to open the first final decree was filed April 19, 1928. It is probable that the passage of this amendment was not known to the solicitors then involved in the case and accordingly its provisions were not brought to the attention of the Court in connection with the application to open the decree. We will quote the statute in part, placing in brackets that which is merely an exact repetition of the statute as formerly existing.

49. [The purchaser, or his heirs or assigns, in addition to the foregoing remedy, and at any time after the expiration of the term of two years, whether notice to redeem has been given or not, may file a bill in equity to foreclose the right of redemption, but on filing such bill the right to redeem shall exist and continue until barred by the decree of the Court of Chancery,] and the Court of Chancery upon the filing of a bill to foreclose as aforesaid, is hereby empowered to give full and complete relief under this act, in accordance with other statutory authority and with the practice of said court, to bar the right of redemption and to extinguish and obliterate all prior or subsequent alienations and descents of said lands and encumbrances thereon, excepting subsequent municipal liens, and to decree an absolute and indefeasible estate of inheritance in

fee simple, to be vested in the purchaser, which decree shall be final upon the defendants, their ancestors and predecessors in title, and their privies, and no application shall be entertained to reopen the same after three months from the date thereof and then only upon the grounds of lack of jurisdiction or fraud in the conduct of the suit. * * *

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

The effect of this act was to take from the Court of Chancery all jurisdiction to vacate the final decree of May 6, 1927, whereas before its passage it would have been within the Court's discretion as to whether or not the decree should be opened. If the Court was without jurisdiction to open the decree of May 6, 1927, it likewise was without jurisdiction to take any action thereafter based upon the opening of said decree and accordingly had no jurisdiction to enter the final decree of June 6, 1929.

It was objected below and no doubt will be urged here, that the provisions of this amendment were not urged at the time of the opening of the first final decree and therefore could not be urged at the time of entering the second final decree in June, 1929. We think there is no merit in this contention, since the effect of the act is to deprive the Court of jurisdiction, and it is a well-recognized principle that lack of jurisdiction may be raised at any time and even on appeal for the first time.

POINT III.

The Amendment of 1928 applies to the Final Decree entered May 6, 1927.

We recognize the general rule that statutes are construed to operate prospectively unless it appears that the intention of the legislature is otherwise.

This act is, by its very terms, to "be liberally construed as remedial legislation."

The rule as to statutes relating to legal remedies is stated in 25 Ruling Case Law, page 791, Section 38, as follows:

"Statutes relating to procedure or legal remedies are undoubtedly within the general rule against retrospective construction where the effect of giving them a retroactive operation will be to impair the obligation of contracts or to disturb vested rights. But the rule does not prevent the application of statutes to proceedings pending at the time of their enactment where they neither create new, nor take away vested rights. When a new statute deals with procedure only, *prima facie*, it applies to all actions—those which have accrued or are pending and future actions."

To the same effect is 36 Cyc., page 1216:

"But a statute in regard to remedies and procedure will be construed to apply to pending proceedings whenever the language used clearly indicates that such construction was intended by the legislature; and whenever the act is purely remedial in character, so that its application to pending proceedings will not work hardship or injustice, but, on the other hand, will the better protect and secure the rights of parties. Such enactments also as do not affect the nature of the remedy, but relate solely to incidents of procedure, such as pleading, evidence, and appeal and error, unless the contrary is

expressed, are applicable to all proceedings taken in pending actions from the time they take effect.”

There is no question of disturbing vested rights in this case since it cannot be said that one against whom a final decree has been properly entered has any vested right of having the Court entertain an application to open such final decree. The person who has in such case secured a vested right is the one in whose favor the final decree has been entered in accordance with law.

Section 49 of the Tax Sale Revision—as amended in 1919 contained the exact language of the 1928 amendment bracketed above. This language authorizes the filing of a bill to foreclose the right of redemption and the entering of a final decree to that effect. The effect of the repetition of such language of the 1928 amendment is, of course, not to repeal and re-enact the same provision. The important and new part of the act is that which provides that no application shall be entertained to reopen the same after three months from the date thereof.

“The same” here refers to final decree. The final decree entered under the 1928 amendment would have exactly the same effect to bar the right of redemption as a final decree entered previously under the 1919 amendment and accordingly where the 1928 amendment says that no application may be entertained to reopen “the same” it refers to final decrees entered in accordance with the foregoing language which would include a final decree entered prior to its passage.

It is important to inquire into the intention of the legislature enacting the 1928 amendment. It

has been stated by the courts that in tax sales the slightest flaw of substance will be seized upon to restore the property to the owner. It seems that the legislature is not satisfied with that condition of affairs and has expressed in the language of the 1928 amendment its desire that marketable titles might be decreed through the foreclosure of a tax sale certificate. It wished to prevent attacks upon the final decree and consequently upon the titles by the provision that no application should be entertained to reopen the final decree after three months from its date. It then provided that the amendment should be liberally construed as remedial legislation. Where the language of the amendment uses the future tense it refers to the procedure thereafter to be instituted and does not refer only to final decrees that shall thereafter be entered.

We wish to refer to the case of *Dwyer v. Volmar Trucking Corporation* (not officially reported), Vol. 7, N. J. Advance Reports No. 28 1031 (July 13, 1929). In that case the plaintiff was injured on October 4, 1926, by a motor truck owned by the defendant and driven under a foreign motor registration. Service of the summons and complaint was made upon the Secretary of State on October 8, 1928 under the provisions of Chapter 232 of the Laws of 1924. Such enactment was in force at the time of the accident but was declared unconstitutional because the statute did not provide for notice of the commencement of the action to the defendant. *Wuchter v. Pizzutti*, 276 U. S. Sup. Ct. Rep. 13.

An amendment to the 1924 act was passed in 1927, Pamphlet Laws 1927, page 441, which remedied the defect in the statute. In accord-

ance with the provisions of the amendment of 1927, notice was given to the defendant in Brooklyn by mail on October 8, 1928. It was claimed by the defendant that the amended statute could not act retroactively to include the accident which occurred in 1926. The amendment being one which related to procedure the Court held that the service of the summons and complaint was good and in its opinion said:

“There is no merit in this contention. The statute is purely a remedial one. It concerns procedure in serving process upon foreign defendants, under the given circumstances, detailed in the statute. It was failure of the statute in 1924 to make provision for notice to be given the foreign defendant of the commencement of an action against him, that led the United States Supreme Court to declare the act to be unconstitutional. That decision did not operate as a repealer of the statute of 1924, but merely pointed out the constitutional defect existing in the legislative enactment, and decided that the defect tainted the validity thereof and prevented its enforcement, leaving it, however, free to the sovereign power of the State to cure the evil by enacting proper legislation to that end. The legislature in 1927, by an amendment of the statute of 1924, remedied the constitutional defect that rendered the statute enforceable. The legal effect of the amendment was to incorporate within the terms of the statute of 1924 a provision for a notice to be given to a foreign defendant of the commencement of the action. The language, therefore, of the amendment, to wit: ‘From and after the passage of this act, any chauffeur,’ &c., expressly refers to the effect to be given to the statute of 1924, since the amendment becomes a constituent of that statute.

The argument of counsel of defendant, that to give legal effect in the present case, to the amendment, affects a vested right of

the defendant since there was no valid process of service upon him at the time the accident occurred.

This is a fallacious conception of the legal rule applicable to legislation relating to matters of procedure.

In *Wanser v. Atkinson*, 43 N. J. L. 571, Mr. Justice Dixon, in speaking for the Supreme Court (at p. 575), says: 'Justice Cooley seems to me to state in brief the result of true principles and of the adjudged cases, when he says: 'It would seem that a right cannot be regarded as a vested right, unless it is something more than such a mere expectation and may be based upon an anticipated continuance of the present general law; it must have become a title, legal or equitable, to the present or future enjoyment of property, or to the present or future enforcement of a demand, or a legal exemption from a demand made by another.' Const. Lim. 359.

'The right to a particular remedy is not a vested right. This is the general rule; and the exceptions are of those peculiar cases in which the remedy is part of the right itself. As a general rule, every state has complete control over the remedies which it offers to suitors in its courts. It may abolish one class of courts and create another. It may give a new and additional remedy for a right already in existence, and it may abolish old remedies and substitute new.' *Ibid* 361.

'And any rule or regulation in regard to the remedy which does not, under pretense of modifying or re-regulating it, take away or impair the right itself, cannot be regarded as beyond the proper province of legislation.' "

It is interesting to note that the 1927 amendment repeats the language of the original Act of 1924 and then adds the additional provision concerning the giving of notice to the defendant.

In that respect it is identically similar with the 1928 amendment to Section 49 of the Tax Sale Revision. Likewise the 1927 amendment does not in any way state that it shall apply to accidents occurring prior to its passage, but specifically says that from and after the passage of the act any owner who shall accept the privilege extended to non-resident owners shall thereby make the Secretary of State his agent for the acceptance of service.

Both the amendment in *Dwyer v. Volmar Trucking Corporation, supra*, and the amendment in question on this appeal are remedial legislation dealing with matters of practice and procedure. In this case the Court is prevented from entertaining an application to reopen a final decree entered in accordance with the first part of the act after three months from its date. The application was filed after the amendment became effective and accordingly was subject to its provisions. We submit that the two cases are practically identical in principle and that the decision should be the same in both.

We therefore submit that the Court of Chancery had no jurisdiction to open the first final decree or to make any orders in the cause thereafter based upon such order and that accordingly the original final decree of May 6, 1927 should now be reinstated and the proceedings had thereafter set aside.

Respectfully submitted,

RIKER & RIKER,
Solicitors for Complainant-Appellant.

IRVING RIKER,
Of Counsel.

New Jersey Court of Errors and Appeals

Between

ANNA WITTES,
Complainant-Appellant,

and

MICHAEL REPKO and ANNIE REPKO,
his wife, their heirs, devisees and
personal representatives,
Defendants-Respondents.

On Appeal
from
the Court of
of Chancery.

BRIEF FOR RESPONDENTS.

Facts.

The facts briefly stated, are as follows:

On January 6th, 1927, complainant, Anna Wittes, filed her bill of complaint in this cause for the strict foreclosure of a tax certificate, pursuant to the provisions of paragraph 49 of the Tax Revision Act of 1918. In her bill she alleges that there was due her on the tax certificate, the sum of \$91.61, together with interest thereon, and prayed (Case, p. 4, l. 27):

“That the defendants or one of them may be decreed to pay the complainant the amount so found due with interest and costs, and in default thereof said defendants stand debarred and foreclosed.”

The matter proceeded *ex parte*, and on May 6th, 1927, final decree in favor of the complainant was entered (Case, p. 26). Subsequent

thereto, defendants, by order to show cause and petition (Case, p. 29) alleging that they had no knowledge of the pendency of the proceedings, although they had been residents of the State of New Jersey continuously for a period of approximately thirty-one years, residing through all that said time in the City of Jersey City; further alleging that they were ready, willing, and able to pay the tax lien and costs, to redeem their property, prayed that the final decree heretofore entered on May 6th, 1927, be vacated and for nothing holden (Case, p. 32, l. 20).

Argument on the order to show cause was had before Vice-Chancellor Fallon on April 30th, 1928; elaborate briefs were submitted by counsel for complainant and defendants respectively; and in a memorandum opinion, Vice-Chancellor Fallon on June 5th, 1928, advised an order to reopen the decree (Case, p. 40).

The memorandum cited the following decided cases in support thereof:

Schaffer vs. Hurd, 98 N. J. Eq. 143;

Bourgeois vs. Risley Real Estate Co., 82 N. J. Eq. 211;

Wells vs. Schaffer, 98 N. J. Eq. 31;

Harrington vs. Horster, 89 N. J. Eq. 270.

An order on the aforementioned opinion was accordingly made on the 11th day of June, 1928, and defendants given leave to answer the said bill of complaint, within ten days from the date of the said order (Case, p. 42).

The defendants, within the ten day period, made a tender to the solicitor of complainant, of all moneys due to complainant, to wit, the sum of \$115.65, which tender complainant, through her solicitor, refused.

On the 19th day of June, 1928, an order was made by Vice-Chancellor Fallon, that the sum of

\$115.65 be deposited with the clerk of this Court, to await such decree as the Chancellor may make in the premises (Case, p. 47). The order recited that tender had been made to the solicitor of complainant, and refused.

On the same date, to wit, June 19th, 1928, an answer was filed by the defendants (Case, p. 44) wherein they admitted each and every allegation contained in the bill of complaint, further alleging that on June 18th, 1928, at 2 o'clock in the afternoon the defendants by their solicitors, Meaney and Lifland, attended at the office of William Stalford, solicitor of the complainant, and there tendered in cash to the solicitor of complainant, the sum of \$91.61, together with interest from August 5th, 1926, to June 18th, 1928, the date of the tender, amounting to the sum of \$14.04, together with the sum of \$10.00 costs, making a total of \$115.65. Subsequent thereto, to wit, on the 18th day of September, 1928, an order was made referring the matter to Vice-Chancellor Fallon to hear the same for the Chancellor (Case, p. 62).

On June 21st, 1928, complainant filed a notice of appeal to the Court of Errors and Appeals (Case, p. 49) and on July 19th, 1928, filed an amended notice of appeal from the order made by Vice-Chancellor Fallon (Case, p. 51).

On October 17th, 1928, an order was filed in the Court of Errors and Appeals dismissing complainant's aforesaid appeal, upon the ground, among others, that the appellant had failed to prosecute the appeal with due diligence (Case, p. 67).

On July 18th, 1928, complainant made a motion before Vice-Chancellor Fallon to stay the proceedings in the Court of Chancery (Case, p. 53) pending the outcome of the appeal to the Court of Errors and Appeals, which motion after argument, was, on July 23rd, 1928, denied.

Subsequently, to wit, on the 8th day of October, 1928, an order was advised referring the matter to Harry Weiner, Esq., one of the Masters of this court, to ascertain and report the amount due the complainant (Case, p. 65).

On December 6th, 1928, the matter was heard by the said Master, who was duly attended by William Stalford, Esq., solocitor of complainant, and by Meaney and Lifland, Esqs., solicitors of the defendants. On March 23rd, 1929, the said Master filed his report with the Clerk of this court, in which report he states that there is due and owing to the complainant the sum of \$108.71 (Case, p. 69).

Upon filing the Master's Report, motion was made to confirm same and settle final decree (Case, p. 75) and to fix counsel fee of defendants. Whereupon complainant countered with a motion to vacate the order advised by Vice-Chancellor Fallon opening the final decree, which order was dated June 11th, 1928, and to reinstate the final decree theretofore entered. Upon denial of the counter-motion of complainant, the final decree was signed and entered June 6th, 1929 (Case, p. 87). It is from this final decree that complainant now appeals (Case, p. 92).

POINT I.

The appellant at this time cannot question the merits of the case sub judice.

Under Point I in her brief, appellant attempts again to reopen the case upon its merits, discussing her diligence in attempting to bring respondents into Court. This phase of the matter was fully argued before the Vice-Chancellor on the return of the order to show cause why the decree

should not be opened and vacated. In opening the decree, the Vice-Chancellor found as a fact that due diligence had not been exercised, and was of the opinion that respondents were entitled to their day in court (Case, p. 41, l. 17; p. 100, l. 8). From the order opening the decree complainant appealed, stating as ground therefor, "Because this suit is the foreclosure of a tax sale certificate under the Tax Laws of this State and that the law and rules of the Court of Chancery relating to the foreclosure of mortgages apply to this case, and that the same have been strictly followed, and that the title has been vested in complainant by virtue of a Final Decree of the Court of Chancery of New Jersey" (Case, p. 49, l. 30). Under this ground of appeal, the discussion now made by appellant under Point I of his brief could properly have been raised upon the appeal thus instituted. But complainant had seen fit to neglect her appeal thus taken, with the result that it was dismissed for lack of prosecution (Case, p. 67). *Interest reipublicae, ut sit finis litium.*

POINT II.

Chapter 211 of the Laws of 1928 did not take from the Court of Chancery power and jurisdiction to open the final decree of May 6th, 1927.

The contention of appellant that by Chapter 211 of the Laws of 1928, the Court of Chancery was deprived of its jurisdiction to open the decree, is erroneous. The legislature cannot by any act deprive the Court of Chancery of jurisdiction. *Harris v. Vanderveer's Ex'r.*, 21 N. J. Eq. 424. Nor of any other constitutional court. New Jersey Const., Art. VI, Sec. 1, Art. X, Sec. 1; *Gross & Pennsylvania Mortgage & Loan Co.*, 146 Atl. Rep. 328.

Appellant also contends under this head that as the controversy herein is one of jurisdiction, it may be raised for the first time on appeal. While we do not quarrel with the rule of law as stated, we do question its applicability. "A" brings suit in equity against "B" and is granted the relief prayed for, from which decree "B" appeals. The appeal is dismissed for lack of prosecution, whereupon "B" discovers that the Chancellor lacked jurisdiction to enter the decree. "B" thereupon moves to vacate the decree for lack of jurisdiction, and from a denial of the motion again appeals. Can it be said that "B" by so doing, raises on appeal for the first time, the question of jurisdiction? On the contrary, it appears, and we respectfully submit, that "B" is raising the question of jurisdiction for the first time after appeal has been adversely decided against him.

The simple illustration just stated, conforms in legal effect with the facts as they occurred in the case *sub judice*. The act referred to went into effect April 3rd, 1928. Petition to reopen decree was filed April 19th, 1928. The order opening the decree is dated June 11th, 1928 (Case, p. 42, l. 39). The order dismissing the appeal taken from the order is dated October 17th, 1928 (Case, p. 68, l. 8). The appellant could have, at any time during this period of over four months, filed an amended notice of appeal setting up (as she alleges) the lack of jurisdiction of the Chancellor to make the decree, yet failed to do so. Evidently, the Court below was of opinion that a sufficiently reasonable time had elapsed for appellant to acquaint herself with the new act and to take some steps toward bringing its provisions to the attention of the Court upon the argument of the order to show cause, or at least, upon appeal. And the learned Vice-Chancellor's conclusion that "It is now too late for the complainant to question the

authority of this Court to make the order complained of, or to urge such questions as she may have urged preceding the making of the order and upon appeal therefrom", finds support in the cases *In re Hall*, 94 N. J. Eq. 108, 116, and *Peer vs. Cookerow*, 13 N. J. Eq. 136. In the former of the cases cited it is stated by Vice-Chancellor Buchanan (note 4) that "where the Court has power or jurisdiction to pronounce the particular judgment, though such power is wrongfully exercised, the judgment is only voidable and can be avoided only by direct appeal." In the latter case, it is held that an objection arising from lapse of time is a mere matter of limitation which must be pleaded. The Court is also respectfully referred to 1 Pom. Eq. Jur. (4th Ed.) §130.

That parties, with knowledge, cannot sleep upon their rights is an assertion which has become a platitude in the law, especially in Chancery, and needs no citation of authority to support it. For a period of over ten months, from June 11th, 1928, the date of the order opening the decree until April 15th, 1929, the date of the notice of motion to vacate the order opening the decree, appellant saw fit to sit silently by, acquiescing in the proceedings taken by respondents. And not until faced with the prospect of losing the valuable piece of property by entry of final decree, which property she had bought in for \$91.61, is any effort made to protect whatever interests she may have by virtue of the amended act.

POINT III.

Chapter 211 of the Laws of 1928 does not apply to the decree entered May 6th, 1927.

While Vice-Chancellor Fallon, in his conclusions filed (Case, p. 97), felt that it was unnecessary to determine the applicability of the act as amended for the purposes of his opinion, yet, as it is so strenuously urged by appellant in her brief, we shall consider it here.

Appellant, in her brief, quotes from 25 Ruling Case Law and 36 Cyc. in support of her contention that the Law of 1928 affects the case at bar. Although the quotations are in the most general of terms, upon a reading it can readily be seen that they refer to procedural remedies, rather than remedies which go to the gist and merit of a controversy.

That an equity of redemption is a "vested right" finds support in *Rodgers v. Cressman*, 98 N. J. Eq. 209, 215. It follows that an equity of redemption which has been improvidently barred by decree of Court remains a "vested right", within the contemplation of the rule, which states that statutes impairing vested rights are not to be construed retrospectively. *Rodgers v. Cressman, supra*. And that the decree had been improvidently entered is made amply manifest by the facts as found by Vice-Chancellor Fallon and under the established law of this state under the cases cited by him. *Bourgeois v. Risley Real Estate Co., supra*; *Schaffer v. Hurd, supra*; *Welles v. Schaffer, supra*; *Harrington v. Horster, supra*; *State, Baxter v. Jersey City*, 36 N. J. Law 188; *Nugent v. Lindsley*, 100 N. J. Eq. 87, 90.

To continue, appellant fails to set forth the first section of the paragraph from which she quotes, which paragraph reads as follows (36 Cyc. 1215):

“Furthermore, a statute will not be applied by the courts to actions or proceedings pending at the time of its passage whenever such application would work injustice, as by . . . conferring jurisdiction not possessed by the court when the action was instituted”

and as authority therefor, cites (Note 40) *Wheatland v. Lovering*, 10 Gray (Mass.) 16, which held that the jurisdiction of a court cannot be suppressed by a statute passed before the commencement of the action but not taking effect until after such commencement. That statutes are similarly construed in this state is evidenced by the case of *State, Vreeland v. Town of Bergen*, 34 N. J. Law 438.

Appellant also makes the contention in her brief that as the statute under consideration contains a provision that it shall be liberally construed as remedial legislation, that the legislature evidenced an intention that the Act was to operate retrospectively.

We respectfully call the attention of the Court to the case of *McGovern vs. Connell*, 43 N. J. Law 106, wherein the complainant attempted to issue execution by virtue of an Act passed in 1879, upon a judgment recovered in 1871, and the Court held that that statute did not contemplate such judgments which had been recovered prior to the passage of the Act, and said regarding the remedial statutes, the following:

“So it is applicable likewise to remedial statutes, notwithstanding the other rule, that such laws shall be liberally construed. Thus, an Act passed in the Revision of 1874 provided ‘that at any time before judgment on a lien claim’, the claim might be amended; and this court decided that a claim filed before its passage could not be amended under it. *Vreeland v. Bramhall*, 10 Vroom 1.”

Appellant further contends under Point III that the words "the same" as used in the Act under consideration, refer to decrees entered prior to the passage of the Act. To this construction of the statute we cannot agree. While it is true that the portion of the Act which counsel of appellant has enclosed in brackets is a mere repetition of section 49 of the Tax Sale Revision of 1918, and while we concede that such repetition does not have the effect of repealing and again re-enacting that section of the original Act, we feel that the words "the same" which appear in the new portions of the Act, refer solely to decrees, entered subsequent to the date of the passage of the Act, to wit, April 3rd, 1928. Under the rules of grammar, the words "the same" must be taken as referring to the antecedent next preceding those words, and that antecedent is the word "decree", which we have capitalized in the following excerpt from the statute:

"And the Court of Chancery is hereby empowered . . . to decree an absolute and indefeasible estate of inheritance in fee simple . . . which DECREE shall be final upon the defendants . . . and no application shall be entertained to reopen THE SAME after three months . . ."

It will be noted, therefore, that the words "the same" and the word "decree" to which the words "the same" refer, appear entirely in the new portions of the Act, and under the settled law of this State, amendatory acts and new parts or changed portions of amended sections "are not to be taken to have been the law at any time prior to the passage of the amended act. The change takes effect prospectively in accordance with the general rule". *In Re: St. Michael's Church*, 76 N. J. Equity, 524, 532.

“The court will not assume that the draughtsman of the act was a bad grammarian, in order to make the law retroactive, when there is no other expression in it which indicates such a purpose. The rule is to construe all legislative acts prospectively, unless there be a clearly expressed purpose to make them retrospective, and the language used must be so clear and imperative as not to admit of doubt.”

State, Alden, Pros. v. Newark, 40 N. J. Law 92, 96;

Riesen v. Riesen (105 N. J. Eq. 144).

It follows therefore that the statute refers to decrees entered subsequent to the passage thereof, and can therefore have no application to the case at bar.

In further support of the proposition that the particular act was intended to be construed prospectively, we submit that on a fair reading of the new parts of the Act, an intention is clearly shown to such a construction. For instance, the terms “upon the filing of a bill”; “Is hereby empowered to give”; “to bar the equity of redemption”; “to extinguish and obliterate”; “to decree an absolute and indefeasible estate”; “which decree shall be final”; “no application shall be entertained”; all have reference to acts in future. In the case of *Alden vs. Newark, supra*, the words “shall have been” were construed to refer to acts in the future. In *McGovern vs. Connell, supra*, it was decided that the words “when any judgment is obtained” failed to show a retrospective intent of the legislators.

In *Citizens Gas Light Company vs. Alden*, 44 N. J. Law 648, the statute recited “no certificate of sale or tax title SHALL be set aside and holden for naught . . .” language practically identical with the act under consideration, which Act

states "no application shall be entertained to reopen the same", the Court said that (page 653) "Under established rules of construction, this law should be held to be prospective only".

Continuing further, we respectfully refer this Court to *Citizens Gas Light Company vs. Alden, supra*, decided by the Court of Errors and Appeals. In that case, notice to delinquent tax payers to pay their taxes within 20 days from the date thereof, was dated August 10th, 1860, but was not advertised until August 11th, reducing the time to 19 days. A writ of certiorari was sued out by the original owners of the property to review and test the validity of the proceedings under the sale in accordance with the Act of April 2nd, 1869. The matter was argued in the February Term, 1873, and the writ failed due to the fact that the Citizens Gas Light Company, which had bought in the property, had not been joined as a party. Subsequently, a second writ of certiorari was sued out and argued at the November Term, 1877. At the argument it developed that since the prior determination in 1873, the legislature had passed an Act under date of April 9th, 1875, in which it was provided that "no certificate of sale or tax title shall be set aside and holden for naught by reason of any variance between the date of such Acts and the actual publication thereof; provided that notice shall have been or shall be actually given for the specified number of days prior to such proceedings for public sale".

The question presented, was whether this statute was to be given a retrospective effect, so as to defeat the certiorari proceedings then before the Court. Referring to the 1877 proceedings, Mr. Justice Knapp, speaking for the Court of Errors and Appeals, said, at page 653:

“The words of the act make it neatly appropriate to a case with facts like those found here, and if the defects in these proceedings had arisen after its passage, there could be no question as to its applicability. But I entirely agree with the judgment below, that it cannot relieve these proceedings from the consequences resulting from failure to give the statutory notice. Under established rules of construction, this law should be held to be prospective only.”

And how appropriate is the language just quoted, to the case *sub judice*.

In *Warshung vs. Hunt*, 47 N. J. Law 256, a writ of certiorari was sued out to review a tax on land assessed to one Julia Chapman. The sale for non-payment of taxes was made on January 5th, 1878. The writ was allowed on October 20th, 1884; more than six years having elapsed since the time of sale. A motion was made on behalf of the defendants to dismiss the writ, because not allowed within six years from the date of sale according to the supplement to an Act to regulate the practice of law approved April 25th, 1884. The supplement enacts, in brief, that no writ of certiorari shall hereafter be granted or allowed to review any assessment for taxes, to recover which taxes any sale *has been had* or made by virtue of any special or local law, or to review the proceedings of any such sale, unless such writ be granted or allowed within six years from the date of such sale; the act to take effect immediately. The Court held:

“This sale was made under a special and local law, to wit, the charter of the City of Rahway, and is, in this respect, within the terms of the statute. But the important question is whether the whole Act is intended to be retrospective or prospective only. Its terms are prospective and apply to all cases

where, in the future, any sale has been had or made for the recovery of taxes. The fact of such sale is made the point on which the limitation shall begin to act, and the writ can only be granted or allowed within six years thereafter. It is true that the words 'has been had', or 'has been made', might apply to a sale that had been made before the law was enacted, but the construction already given, that it may indicate a sale in the future, is sufficient to decide which shall be adopted, for the rule of construction of statutes is, that very reasonable endeavour shall be made so to interpret the statutory text as to give the law a prospective and not a retroactive effect" (Citations).

The opinion was affirmed *per curiam* in the Court of Errors and Appeals, 48 N. J. Law. 613.

The question really simmers down to what law governs the rights of an owner to redeem his property, sold under a tax sale. This is definitely decided in *Rodgers vs. Cressman*, 98 N. J. Equity 209, wherein the syllabus is as follows:

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

The Court in that case definitely decided that the 1918 Tax Act could not affect a sale had, or proceedings had, under the 1903 Act, by virtue of which the property had been sold. By a parity of reasoning, the 1928 Act cannot affect a sale of lands and proceedings had under the 1918 Act. This case was followed in *Hildreth v. Vineland Trust Co.*, reported in VII N. J. Adv. Rep. 570, 573 (not yet officially reported).

“The rights of a private person purchasing at a tax sale are governed as to the owners right of redemption, by the law in force at the time of sale. *Rodgers v. Cressman*, 98 N. J. Eq. 209 (at p. 215), and cases there cited.”

It is respectfully contended, therefore, that Chapter 211 of the Laws of 1928 can have no application to the case at bar, because the sale of the land for non-payment of taxes was had prior to the enactment thereof, and the owner's rights of redemption under the decided cases are governed solely by the law in force at the time of the tax sale.

POINT IV.

Appellant is not a bona fide purchaser for value and without notice.

One other point presents itself for consideration. Under Point II of her brief, appellant adverts to the fact that the principle of *Schaffer v. Hurd*, 98 N. J. Eq. 143, upon which Vice-Chancellor Fallon relied, does not control the case *sub judice*, because appellant is a *bona fide* purchaser for value and without notice. Without notice of what? Of an outstanding equity in some other person. 2 Pomeroy Eq. Juris. (4th Ed.) Sec. 688, p. 1383. That appellant was aware of such an outstanding equity is manifest from the fact that she filed her bill to cut that equity off. As to appellant's statement that *Schaffer v. Hurd*, *supra*, applies only where the holder of the tax certificate will receive that for which his bill to foreclose prays—namely—payment of the amount due upon his tax certificate, it is sufficient to say that that is all appellant does pray in her bill

(Case, p. 4, l. 27—quoted at length on page 1 hereof).

It is respectfully submitted, therefore, that under the established law of this State under the decided cases cited herein, Chap. 211 of the Laws of 1928, did not have the effect of ousting the Court of Chancery of jurisdiction to open and vacate its decree of May 6th, 1927; that the act did not have application to any of the proceedings had in the case *sub judice*, since their institution by filing of the bill in January, 1927, and that the decree of the Chancellor be affirmed.

Respectfully submitted,

MEANEY & LIFLAND,
Solicitors of Defendants-Respondents.

THOMAS F. MEANEY,
Of Counsel.



