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Case No. 2.

24 52/100

WRIT OF CERTIORARI.

NEW JERSEY, TO WIT:

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The State of New Jersey to the Township of Long Beach, in the County of Ocean, a municipal corporation of the State of New Jersey; H. Earle McConnell, Collector of Taxes of the Township of Long Beach; and Augustus L. Keil, Township Clerk of the Township of Long Beach.

We being willing for certain reasons to be certified of certain proceedings of the Township of Long Beach, relating to supposed sale for unpaid taxes, of certain property of Daniel B. Frazier Co., made on November 19, 1928, and all proceedings relating to the said sale, whether leading up to, or following the same and all records and papers relating to the said sale, or to the certificate of said sale, recorded in Book 223 of Mortgages, page 87, &c., said property being described therein as "24 52/100 Acres formerly Cassidy Est., on the tax duplicate of said municipality," and all matters and things touching and concerning the same and leading up to or in any way having to do therewith as fully and entirely as before you they remain, so that the validity and legality of the proceedings to sell and of such sale and of such certificate may be reviewed.

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Writ of Certiorari

We do command you that the aforesaid proceedings, together with all things touching and concerning the same and leading up to or in any way arising therefrom, to our Justices of the Supreme Court of Judicature at Trenton on the 4th day of February next, you certify and send, together with this
 10 writ that everything may be done what, of right and according to the laws of this State, should be done.

Witness, WILLIAM S. GUMMERE, ESQUIRE, Chief Justice of our Supreme Court at Trenton, this 15 day of January, A. D. nineteen hundred and thirty-two.

FRED L. BLOODGOOD,
Clerk.

JOSEPH H. CARR,
Attorney.

20

[ENDORSED]

This writ is allowed; let it be sealed.

By the Court,

Joseph L. Bodine,

J. S. C.

30

Jany. 15th, 1932

Affidavit

Case No. 2.

24 52/100

AFFIDAVIT.

NEW JERSEY SUPREME COURT.

10

DANIEL B. FRAZIER Co., a
corporation of New Jer-
sey,

Prosecutor,

v.

TOWNSHIP OF LONG BEACH,
in the County of Ocean,
a municipal corporation
of the State of New Jer-
sey; H. EARLE McCON-
NELL, Collector of Taxes
of the Township of Long
Beach; and AUGUSTUS L.
KEIL, Township Clerk of
the Township of Long
Beach,

Defendants.

On Certiorari.
Affidavit.

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State of New Jersey, }
County of Camden, } ss.

WILLIAM N. MATTIX, being duly sworn according
to law, upon his oath deposes and says that:

Affidavit

1. He is secretary of Daniel B. Frazier Co., a New Jersey corporation, the prosecutor herein, and is the duly authorized agent of the corporation for the purpose of making this affidavit.

2. Said Daniel B. Frazier Co., is the owner of
10 lands in the Township of Long Beach, in the County of Ocean and State of New Jersey, and is a taxpayer therein.

3. Daniel B. Frazier Co., is the owner of a certain tract of land in the Township of Long Beach, County of Ocean and State of New Jersey, conveyed to it by a deed dated September 9th, 1925, from Seabreeze Improvement Company, a corporation of the State of New Jersey, recorded September 28, 1925,
20 in the office of the Clerk of Ocean County in Book 662 of Deeds, page 109, &c., and described in said deed as follows:

ALL that certain tract or parcel of land situate, lying and being on Long Beach, in the County of Ocean and State of New Jersey,

BEGINNING at a point in the high water mark on the easterly shore of Barnegat Bay, where the centre line of Twenty-fifth Street strikes the same, as laid down on a plan of Long
30 Beach City, duly filed; thence (1) along said centre line of Twenty-fifth Street, which is also the northerly line of lands of the Long Beach City Land Company, South fifty-one degrees East, crossing a hub and tack center on the top of sand hills and a hub and tack centre below the sand hills, supposed to be put in by A. P.

Affidavit

Irons, Esquire, 1600 feet more or less to a high water mark of the Atlantic Ocean; thence (2) along the same northeasterly, the general course being North forty degrees East, to a point in the said high water mark distant 5284 feet from said centre line of Twenty-fifth Street, on a course at right angles with said centre line, 10 which said point is in a line marked by two stakes; thence (3) North fifty-one degrees West 1700 feet, more or less, to high water mark on the Easterly shore of Barnegat Bay; thence (4) Southerly along the high water mark on the easterly shore of Barnegat Bay to the beginning, intending hereby to describe all the land between high water mark on the Easterly shore of Barnegat Bay and high water mark on the Atlantic Ocean, lying between the centre line 20 of Twenty-fifth Street and a line parallel therewith, marked by two stakes distant 5284 feet northerly therefrom on a course at right angles, thereto, containing 196-20/100 acres.

EXCEPTING thereout the land conveyed by deed from George W. Bailey and wife, Thomas W. Synott and wife, Benjamin F. Archer and wife, William J. Sewell and wife, William T. Bailey and wife and Walter M. Patton and wife 30 to the Long Beach Railroad Company, dated January 12, 1886, and recorded at Toms River in Book 140 of Deeds, pages 448, &c., also excepting that portion of said tract taken by the Township of Long Beach for the road known as Bay Avenue.

Affidavit

4. On or about September 15, 1931, the Township of Long Beach, one of the defendants herein filed a bill in the Court of Chancery of New Jersey, docket 86-302, for the purpose of foreclosing a tax sale certificate, dated December 24, 1928, recorded in the office of the Clerk of Ocean County on December 29,
10 1928, in Book 223 of Mortgages, page 90, &c. A copy of the said certificate of sale as the same appears of record is attached hereto, and marked "Exhibit A."

5. It is claimed in the Chancery suit aforesaid that the lands of prosecutor, above described in paragraph No. 3, are the lands covered by the tax sale certificate referred to in paragraph No. 4 hereof.

6. Prosecutor has filed an answer in said Chancery
20 suit setting up that said sale referred to in said certificate was ineffective, invalid and void and that the certificate of sale sought to be foreclosed was ineffective, invalid and void, and under the terms of an Act of the State of New Jersey, being Chapter 202, Laws of 1925, prosecutor is required on the filing of such answer to proceed in this cause by writ of certiorari to review the legality of the matters set up in the answer to said Chancery suit. Said answer was filed within time, subpoenas having been
30 served upon the prosecutor on October 13, 1931.

7. Prosecutor has in its possession what purports to be a copy of the notice of sale referred to in the aforementioned Chancery proceedings, with certain additional matter printed therein. Deponent believes that this notice is a true copy of the notice

Affidavit

of sale with the exception of such additional printed matter. Said copy attached hereto is marked "Exhibit B."

8. The answer filed by the prosecutor set forth the following defenses:

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(a) The tax sale attempted to be made on November 19, 1928, and referred to in paragraph 2 of the bill of complaint was ineffective, invalid and void because of the fact that proper notice was not given of said sale and notice such as is required by the statute of the State of New Jersey, in such cases made and provided, was not given.

(b) The notice of sale given by the Township was defective in that it contained no statement of the year in which the taxes for which sale was to be held became due and payable. Said notice of sale was further defective in that it contained no statement of the rate of interest due on such taxes; said notice was defective in that it erroneously stated the amount of interest due July 1, 1928, upon such taxes and stated the amount of interest at an excessive amount; and said notice was likewise defective in that it did not contain a description of the property to be sold at tax sale sufficient to identify the property proposed to be sold and did not contain a description of the property sufficient to inform the owner thereof of the claim made upon the owner or upon the property of the owner and because said description was not sufficient to notify the members or the public as to what land was offered for sale

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for non-payment of taxes and that said description was not sufficient to enable a purchaser to procure a title thereby by said description and by reason of all of which said description was not sufficient to procure for the benefit of the owner the competitive bidding to which such owner was entitled, and because of all of which matters said sale was ineffective, invalid and void.

(c) Said sale on November 19, 1928, was ineffective, invalid and void because the notice thereof was not set up in five of the most public places in the municipality of Long Beach and a copy of such notice was not published in a newspaper circulating in said municipality once in each of the four calendar weeks preceding the day of the sale.

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(d) Said sale on November 19, 1928, was ineffective, invalid and void because there was never made up the list referred to in Sections 17, 18, 23 and 26 of an Act known as the Tax Sale Revision of 1918, being Chapter 237 of the Laws of 1918 and the amendments and supplements thereto, and as otherwise required by the said act; nor were any of the matters and things required under the terms of such statute and the amendments and supplements thereto to be done in connection with such list by way of record of such sale ever done or performed.

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(e) Said sale on November 19, 1928, was ineffective, invalid and void because of the absence of any record of any nature or kind and the absence of the record required by the said Tax Sale Revision Act,

Affidavit

its amendments and supplements, with respect to the proceedings leading up to said sale or the said sale itself or matters transpiring after the sale.

(f) Said sale on November 19, 1928, was ineffective, invalid and void because the lands sold at said sale were not described sufficiently to identify the same, nor to inform the owner thereof of the property sold, or to enable the purchaser thereof to procure title thereby by said description and was not sufficient to notify the members of the general public as to what land was offered for sale, and was not sufficient to induce competitive bidding for such premises. 10

(g) Said sale on November 19, 1928, was ineffective, invalid and void because it attempted thereby to sell for taxes for the year 1927 subject to municipal liens accruing after July 1, 1927, whereas, as a matter of fact, the taxes for the year 1927 did not accrue as municipal liens until December 1, 1927, and, therefore, the attempt was made to sell for 1927 taxes subject to 1927 taxes. 20

(h) The certificate of sale referred to in paragraph 5 of the bill was ineffective, invalid and void because it does not contain a description of the property purported to be sold thereby sufficient to identify the said property and does not contain a description of the property sufficient to inform the owner thereof that his property was sold for taxes and because said description is not sufficient to en- 30

Affidavit

able the purchaser to procure title by said description.

10 (i) The certificate of sale referred to in paragraph 5 of the bill was ineffective, invalid and void because there is no showing therein or statement therein that there were no other bidders for such property than the Township of Long Beach. Said certificate was ineffective, invalid and void because the same does not set forth the name of the owner of the property proposed to be sold as required by the laws of the State of New Jersey applicable thereto.

20 (j) The certificate of sale referred to in paragraph 5 of the bill was ineffective, invalid and void because, while it therein is stated that said sale was for taxes for the year 1927, it is also therein stated that the said sale is subject to municipal liens accruing after July 1, 1927, and the taxes for the year 1927 did not accrue as municipal liens until December 1, 1927, and said certificate, therefore, purports to sell for 1927 taxes and subject to said taxes.

30 (k) The certificate of sale referred to in paragraph 5 of the bill was ineffective, invalid and void because, the said sale was invalid for the reasons set forth in paragraphs a to g, inclusive, set forth hereinabove.

9. After the filing of said answer, notice was given to the Township of Long Beach that an application would be made for a bill of particulars and on No-

Affidavit

vember 17th, 1931, an order was made directing the Township of Long Beach to furnish the prosecutor with certain particulars. Bill of particulars was furnished by the Township of Long Beach, but the same did not cover all of the matters called for by the order in the Court of Chancery and an additional bill of particulars was furnished the prosecutor on December 9th, 1931. In said bill of particulars it is stated that no resolution has been passed by the Township Committee of the Township of Long Beach, fixing the rate of interest to be charged on delinquent or unpaid taxes. 10

10. Deponent is advised that the defenses interposed are sound in law and believes same can be substantiated by the evidence, but the evidence necessary to be produced, to a large extent, is under the control of the Township of Long Beach, and, therefore, the prosecutor cannot attach hereto affidavits of persons familiar with all of the facts as to the situation and will have to rely upon examination of witnesses under subpoena in proceedings taken herein. 20

11. Daniel B. Frazier Co., prays that a writ of certiorari may be allowed to review the validity of the aforementioned sale and of the certificate issued thereunder and of the proceedings to sell such lands, and also all matters and things touching and concerning the same and leading up to and in any way arising therefrom. 30

WILLIAM N. MATTIX.

Affidavit

Sworn and subscribed before me this 11th day of
December, A. D. 1931.

EARLE H. WESCOTT,
Notary Public of N. J.

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EXHIBIT "A."

H. Earle McConnell, Coll
To
Twp. of Long Beach

I, H. EARLE McCONNELL, Collector of Taxes
of the Township of Long Beach, in the County of
Ocean, State of New Jersey, do hereby certify, that
20 at a sale at public auction for unpaid municipal liens,
duly held by me on November 19, 1928, pursuant
to the provisions of an Act of the Legislature of the
State of New Jersey entitled "An Act concerning
unpaid taxes, assessments and other municipal
charges on real property, and providing for the col-
lection thereof by the creation and enforcement of
liens thereon (Revision of 1918)," and the acts sup-
plementary thereto and amendatory thereof, I sold
in fee, to the Township of Long Beach, for \$2,993.09
30 the lands in said municipality described as:

177 82/100 Acres, Sea Breeze tract, adjoining
Surf City, on the tax duplicate of said municipality
and assessed thereon to Daniel B. Frazier Co. as
owner.

THE amount of sale was made up of the following
items:

Affidavit

Taxes, 1927	\$2,823.40
Interest	166.27
Costs	3.42
Total	\$2,993.09

SAID sale is subject to redemption on repayment of the amount of the sale, together with interest 10 thereon at the rate of eight per centum per annum from the date of sale and the costs incurred by the purchaser. Said sale is subject only to municipal liens accruing after July 1, 1927.

THE right to redeem will expire in SIX MONTHS after the service of notice to redeem except that the right to redeem shall in all cases extend for TWO YEARS from the date of sale.

WITNESS my hand and seal this 24th day of December, nineteen hundred and twenty-eight. 20

H. Earle McConnell (L. S.)
Collector of Taxes of the
Township of Long Beach

WITNESS:

Edwin G. Scovel

STATE OF NEW JERSEY }
COUNTY OF CAMDEN } ss.

30

BE IT REMEMBERED, that on this 24th day of December, 1928, before me, a *a* Master in Chancery of New Jersey, personally appeared H. EARLE MCCONNELL, Collector of Taxes of the Township of Long Beach, in the County of Ocean and State of

Affidavit

New Jersey, who I am satisfied is the person named in and who executed the above certificate of tax sale; and I having first made known to him the contents thereof, he thereupon acknowledged to me that he signed, sealed and delivered the same as his voluntary act and deed, for the uses and purposes therein expressed.

Edwin G. Scovel
A Master in Chancery of
New Jersey

Received and Recorded December 29, 1928; 9:15
A. M.

John A. Ernst, Clerk

20 STATE OF NEW JERSEY }
COUNTY OF OCEAN } ss

I, JOHN A. ERNST, Clerk of the said County of Ocean, do hereby certify that the foregoing is a true, full and correct copy of a certain Certificate of Tax Sale recorded in my office in Book No. 223 of Mortgages, page No. 90, &c.

30 (SEAL) IN TESTIMONY WHEREOF, I have
hereunto set my hand and affixed the
official seal of said County at Toms
River, New Jersey, this Eleventh day
of July, A. D. 1931.

John A. Ernst

County Clerk of Ocean County

By: LeRoy Grant

Deputy Clerk

SALE OF LAND

IN THE TOWNSHIP OF LONG BEACH

OCEAN COUNTY, NEW JERSEY

PUBLIC NOTICE IS HEREBY GIVEN that the subscriber, Collector of Taxes of the Township of Long Beach, Ocean County, New Jersey, pursuant to the statute, will on

MONDAY, NOVEMBER 19, 1928

at the hour of 1 o'clock p. m., at the Township Hall, 16th Street and the Boulevard, at North Beach Haven in said Township, expose to public sale and sell to such person or persons as will purchase the same, subject to redemption at the lowest rate of interest or at the highest premium without interest, and pay the tax liens thereon including interest and costs, each of the parcels of lands in the Township of Long Beach, together with the tenements and hereditaments thereunto belonging, as described below.

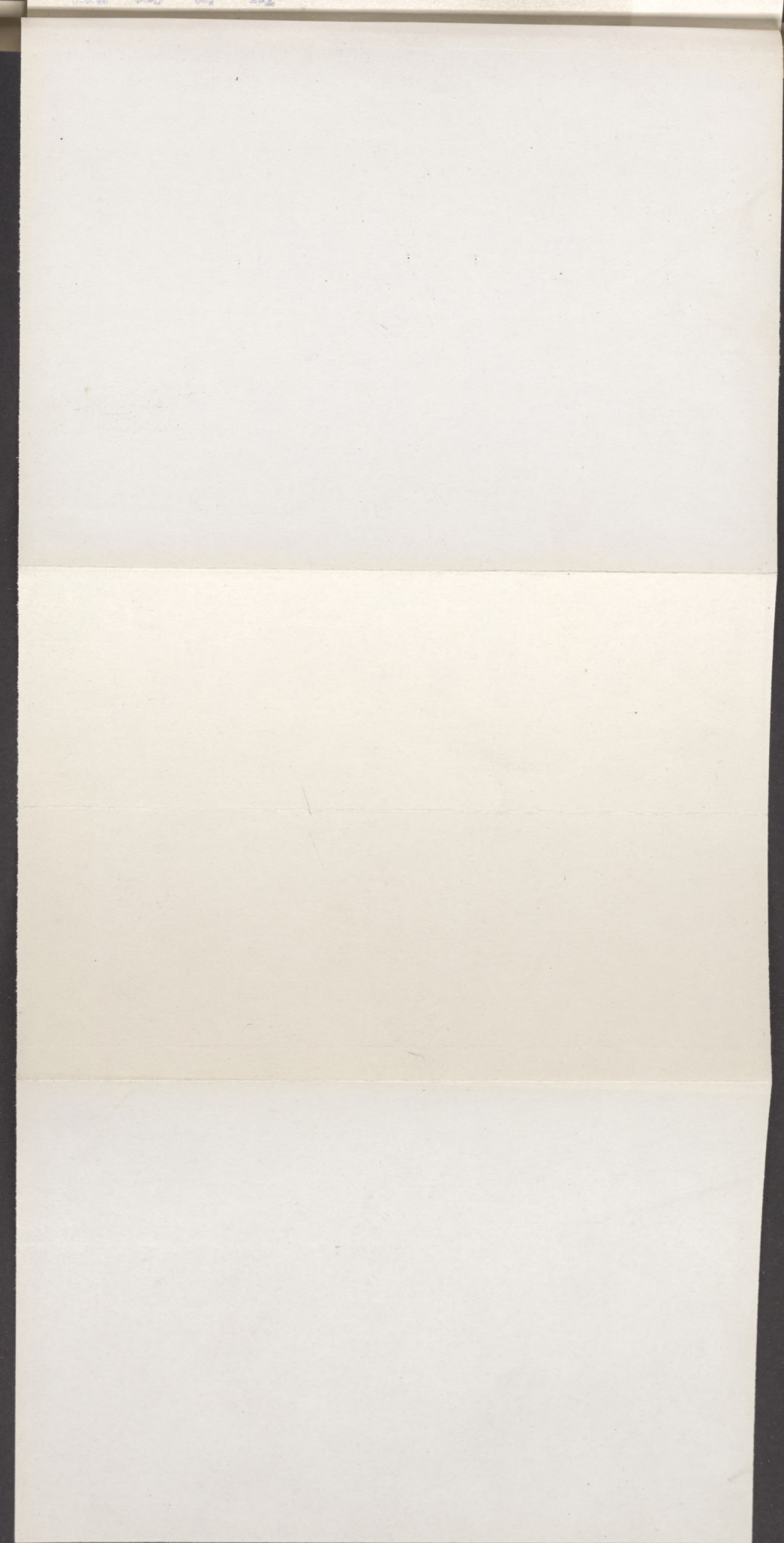
No lands will be sold subject to redemption at a rate of interest higher than eight per centum per annum. Payment for lands purchased must be made before the conclusion of the sale or the lands will be immediately resold.

The parcels of lands and real estate to be sold; the names of the persons against whom the same are assessed as owners; and the amount of the delinquent taxes, together with interest to July 1, 1928, and costs thereon, are as follows:

—RESULT OF TAX SALE—

BOUGHT IN BY THE TOWNSHIP OF LONG BEACH:—

	Tax.	Int.	Cost	Total
George W. Evenson, 12 36-100 acres				
South of Harvey Cedars, 1927	105.86	6.23	3.42	115.51
Daniel B. Frazier Co—				
South of Harvey Cedars, formerly				
R. R. property 18 35-100 A., 1927	95.27	5.61	3.42	104.30
Daniel B. Frazier Co. 177 82-100 acres				
Sea Breeze tract, adjoining Surf				
City, 1927	2823.40	166.27	3.42	2993.09
Daniel B. Frazier Co. 486.01 acres				
Between Harvey Cedars and Bar-				
negat City 1 house, 1927	7743.90	456.03	3.42	8203.35
Daniel B. Frazier 24 52-100 acres				
Formerly Cassidy Est., 1927	389.32	22.93	3.42	415.67
Samuel H. Burkhardt—Beach Haven Crest				
Block 26, lots 24-35, 1927	7.94	.47	3.42	11.83
Domenico Frederico—Beach Haven Crest				
Block 9, lots 21-23 and part of 22-				
24, 1927	23.82	1.40	3.42	28.64
Rev. Francis P. Haltgreve—Beach Haven Crest				
Block 20, lot 6, 1927	3.97	.24	3.42	7.63
J O. Huber—Beach Haven Crest				
Block 20, lots 31-32-33, 1927	11.91	.70	3.42	16.03
I. Santaro—Beach Haven Crest				
Block 12, lot 6, 1927	6.52	.39	3.42	10.43
Leroy L. Vennell—Beach Haven Crest				
Block 31, lots 7-8, 1927	7.94	.47	3.42	11.83
Ellis L. Goodall—Brighton Beach				
Blk. 447, lots 22-23-24, 1927	15.88	.93	3.42	20.23
Harry F. Reinhardt—Brighton Beach				
Block 437, lots 14-15				
Block 447, lots 4-5, 1927	14.56	.86	3.42	18.84
Wallace Royles—Beach Haven Terrace				
Tract 1, sec. D. lot 53, 1927	3.97	.24	3.42	7.63
Alex. R. Schuler—Beach Haven Terrace				
Tract 2, sec. D. lot 30, 1927	5.30	.31	3.42	9.03
Martin Wida—Beach Haven Terrace				
Tract 1, section A. lots 3-4 1 hotel				
1927	116.44	6.86	3.42	126.72
Spray Beach Hotel Co.—Spray Beach				
Blk. E. lots 2-3, hotel annex and				
public garage, 1927	100.56	5.92	3.42	109.90
Spray Beach Hotel Co.—Spray Beach				
Blk. B. lots 1-2-3-4-5-6-7-8, Hotel				
Store, Poolroom, Apt. House and				
Engine House, 1927	449.88	26.49	3.42	479.79
Spray Beach Hotel Co.—Spray Beach				
Blk. H. lot 18, 1 garage, 1927	26.47	1.54	3.42	31.43
G. Earle Vogels—Spray Beach				
Blk. F. lots 1-2-3 and part of 6,				
1 apartment house, 1927	230.23	13.56	3.42	247.21
James L. Heap Jr.—North Beach Haven				
Block 12, lot 16, 1927	5.30	.31	3.42	9.03
Realty Mart—North Beach Haven				
Block 6, lots 1 to 22 inc., 1927	116.44	6.86	3.42	126.72
Realty Mart—North Beach Haven				
Block F. lots 1 to 20 inc., 1927	105.86	6.23	3.42	115.51
Anthony Murphy—Beach Haven Heights				
Block 20, lots 36-38, 1927	5.30	.31	3.42	9.03
Dr. Mary E. Allen—St. Albans				
Sec. A. blk. 26, lots 1-3, 1927	1.33	.08	3.42	4.83
Albert L. Bemis—St. Albans				
Sec. B. blk. 47, lots 18-20, 1927	1.33	.08	3.42	4.83
Catherine A. Cole—St. Albans				
Sec. A. blk. 44, lot 25, 1927	.67	.05	3.42	4.14
Leora M. Dempsey—St. Albans				
Sec. B., blk. 78, lot 7, 1927	.67	.05	3.42	4.14
Jennie G. Felton—St. Albans				
Sec. B., blk. 40, lot 23, 1927	.67	.05	3.42	4.14
John L. Floyd—St. Albans				
Sec. A. blk. 34, lot 3				
Sec. A. blk. 35, lots 6-7				
Sec. A. blk. 36, lots 3-4, 1927	3.31	.20	3.42	6.93
Jos. S. Jacobowski—St. Albans				
Sec. B. blk. 52, lot 16, 1927	.67	.05	3.42	4.14
Minnie L. Joyce—St. Albans				
Sec. A. blk. 44, lot 6, 1927	.67	.05	3.42	4.14
Chas. N. Lang—St. Albans				
Sec. A. Blk. 12, lot 7, 1927	.67	.05	3.42	4.14
Florence M. Lloyd—St. Albans				
Sec. A., Blk. 44, Lots 1-2, 1927	1.33	.08	3.42	4.83
Walter E. Mallory—St. Albans				
Sec. B., Blk. 44, Lot 15, 1927	.67	.05	3.42	4.14
Dr. John Mellor Est.—St. Albans				
Sec. A., Blk. 61, Lot 7, 1927	.67	.05	3.42	4.14



	Tax	Int.	Cost	Total
John F. Murray—St. Albans				
Sec. B., Blk. 106, Lot 16, 1927	.67	.05	3.42	4.14
Dr. James G. McCollen—St. Albans				
Sec. A., Blk. 29, Lots 15-17, 1927	1.33	.08	3.42	4.83
Marie F. O'Connor—St. Albans				
Sec. A., Blk. 19, Lot 32, 1927	.67	.05	3.42	4.14
Harry L. Overton—St. Albans				
Sec. A., Blk. 57, Lot 12, 1927	.67	.05	3.42	4.14
W. Scott Prickett—St. Albans				
Sec. A., Blk. 11, Lots 16-18, 1927	1.33	.08	3.42	4.83
Samuel Rawlinson—St. Albans				
Sec. A., Blk. 57, Lots 4-5-7-9-11-13				
Sec. A., Blk. 36, Lots 5-7-9-11, 1927	6.62	.39	3.42	10.43
Dr. Wm. J. Ritter—St. Albans				
Sec. A., Blk. 11, Lots 31-33, 1927	1.33	.08	3.42	4.83
Wm. E. Salnick—St. Albans				
Sec. A., Blk. 16, Lot 29, 1927	.67	.05	3.42	4.14
Herman R. Soder—St. Albans				
Sec. A., Blk. 16, Lot 17, 1927	.67	.05	3.42	4.14
Albert H. Weller—St. Albans				
Sec. A., Blk. 57, Lot 10, 1927	.67	.05	3.42	4.14
St. Albans Improvement Co.—St. Albans				
Sec. A., Blk. 3, Lot 5.				
Sec. A., Blk. 4, Lots 1 to 25, inc.				
Sec. A., Blk. 5, Lots 7-9 to 25 inc., 27.				
Sec. A., Blk. 6, Lots 15-17-18-19-20-22-24				
Sec. A., Blk. 6, Lots 25-26-27				
Sec. A., Blk. 7, Lot 26.				
Sec. A., Blk. 11, Lots 15-17.				
Sec. A., Blk. 13, Lot 29.				
Sec. A., Blk. 14, Lots 17-19-21-23-25.				
Sec. A., Blk. 16, Lots 7-10-11-14-16-31.				
Sec. A., Blk. 19, Lot 39.				
Sec. A., Blk. 20, Lots 10-12-22-23.				
Sec. A., Blk. 23, Lot 29.				
Sec. A., Blk. 24, Lot 26.				
Sec. A., Blk. 29, Lots 6-31-33.				
Sec. A., Blk. 36, Lot 13.				
Sec. A., Blk. 37, Lot 27.				
Sec. A., Blk. 40, Lot 8.				
Sec. A., Blk. 41, Lots 23-25.				
Sec. A., Blk. 42, Lot 29.				
Sec. A., Blk. 45, Lots 22-24.				
Sec. A., Blk. 59, Lots 1-15.				
Sec. A., Blk. 62, Lots 7-8.				
Sec. B., Blk. 34, Lots 5-6-7.				
Sec. B., Blk. 38, Lot 6.				
Sec. B., Blk. 39, Lots 12-21.				
Sec. B., Blk. 40, Lots 6-16.				
Sec. B., Blk. 44, Lots 1-2-16-18-19.				
Sec. B., Blk. 44, Lots 20-21-23-25.				
Sec. B., Blk. 47, Lots 5-14-24.				
Sec. B., Blk. 51, Lots 19-21-23.				
Sec. B., Blk. 52, Lots 8-9-10-11-12-13				
Sec. B., Blk. 52, Lots 14-15-18-20-22.				
Sec. B., Blk. 56, Lots 2-3-5-7-9-11-13-17.				
Sec. B., Blk. 56, Lots 19-21-22-23.				
Sec. B., Blk. 59, Lots 11-12-13-14.				
Sec. B., Blk. 60, Lots 1 to 13 inc., 15.				
Sec. B., Blk. 62, Lots 10-11-12-13-14-16-18.				
Sec. B., Blk. 63, Lots 11-12-20-22-24.				
Sec. B., Blk. 64, Lots 1-2-3-4-5.				
Sec. B., Blk. 66, Lots 6-8-10-12-14-16-18.				
Sec. B., Blk. 66, Lots 20-21-22-23-24-25-26.				
Sec. B., Blk. 67, Lots 1 to 18 inc.				
Sec. B., Blk. 68, Lots 18-19-20-21-22-23.				
Sec. B., Blk. 72, Lots 16-18-22-24-26.				
Sec. B., Blk. 74, Lot 12.				
Sec. B., Blk. 76, Lots 12-14-15-16-17-18-19-20-22				
Sec. B., Blk. 77, Lots 2-10-22.				
Sec. B., Blk. 81, Lots 4 to 16 inc.				
Sec. B., Blk. 82, Lots 1-2-4-5-7-8-9-10.				
Sec. B., Blk. 83, Lots 10-13-15-17.				
Sec. B., Blk. 87, Lots 22.				
Sec. B., Blk. 88, Lots 9-11-12-13-14.				
Sec. B., Blk. 93, Lots 2-10-16-17-19.				
Sec. B., Blk. 94, Lot 8.				
Sec. B., Blk. 99, Lots 6-8.				
Sec. B., Blk. 101, Lots 5-7 to 12 inc.				
Sec. B., Blk. 105, Lots 14-15-16-17-18.				
Sec. B., Blk. 108, Lots 11-13.				
Sec. B., Blk. 116, Lots 2-3-5-7-8-9-10-13.				
Sec. B., Blk. 120, Lots 1 to 11 inc., 13.				
Sec. B., Blk. 130, Lots 15 to 20 inc., 24.				
For the year 1922	85.21	39.00		
For the year 1923	91.33	34.00		
For the year 1924	117.37	35.00		
For the year 1925	145.64	32.00		
For the year 1926	157.02	23.00		
For the year 1927	204.98	14.00	30.00	1008.55

BOUGHT IN BY ELLEN C. FORD—No Interest

315 Spruce St., Philadelphia, Pa.				
John F. Ford—Beach Haven Crest				
Block 11, lot 40, 1927.....	6.62	.39	3.42	10.43

BOUGHT IN BY ANDREW V. HIBBS—8% Interest

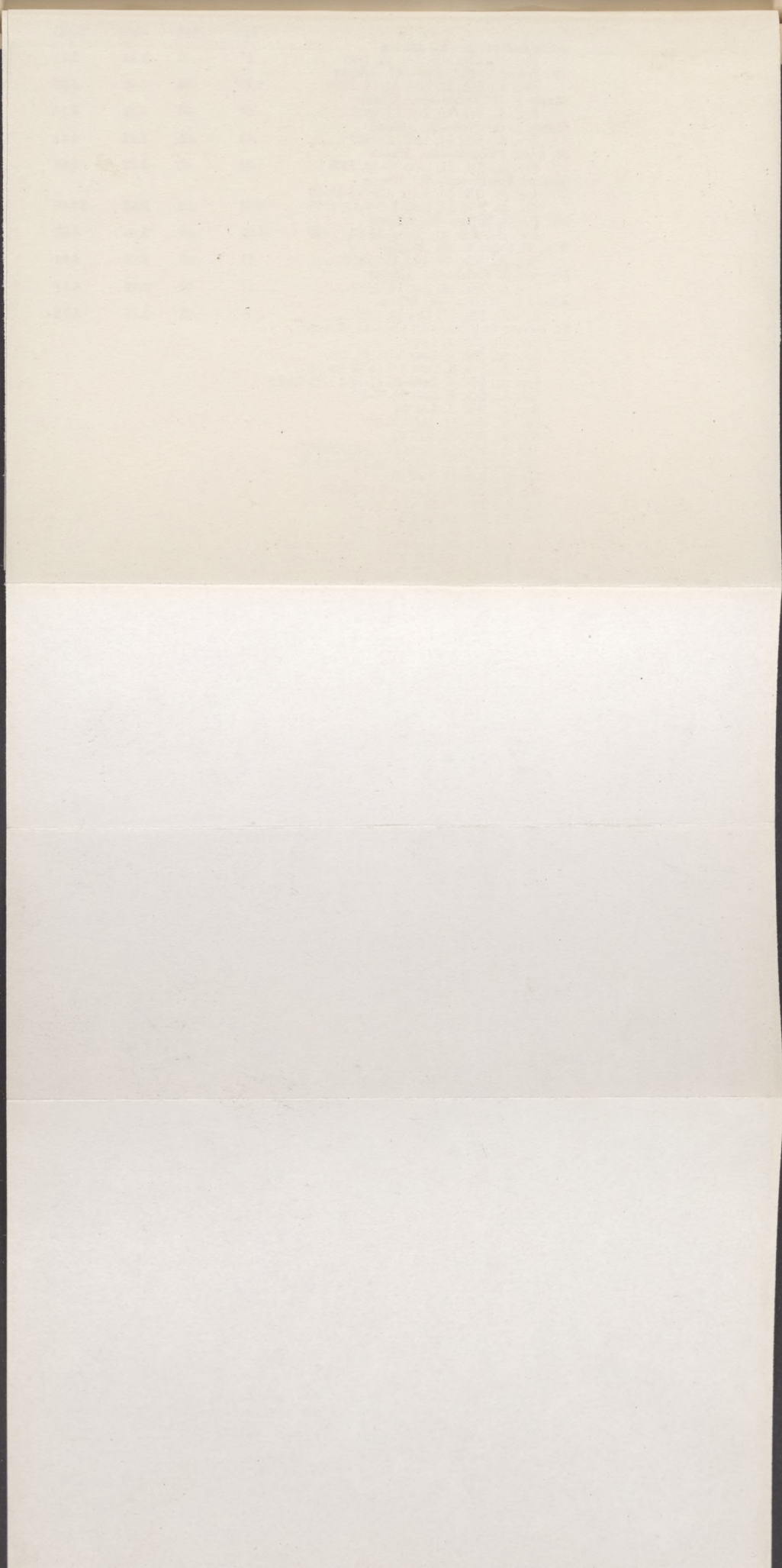
Beach Haven Terrace, N. J.				
Joseph Coyle—Beach Haven Terrace				
Tract 1, sec. A., lot 43, 1927	6.62	.39	3.42	10.43
Jessie McElroy—Beach Haven Terrace				
Tract 1, sec. A. lot 32, 1927.....	5.30	.31	3.42	9.03

This sale is made under the provisions of an Act of the Legislature known as the "Tax Sale Revision," being Chapter 237, P. L. 1918, and the several Acts amendatory thereof and supplemental thereto.

Any of the aforesaid parcels of lands and real estate may be redeemed by the owner prior to the sale by payment of the amount due thereon for taxes, interest and costs.

Dated: October 24, 1928.

H. EARLE McCONNELL,
Collector of Taxes of the Township
of Long Beach.



Order

17

Case No. 2.

24 52/100

ORDER.

10

NEW JERSEY SUPREME COURT.

DANIEL B. FRAZIER Co., a
corporation of New Jer-
sey,

Prosecutor,

v.

TOWNSHIP OF LONG BEACH,
in the County of Ocean,
a municipal corporation
of the State of New Jer-
sey; H. EARLE McCON-
NELL, Collector of Taxes
of the Township of Long
Beach, and AUGUSTUS L.
KEIL, Township Clerk of
the Township of Long
Beach,

Defendants.

20

On Certiorari.
Order.

30

This matter being opened to the Court by Howard
Ewart, attorney for defendants, and it appearing

Order

that on the 15th day of January, 1932, an allocatur was made to a writ of certiorari in the above-entitled matter, which said writ of certiorari was made returnable on the 4th day of February, 1932;

And cause being shown:

It is, on this 2nd day of February, 1932, ordered
10 that the return day of the writ of certiorari in this matter be extended to the 15th day of February, 1932.

J. L. BODINE,
Judge, Supreme Court.

I hereby consent to the entry of the above order.

JOSEPH H. CARR,
20 *Attorney for Prosecutor.*

Notice

Case No. 2.

24 52/100

NOTICE.

NEW JERSEY SUPREME COURT.

10

DANIEL B. FRAZIER Co., a
corporation of New Jer-
sey,

Prosecutor,

v.

TOWNSHIP OF LONG BEACH,
in the County of Ocean,
a municipal corporation
of the State of New Jer-
sey; H. EARLE McCON-
NELL, Collector of Taxes
of the Township of Long
Beach, and AUGUSTUS L.
KEIL, Township Clerk of
the Township of Long
Beach,

Defendants.

On Certiorari.
Notice.

20

30

To Joseph H. Carr, Attorney for Prosecutor:

Sir:

Please take notice that on Monday, the 15th day
of February, 1932, at ten o'clock in the forenoon, or

Notice

as soon thereafter as counsel can be heard thereon, at the State House in the City of Trenton, I shall apply to his Honor, Joseph L. Bodine, Justice of the Supreme Court, for a rule in the above-entitled cause, vacating the allocatur on the writ of certiorari issued in this matter, on the following
10 grounds:

(1) That the prosecutor is in laches.

(2) That the tax sale proceeding, the legality of which was questioned by the prosecutor, was valid.

(3) That the affidavit filed in this matter, under which the allocatur to the writ of certiorari was made, does not disclose reasonable cause for the is-
20 suance of the writ of certiorari.

Dated February 5, 1932.

HOWARD EWART,
Attorney for Defendants.

[ENDORSED]

Service of the within Notice is hereby acknowledged this 6th day of February, 1932.

Joseph H. Carr,
Attorney for Prosecutor.

Notice of Taking Depositions

Case No. 2.

24 52/100

NOTICE OF TAKING DEPOSITIONS.

NEW JERSEY SUPREME COURT.

10

DANIEL B. FRAZIER Co., a
corporation of New Jer-
sey,

Prosecutor,

v.

TOWNSHIP OF LONG BEACH,
in the County of Ocean,
a municipal corporation
of the State of New Jer-
sey; H. EARLE McCON-
NELL, Collector of Taxes
of the Township of Long
Beach, and AUGUSTUS L.
KEIL, Township Clerk of
the Township of Long
Beach,

Defendants.

On Certiorari.
Notice of Taking
Depositions.

20

30

To Joseph H. Carr, Attorney for Prosecutor:

Sir:

Please take notice that depositions to be read on
the hearing of the motion to vacate the allocatur on

Notice of Taking Depositions

the writ of certiorari issued in this matter will be taken before the Honorable George C. Low, a Supreme Court Commissioner, at his office in the Veeder Building, Main Street, Toms River, New Jersey, on Thursday, the 11th day of February, 1932, at 10:00 o'clock in the forenoon.

10 Dated February 6, 1932.

Yours respectfully,

HOWARD EWART,
Attorney for Defendants.

[ENDORSED]

20

Service of the within Notice is hereby acknowledged this 6th day of February, 1932.

Joseph H. Carr,
Attorney for Prosecutor.

30

Depositions

10

Case No. 2.

24 52/100

DEPOSITIONS.

The depositions taken in this matter were taken 20 in four other cases at the same time. These depositions are printed in the State of the Case in the case marked No. 1, 12 36/100.

30

Case No. 2.

24 52/100

10

ORDER VACATING ALLOCATUR.

NEW JERSEY SUPREME COURT.

DANIEL B. FRAZIER Co., a
corporation of New Jer-
sey,

Prosecutor,

v.

20

TOWNSHIP OF LONG BEACH,
in the County of Ocean,
a municipal corporation
of the State of New Jer-
sey; H. EARLE McCON-
NELL, Collector of Taxes
of the Township of Long
Beach, and AUGUSTUS L.
KEIL, Township Clerk of
the Township of Long
Beach,

30

Defendants.

On Certiorari.
Order Vacating
Allocatur.

This matter being opened to the Court by Howard
Ewart, attorney for defendants, and Joseph H. Carr,

Order Vacating Allocatur

appearing as attorney for prosecutor, on motion to vacate the allocatur to a writ of certiorari in this cause allowed January 15th, 1932, and returnable February 4th, 1932; and it appearing that by order of this Court made February 2nd, 1932, the return day of the writ of certiorari was extended to February 15th, 1932; and the Court having considered 10 the depositions and evidence returned in support of the motion and having heard the arguments of counsel, and being of the opinion that the allocatur should be returned in support of the motion and having heard the arguments of counsel, and being of the opinion that the allocatur should be vacated;

It is, on this fifteenth day of February, 1932, ordered that the allocatur to the writ of certiorari allowed on January 15th, 1932, be and the same is hereby vacated, without prejudice to a renewal there- 20 of before the Court.

J. L. BODINE,
J. S. C.

Case No. 2.

24 52/100

10

NOTICE.

NEW JERSEY SUPREME COURT.

DANIEL B. FRAZIER Co., a
corporation of New Jersey,

Prosecutor,

v.

20

TOWNSHIP OF LONG BEACH,
in the County of Ocean,
a municipal corporation
of the State of New Jersey;
H. EARLE MCCONNELL, Collector of Taxes
of the Township of Long Beach,
and AUGUSTUS L. KEIL, Township Clerk of
the Township of Long Beach,

30

Defendants.

On Certiorari.
Notice.

To Howard Ewart, Esquire, Attorney for Defendants:

Notice

Sir:—

Take notice that I shall apply to part No. 2 of the New Jersey Supreme Court on Wednesday, March 2, 1932, at one o'clock in the afternoon, or as soon as the matter can be heard on that day, at the State House Annex in Trenton, for a rule requiring the defendants above-named to show cause why the writ 10 of certiorari allowed on January 15, 1932, should not be renewed by the said Court, or in the alternative, shall apply for a rule to show cause why a writ of certiorari should not issue to review the matters set forth in the writ of certiorari issued on January 15, 1932.

Respectfully,

JOSEPH H. CARR,

Attorney for Prosecutor.

Dated: Camden, N. J.
February 25, 1932.

20

[ENDORSED]

Service of the within notice is hereby acknowledged this 25th day of February, A. D. 1932.

30

.....,
Attorney for Defendants.

Order

Case No. 2.

24 52/100

10

ORDER.

NEW JERSEY SUPREME COURT.

DANIEL B. FRAZIER CO., a
 corporation of New Jer-
 sey,

Prosecutor,

v.

20

TOWNSHIP OF LONG BEACH,
 in the County of Ocean,
 a municipal corporation
 of the State of New Jer-
 sey; H. EARLE MCCON-
 NELL, Collector of Taxes
 of the Township of Long
 Beach, and AUGUSTUS L.
 KEIL, Township Clerk of
 the Township of Long
 Beach,

30

Defendants.

On Certiorari.
 Order.

The prosecutor herein having given notice to the
 defendants of an application to be made March 2,

Order

1932, for a rule requiring the defendants to show cause why the writ of certiorari allowed on January 15, 1932, should not be removed, or in the alternative, that the prosecutor would apply for a rule to show cause why a writ of certiorari should not issue to review the matters set forth in the writ of certiorari issued on January 15, 1932; and it appearing to the 10 Court that the order vacating the allocatur on the said writ of certiorari provided that the same was without prejudice to a renewal thereof before the Court, and that an appeal was taken from the order vacating the allocatur, by notice duly filed; and the Court having heard Joseph H. Carr, attorney for the prosecutor, for the motion under the notice aforesaid, and Howard Ewart, for the defendant, opposed; and the Court being of the opinion that in view of the said appeal the Court is without juris- 20 diction to act upon the motion of March 2, 1932, and is without jurisdiction to grant the relief applied for;

It is, as of March 2, 1932, ordered that the motion of the prosecutor be and the same is hereby denied with costs.

By the Court,

THOMAS W. TRENCHARD,

J. S. C.

Notice of Appeal

Case No. 2.

24 52/100

NOTICE OF APPEAL.

10

NEW JERSEY SUPREME COURT.

DANIEL B. FRAZIER Co., a
corporation of New Jer-
sey,

Prosecutor,

v.

20 TOWNSHIP OF LONG BEACH,
in the County of Ocean,
a municipal corporation
of the State of New Jer-
sey; H. EARLE McCON-
NELL, Collector of Taxes
of the Township of Long
Beach, and AUGUSTUS L.
KEIL, Township Clerk of
the Township of Long
Beach,

Defendants.

30

On Certiorari.
Notice of Appeal.

*To Howard Ewart, Esquire, Attorney for the Defen-
dants, Township of Long Beach; H. Earle Mc-
Connell, Collector of Taxes of the Township of
Long Beach, and Augustus L. Keil, Township
Clerk of the Township of Long Beach:*

Notice of Appeal

Sir:

Please take notice that the prosecutor in the above matter hereby appeals to the Court of Errors and Appeals from the whole of the judgment entered in the above-stated cause on the following ground:

1. The Supreme Court erred in its order vacating 10
the allocatur to the writ of certiorari allowed on
January 15, 1932.

Respectfully,
JOSEPH H. CARR,
Attorney for and of Counsel with
Daniel B. Frazier Co.

Dated February 23, 1932.

20

[ENDORSED]

Service of the within notice is hereby
acknowledged this 24th day of Feb-
ruary, A. D. 1932.

Howard Ewart,
Attorney for Township of Long
Beach, H. Earle McConnell,
Collector of Taxes of the
Township of Long Beach, and
Augustus L. Keil, Township
Clerk of the Township of Long
Beach.

30

Case No. 2.

24 52/100

GROUNDS OF APPEAL.

10 NEW JERSEY COURT OF ERRORS AND
APPEALS.

DANIEL B. FRAZIER Co., a
corporation of New Jer-
sey,

*Prosecutor-
Appellant,*

v.

20 TOWNSHIP OF LONG BEACH,
in the County of Ocean,
a municipal corporation
of the State of New Jer-
sey; H. EARLE McCON-
NELL, Collector of Taxes
of the Township of Long
Beach, and AUGUSTUS L.
KEIL, Township Clerk of
the Township of Long
30 Beach,

*Defendants-
Respondents.*

On Certiorari.
On Appeal.
Grounds of Appeal.

The appellant states the following ground of ap-
peal in this cause:

Grounds of Appeal

The Supreme Court erred in giving judgment for the defendants instead of for the prosecutor, and in vacating the allocatur and dismissing the writ of certiorari.

JOSEPH H. CARR,
Attorney for Prosecutor-
Appellant. 10

[ENDORSED]

Service of the within grounds of appeal is hereby acknowledged this 9th day of May, A. D. 1932.

Howard Ewart, 20
 Atty. for Defendants-
 Respondents.

Opinion

Case No. 2.

24 52/100

10

OPINION.

(Filed Mar. 28, 1932.)

NEW JERSEY SUPREME COURT.

20	DANIEL B. FRAZIER Co., a corporation of New Jer- sey, <i>Prosecutor,</i> v. TOWNSHIP OF LONG BEACH, in the County of Ocean, <i>et als.,</i> <i>Defendants.</i>	} Memorandum. (not for print in the official or unofficial reports)
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30

ON MOTION TO VACATE ALLOCATUR.

For the motion, HOWARD EWART.
 Contra, JOSEPH H. CARR.

Opinion

BODINE, J.:

For all practical purposes all five cases involving the taxation of lands of the Daniel B. Frazier Company in Long Beach Township, Ocean County, New Jersey, stand on the same footing and are here dealt with.

The Township of Long Beach filed five separate 10 bills in equity to foreclose certain tax sale certificates acquired in December of 1928, covering lands of the prosecutor which had been sold pursuant to law for unpaid taxes. The answers in chancery challenged the validity of the tax sales. Under Chapter 202, Pamphlet Laws of 1925, page 480, the answer will be struck unless the defendant obtains a writ of certiorari to review the validity of the tax sale within four months from the date of the filing of the answer in the chancery proceeding. In order that the 20 defendant should not be deprived of such rights as might exist by the mere passage of time, the application being tardy, and because it was apparent that by reason of the delay a rule to show cause might not be effective, the writ was allowed on *ex parte* affidavits.

The rights of the municipality to move for the vacation of the allocatur is clear; also the right of the Justice granting the same to vacate the same. Rule 170, of the Supreme Court, *Winegrath v. Fair-* 30 view, 77 N. J. L. 448, where Justice Minturn said:

"The statute 5 and 6 W. & M. expressly established the practice of applying for the writ to the Justice at Chambers, and required him, if he allowed it, to endorse thereon his allowance, to which act the term allocatur was ap-

plied. It will be perceived, therefore, that the allocatur to the writ is, in effect, but a substitute for the earlier common law fiat, which, like all orders or rules made by a single justice of the King's bench, was, until return made to the writ, within the power of the Justice granting it to amend, modify or recall."

10

No return was made to any of the writs and counsel for the defendant asked for further time for this purpose, if the allocatur was not vacated, as he had a right so to do under Rule 170.

The application for the writ of certiorari was predicated upon the following grounds: (1) The tax sale was invalid; (2) The notice of the tax sale was invalid as it contained no statement of the years
20 the taxes became payable for which the sale was being made; (3) The amount of interest stated was excessive; (4) The description was insufficient; (5) The notice of sale was not posted in five of the most public places; (6) No list was made up pursuant to secs. 17, 18, 23 and 26 of Chapter 237 Pamphlet Laws 1918; (7) No record of the sale was made as required by law; (8) The sale was ineffective because the attempt was made to sell for 1927 taxes; (9) The certificate of sale contains no adequate description;
30 (10) The certificate contains no averment that there were no other bidders.

The facts developed by the defendants' depositions indicate that the Daniel B. Frazier Company is a persistent and continuous evader of tax obligations, and that the property in question is sand dunes held for speculative purposes. The assessment of

Opinion

the taxes in question was appealed to the County Board of Taxes and reductions secured.

The tax sale was held November 19, 1928. Previous to the sale, the collector of taxes made up a list in which the lands subject to sale were described according to the description set forth in the 1927 duplicate, together with the name or names of the owners of said premises and the amount of all taxes and assessments which were a lien on July 1, 1928. This list was subsequently turned over to the printer and a notice of sale made up. A copy of this notice of sale was thereafter used by the collector of taxes as his list and on it was noted the record of properties redeemed before or at the sale and the results of the sale itself. The notice of sale was published in the Tuckerton Beacon, a newspaper circulating in the Township of Long Beach, once in each of the four calendar weeks preceding the sale. Copies of the notice of sale were posted in seven public places with the township on or before October 27, 1928, and further copies of the notice of sale were mailed to each of the owners. 10 20

There were no other bidders than the township at the sales in question.

The tax sale certificates were made up for each of the properties sold and delivered to the Township of Long Beach subsequent to the sale and were recorded. Notations to the effect that sale was made to the township were made by the collector on the tax duplicates for 1927, and on the duplicates for 1928, 1929 and 1930. 30

The Tax Sale Revision Act of 1918 provides as follows:

10 “No sale of lands for municipal liens heretofore or hereafter made, shall be set aside * * * because of insufficient description in the original entry of the lien, or in the list made up for the sale, or because of a mistake in or omission in the name of the owner, or because of the failure of the clerk or any municipal officer to record the proceedings relative to the sale, if it shall appear by other legal evidence that the land sold was, in fact, that assessed, and that the sale was made pursuant to law. * * *” Com. State. 1924, p. 3538, Secs. 208-44a (56); P. L. 1918, C. 237, p. 898.

20 The proofs show that there was substantial compliance with the legislative requirements in that all acts necessary to be done by the collector of taxes were, in fact, done with the exception of actually making up a complete record of the proceedings. Such substantial compliance brings the proceedings within the terms of the statute and they were in all respects legal and binding on the prosecutor.

30 It was proved and not controverted that the township officers frequently requested the payment of the taxes in question and made known to the prosecutor the embarrassment incident to the delay in payment, because of the inability of the township to meet tax anticipation notes which it had negotiated and which were long over due to the great detriment of banks affording accommodation to the township.

 The delay in resorting to foreclosure proceedings was due to the repeated promises and assurances of the president of the Frazier Company that the taxes

Opinion

would be paid and that accommodation had been secured from out of town banks to refiance the Frazier Company and provide the money needed for settlement of the taxes.

The Frazier Company owes about 65 or 70% of the township's unpaid taxes. The attempt to challenge the validity of the taxes, in the light of the admission of liability frequently made, seems without merit. Having recognized the validity of the obligation and the manner in which the township's right has been asserted it is now too late to assert a right to a discretionary writ to review that which the Frazier Company has conceded imposed a valid and binding obligation upon it which it was more than willing to pay, if like Mr. MacCauber, it could have borrowed the money. 10

The fanciful irregularities suggested in the township proceedings for the collection and sale for taxes seem due to the circumstances that the township is not a large municipality with voluminous records kept by skilled clerks. The essential records were, however, kept. The precise form and style of writing the records is immaterial under the statute above referred to, but at all events since there was an absolute recognition of the obligation and the rights arising from the sale and repeated requests for further time to secure the funds to make the payments due, it would seem that the allocatur was improvidently granted. The power to vacate is clear. 20 30

The allocatur is, therefore, vacated with costs.

*Call to
Township*

	Tax	Int.	Cost	Total
Sec. A., Blk. 16, Lots 7-10-11-14-16-31.				
Sec. A., Blk. 19, Lot 39.				
Sec. A., Blk. 20, Lots 10-12-22-23.				
Sec. A., Blk. 23, Lot 29.				
Sec. A., Blk. 24, Lot 26.				
Sec. A., Blk. 29, Lots 6-31-33.				
Sec. A., Blk. 36, Lot 13.				
Sec. A., Blk. 37, Lot 27.				
Sec. A., Blk. 40, Lot 8.				
Sec. A., Blk. 41, Lots 23-25.				
Sec. A., Blk. 42, Lot 29.				
Sec. A., Blk. 45, Lots 22-24.				
Sec. A., Blk. 59, Lots 1-15.				
Sec. A., Blk. 62, Lots 7-8.				
Sec. B., Blk. 34, Lots 5-6-7.				
Sec. B., Blk. 38, Lot 6.				
Sec. B., Blk. 39, Lots 12-21.				
Sec. B., Blk. 40, Lots 6-16.				
Sec. B., Blk. 44, Lots 1-2-16-18-19.				
Sec. B., Blk. 44, Lots 20-21-23-25.				
Sec. B., Blk. 47, Lots 5-14-24.				
Sec. B., Blk. 51, Lots 19-21-23.				
Sec. B., Blk. 52, Lots 8-9-10-11-12-13.				
Sec. B., Blk. 52, Lots 14-15-18-20-22.				
Sec. B., Blk. 56, Lots 2-3-5-7-9-11-13-17.				
Sec. B., Blk. 56, Lots 19-21-22-23.				
Sec. B., Blk. 59, Lots 11-12-13-14.				
Sec. B., Blk. 60, Lots 1 to 13 inc., 15.				
Sec. B., Blk. 62, Lots 10-11-12-13-14-16-18.				
Sec. B., Blk. 63, Lots 11-12-20-22-24.				
Sec. B., Blk. 64, Lots 1-2-3-4-5.				
Sec. B., Blk. 66, Lots 6-8-10-12-14-16-18.				
Sec. B., Blk. 66, Lots 20-21-22-23-24-25-26.				
Sec. B., Blk. 67, Lots 1 to 18 inc.				
Sec. B., Blk. 68, Lots 18-19-20-21-22-23.				
Sec. B., Blk. 72, Lots 16-18-22-24-26.				
Sec. B., Blk. 74, Lot 12.				
Sec. B., Blk. 76, Lots 12-14-15-16-17-18-19-20-22				
Sec. B., Blk. 77, Lots 2-10-22.				
Sec. B., Blk. 81, Lots 4 to 16 inc.				
Sec. B., Blk. 82, Lots 1-2-4-5-7-8-9-10.				
Sec. B., Blk. 83, Lots 10-13-15-17.				
Sec. B., Blk. 87, Lots 22.				
Sec. B., Blk. 88, Lots 9-11-12-13-14.				
Sec. B., Blk. 93, Lots 2-10-16-17-19.				
Sec. B., Blk. 94, Lot 8.				
Sec. B., Blk. 99, Lots 6-8.				
Sec. B., Blk. 101, Lots 5-7 to 12 inc.				
Sec. B., Blk. 105, Lots 14-15-16-17-18.				
Sec. B., Blk. 108, Lots 11-13.				
Sec. B., Blk. 116, Lots 2-3-5-7-8-9-10-13.				
Sec. B., Blk. 120, Lots 1 to 11 inc., 13.				
Sec. B., Blk. 130, Lots 15 to 20 inc., 24.				
For the year 1922	85.21	39.00		
For the year 1923	91.33	34.00		
For the year 1924	117.37	35.00		
For the year 1925	145.64	32.00		
For the year 1926	157.02	23.00		
For the year 1927	204.98	14.00	30.00	1008.55

This sale is made under the provisions of an Act of the Legislature known as the "Tax Sale Revision," being Chapter 237, F. L. 1918, and the several Acts amendatory thereof and supplemental thereto.

Any of the aforesaid parcels of lands and real estate may be redeemed by the owner prior to the sale by payment of the amount due thereon for taxes, interest and costs.

Dated: October 24, 1928.

H. EARLE McCONNELL,
Collector of Taxes of the Township
of Long Beach.

Official

D 6

SALE OF LAND IN THE TOWNSHIP OF LONG BEACH OCEAN COUNTY, NEW JERSEY

PUBLIC NOTICE IS HEREBY GIVEN that the subscriber, Collector of Taxes of the Township of Long Beach, Ocean County, New Jersey, pursuant to the statute, will on

MONDAY, NOVEMBER 19, 1928

at the hour of 1 o'clock p. m., at the Township Hall, 16th Street and the Boulevard, at North Beach Haven in said Township, expose to public sale and sell to such person or persons as will purchase the same, subject to redemption at the lowest rate of interest or at the highest premium without interest, and pay the tax liens thereon including interest and costs, each of the parcels of lands in the Township of Long Beach, together with the tenements and hereditaments thereunto belonging, as described below.

No lands will be sold subject to redemption at a rate of interest higher than eight per centum per annum. Payment for lands purchased must be made before the conclusion of the sale or the lands will be immediately resold.

The parcels of lands and real estate to be sold; the names of the persons against whom the same are assessed as owners; and the amount of the delinquent taxes, together with interest to July 1, 1928, and costs thereon, are as follows:

	Tax.	Int.	Cost	Total	
<i>Paid</i> 10/31/28. <i>La-Rue-Clayton, 10 Acres</i>					
Part of McKinney tract south of Eashala, 1927	\$165.25	\$10.91	\$3.42	\$199.58	<i>Paid-off</i>
T George W. Evenson, 12 36-100 acres South of Harvey Cedars, 1927	105.86	6.23	3.42	115.51	
T Daniel B. Frazier Co. South of Harvey Cedars, formerly R. R. property 18 35-100 A., 1927	95.27	5.61	3.42	104.30	
T Daniel B. Frazier Co. 177 82-100 acres Sea Breeze tract, adjoining Surf City, 1927	2823.40	166.27	3.42	2993.09	
T Daniel B. Frazier Co. 486.01 acres Between Harvey Cedars and Barnegat City 1 house, 1927	7743.90	456.03	3.42	8203.35	
T Daniel B. Frazier 24 52-100 acres Formerly Cassidy Est., 1927	389.32	22.93	3.42	415.67	
<i>Paid</i> 10/30/28. <i>Brant Beach Realty Co. Brant Beach</i>					
Block 7, lots 39-40, 1 house, 1927	80.00	2.01	3.42	85.43	<i>Paid-off</i>
<i>Paid</i> 11/7/28. <i>Brant Beach Realty Co. Brant Beach</i>					
From South line of Hardenberg tract to north line of Beach Haven Crest, Ocean to bay 47 acres, 1927	435.32	34.34	3.42	473.08	
<i>Paid</i> 11/6/28. <i>Brant Beach Realty Co. Brant Beach</i>					
West of R. R. from 31st St. to Beardslee ave. 24 39-100 acres 1927	158.78	12.53	3.42	174.73	
<i>Paid</i> 11/19/28. <i>Walter Cullen Brant Beach</i>					
Sec. A. A. block I, lot 22, 1927	5.30	.31	3.42	9.03	
<i>Paid</i> 11/19/28. <i>James H. McGregor Brant Beach</i>					
Sec. A. blk. 6, lot 23, 1927	6.62	.39	3.42	10.43	
T Samuel H. Burkhardt Beach Haven Crest Block 26, lots 24-35, 1927	7.94	.47	3.42	11.83	
<i>Paid</i> 11/16/28. <i>James McMurray, Inc. Beach Haven Crest</i>					
Block 19, lots 15-17-19-20-23-25-26					
Block 19, lots 31-32-33-34-35-36					
Block 20, lots 1-7-9-11-13-15-19-21-23-25					
Block 20, lots 27-29-34-35-36					
Block 26, lots 1-2-3-5-6-7-8-9-10-11-12-13-14-15-16-17-18-19-22-26-28-29-30-31-41					
Block 27, lots 1-2-3-4-9-11-13-15-17-19-21-23-25, 1927	63.52	5.01	3.42	71.95	
<i>Paid</i> 11/19/28. <i>Harry M. Ellis Beach Haven Crest</i>					
Block 12, lots 16-18-20-22	25.72	1.51	3.42	30.65	
Block 13, lots 25-27-29-31-32, 1927					
T Domenico Frederico Beach Haven Crest Block 9, lots 21-23 and part of 22-24, 1927	23.82	1.40	3.42	28.64	

(1)

plainant by fraudulent representations to enter into the contract for the purchase of said prem-

New Jersey Court of Errors and Appeals

Between

CHARLES CASPER,
Complainant-Appellee,

and

HELEN GADEK and JOSEPH GADEK,
Defendants-Appellants.

Final Decree.

On Appeal
from Court of
Chancery.

BRIEF OF COMPLAINANT-APPELLEE.

Statement.

The complainant filed his bill of complaint in the Court of Chancery against the defendants praying for the rescission and cancellation of a contract and deed for the sale of premises sold to him by the defendants, and for the return of Four Thousand (\$4,000) Dollars representing the purchase price of same, for the reason that the defendants induced the complainant to purchase the said premises by fraudulent representations, namely that the said premises had a frontage on the highway of approximately two hundred feet (State of Case, pp. 1 to 5).

The case was tried before the Honorable Maja Leon Berry, Vice Chancellor, at the Chancery Chambers in Long Branch, on January 7th, 1932, and the learned Vice Chancellor advised a decree in favor of the complainant rescinding and cancelling the contract and deed for said premises (State of Case, p. 68 to p. 70), because he was "satisfied that the defendants induced the complainant by fraudulent representations to enter into the contract for the purchase of said prem-

ises, which contract is dated May 8th, 1931, and the deed to said premises dated May 18th, 1931, said fraudulent representations made concerning the frontage of said premises on the highway" (State of Case, p. 68, ll. 26 to 33).

The defendants' appeal is based on the following reasons, as stated in their brief:

First: The decree is not warranted by the evidence, since no evidence of fraud on the part of the defendants was proven at the hearing.

Second: The quantum of proof required in cases of fraud was not adduced by the complainant; and

Third: The contract of sale was incorrectly interpreted by the learned court in that the court decided that the contract of sale in question gave the purchaser a right to assume that the property in question fronted on the highway.

The defendants-appellants present the first and second reasons together in point one, and then argue the third reason as the second point in their brief, and we will endeavor to answer same in that order.

POINT I.

The decree in favor of the complainant is warranted by the evidence of fraud on the part of the defendants, and the quantum of proof necessary to show fraud was adduced by complainant.

The misrepresentation of which the complainant complained in this case is the fact that he was told and led to believe by the defendants that the property which he, the complainant, was purchasing fronted on the highway (State of Case, p. 2, ll. 35 to 40; p. 9, ll. 23 to 40; p. 18, ll. 1 to 20).

As will be seen from the descriptions in the contract for the purchase of said property (State of Case, p. 54, ll. 10 to 40), and in the deed (State of Case, p. 60, l. 32, to p. 61, l. 32), the property is described as "being on the northerly side of the highway that leads from Englishtown to Middletown Point, beginning at a stone standing on the northerly side of the aforesaid highway, it being the most southeasterly corner of late Wm. Way's lands," and then continuing by metes and bounds.

To the layman from a reading of the contract and deed, it would seem that this property is, as stated, on the northerly side of the highway, but to an engineer who could understand the description it would probably mean no more than what it turned out to be, namely, merely a point on the highway as shown by Exhibit C-3 (State of Case, p. 66), which is the survey the complainant had made, and whereby it can be seen that the lands which the defendants conveyed to the complainant merely began at a point on the highway known as the road leading from Englishtown to Middletown Point, said point being in the southeast corner, where the small arrow can be seen on the survey, pointing to a stone, which is the beginning point.

The complainant produced as witnesses himself (State of Case, p. 9), Oscar Ricklefsen, the real estate agent (State of Case, p. 36), Stephen Boyce, the man who owned the farm next to the one that he had purchased from the defendants (State of Case, p. 40), and Arthur T. McMichael, a civil engineer who made a survey of the farm which the complainant had purchased from the defendants (State of Case, p. 29).

Complainant testified that he had a conversation with the defendant Gadek before he purchased the farm and that Gadek showed him and the real estate agent the farm and told them all

about the location and described it to them (State of Case, p. 9, ll. 15 to 28), and that Gadek pointed out the frontage stating that it ran from one point to another by indicating a fence up to which the frontage ran (State of Case, p. 9, ll. 29 to 33).

Complainant then testified (State of Case, p. 9, ll. 34 to 40):

“Q. Did he tell you approximately how much the frontage was? A. We figured about 200 feet.

Q. Not what you figured, what did he tell you?

The Court: What do you mean by ‘we figured’?

Witness: *That is what he says, about 200 feet.*”

Continuing (p. 10, ll. 1 to 13):

Q. And he pointed the fence out to you?

A. From post to post, fence to fence.

The Court: Were there posts erected on the property?

Witness: Yes, sir, on the property, from this point to this point (indicating).

Q. That was the highway? A. Yes.

Q. And the fence ran from one post to the other post? A. Yes.”

Complainant then testified (State of Case, p. 18, ll. 1 to 18), as follows:

“Q. Did the agent tell you there was 200 feet on the highway, on this road? A. Gadek and I were there when the agent took me there, when Gadek was there and the agent, and said there it is, from post to post, and Gadek the same way.

The Court: That is your answer, they both said it.

Q. *Did the agent say 200 feet was frontage; did he say that part?* A. *That is what Gadek said.*

Q. I am not asking you what Gadek said; did the agent say that? A. The agent did

not say anything about frontage at all; he said it ran from post to post, and *Gadek said, 'Yes, 200 feet'.*"

On page 25, State of Case, ll. 24 to 40, complainant testified:

"Q. Now when Mr. Gadek and the agent told you that the property was from post to post, that does not mean necessarily that it is on the road, does it? A. When he pointed to me, 'it is bounded' he said, 'from Guggenheimer's to Steve Boyce's property; I got the whole frontage here, that all belongs to it; it runs from post to post, from Guggenheimer's fence to Steve Boyce's fence'.

Q. In other words, he merely told you from what side to what side the property ran, is that right? A. Yes.

Q. How much did he say was on the highway, did he tell you anything about that? A. *He said to me it is 200 feet. I even told him, 'kind of narrow place' and he said, 'it is plenty wide enough, 200 feet', I said, 'all right'.*"

Oscar Ricklesen, the real estate agent, testified (State of Case, p. 37, ll. 1 to 15), that he was present at the time the complainant and Mr. Gadek talked about the purchase of the farm premises and that Gadek showed the complainant the lines of the property; that complainant was shown the posts in front and that he thought the posts were about one hundred fifty feet apart (State of Case, p. 37, ll. 16 to 20); and stated that he did not recall whether Mr. Gadek said anything to Mr. Casper concerning the distance of the frontage on the highway (State of Case, p. 37, ll. 35 to 40). He also testified that he did not recall whether Mr. Gadek had represented to the complainant that there was two hundred feet frontage on the highway (State of Case, p. 39, ll. 13 to 17), but that he took the frontage on the road to be between the

post lines, and he assumed that was it (State of Case, p. 39, ll. 29 to 31).

The Court then stopped the examination of this witness stating that it was not necessary to go any further because he was satisfied (State of Case, p. 40, l. 5).

The next witness for the complainant, Stephen Boyce, is the man who owns the property next to the premises that the complainant purchased from the defendants (State of Case, p. 40, ll. 15 to 20).

He testified that the posts which were mentioned by the complainant and the other witnesses were set up by the defendant Gadek (State of Case, p. 40, l. 40), and that Gadek later consulted them with reference to buying the small triangular strip of land in front of his, Boyce's property, and which is also partly in front of Gadek's property (State of Case, p. 41, ll. 1 to 30), and that he, Boyce, had told defendant Gadek that he owned the property where Gadek had put the posts (State of Case, p. 41, ll. 23 to 25). As shown on the survey (State of Case, p. 66), the small triangular piece in question is bounded by the highway and marked 0.46 acres, and would be necessary for defendants to own in order to have a frontage on the highway.

The purpose of the testimony of Mr. Boyce was to show that the defendant Gadek had knowledge at the time he put up these posts that he was putting them on property that did not belong to him, and that therefore he must have known that he did not have a frontage on the highway, as he represented to the complainant.

The testimony of Boyce further shows that the defendant Gadek knew that he didn't own the property in front of his premises about two years before the trial of this cause, when he had a conversation with Boyce (State of Case, p. 41, ll. 15 to 19 and State of Case, p. 42, ll. 29 to 32).

A. T. McMichael, the engineer, testified for the complainant that he made an investigation and partial survey of the premises purchased by the complainant from the defendants (State of Case, p. 29, ll. 21 to 37), including a plot of the deeds and that from his survey and plotting the premises conveyed by the defendants to the complainant does not contain any frontage on the highway, but merely a beginning point (State of Case, p. 29, ll. 37 to 40; State of Case, p. 30, ll. 1 to 30).

He testified also that there was a fence fronting along the road (State of Case, p. 33, ll. 37 to 40; State of Case, p. 34, l. 4); that on the line between Boyce and Casper there was nothing, but alongside of the road there is a fence (State of Case, p. 34, ll. 19 to 36).

As against all of the testimony of these witnesses the only testimony produced by the defendants was that of the defendant Joseph Gadek which is a complete denial of any representations concerning any frontage on the highway. He even denied that Mr. Boyce told him to put his fence upon his own property (State of Case, p. 46, ll. 35 to 40); and it must be remembered that Mr. Boyce was a disinterested witness who had absolutely no interest in the outcome of this case, and who testified that he told Gadek that he was putting up the post and fence on his property (State of Case, p. 41, ll. 15 to 26); so that right here we have a sharp conflict of testimony putting up to the Trial Court the task of determining its credibility. Aside from that there is a conflict in the testimony between Gadek and the complainant whether or not the representations alleged about the frontage on the highway were made. Under such circumstances, the rule, is stated to be that an appellate court, on appeal from a decree of the Court of Chancery will give great weight to a finding upon a question of fact,

because the Vice Chancellor who hears the case in the Court below and sees the witnesses and hears them testify has better opportunities to judge their credibility than the reviewing court. *Cartan vs. Phelps*, 91 N. J. L. 321; cited in *Naame vs. Doughty*, 109 N. J. E. 535.

The defendants-appellants argue in their brief that there was a total failure to prove a reliance by the complainant on the alleged misrepresentation, said reliance being essential to make out a case of fraud, and cite the case of *Lembeck vs. Gerken*, 86 N. J. L. 111. We wish to call to the attention of the court, however, that the cited case was an action at law for deceit and not an equitable action, and that the rule obtaining in equity courts is that an untruthful representation of a material fact, though there be no moral delinquency is deemed to be fraudulent; *Commercial Casualty Insurance Company v. Southern Surety Company*, 100 N. J. E. p. 92, and that equity will relieve from false representations whether they were intentional or made innocently through mistake. *Travelers Insurance Company vs. Evslin*, 101 N. J. E. p. 527. See also *Strauss vs. Norris*, 77 N. J. E. p. 33; *Eibel vs. Von Fell*, 55 N. J. E. 670. Therefore, it is not a question of honesty or dishonesty of the defendants as argued by them, which should control the court in deciding the issue, because under the rules laid down in the cases cited above even if the representation made by the defendants was honest and innocently made or made by mistake, that would not bar the complainant's recovery, if the representation made was a material one.

Aside from the testimony that was adduced by the witnesses, the contract (State of Case, p. 54, ll. 16 to 19), and the deed (State of Case, p. 60, l. 36) describe the property as "being on the northerly side of the highway that leads from

Englishtown to Middletown Point'', and that, together with the testimony of the witnesses, is a strong indication that the property was, as stated by defendant, on the northerly side of the highway, and being on the northerly side of the highway must certainly have some frontage on it.

To argue, as do the defendants, that a person would knowingly buy a farm with absolutely no frontage on the highway, but have merely a beginning point thereon, as was in this case, is almost preposterous.

It must also be borne in mind that the learned Vice Chancellor in deciding the case stated in his conclusions that there was no question in his mind but what this contract was induced by fraudulent representation to the effect that this property had a frontage on the highway as indicated by the fence line, which has been referred to; that Gadek knew that that was untrue because Mr. Boyce had already previously pointed out to him that he Boyce, owned the property in front bordering on the highway; that that representation, therefore, was not only equitably fraudulent, but it was actually fraudulent (State of Case, p. 52, ll. 18 to 30). We are inclined to concur, in the views of the Vice Chancellor, who saw and heard the witnesses testify, that there was not only equitable fraud but actual fraud.

We respectfully submit that all of the testimony in this case, which was conflicting in many instances, was for the learned Vice Chancellor to pass upon so far as its credibility was concerned, and that having found in favor of the complainant this court should not disturb his findings where a question of weight of evidence or credibility of witnesses is in issue.

POINT II.

The contract of sale was correctly interpreted by the Learned Vice Chancellor.

Counsel for the defendants argues under this point that the learned Vice Chancellor incorrectly interpreted the contract of sale by assuming that the premises in question fronted on the highway, because several of the witnesses had testified that they could not tell from an examination of the deed whether or not the property did front on the highway.

We do not know the purpose the defendants had in mind when they called their witnesses and elicited the testimony to the effect that one could not tell from an examination of the deed or contract whether the property described therein fronted on the highway. But the testimony for the complainant on that score was introduced not for the purpose of proving that the defendants were guilty of fraud, but for the purpose of showing that it was impossible for the complainant or anyone else to know by a mere examination of the deed or contract whether the premises in question fronted on the highway, thereby explaining the delay by complainant up to the time that he had his deed examined by the engineers who advised him that the property did not front on the highway. Immediately the complainant so advised the defendants and demanded the return of his money (State of Case, p. 10, ll. 25 to 32).

The complainant did not file his bill upon the theory that he relied upon the description in the contract as an inducement to enter into the contract for the purchase of the premises in question. We cannot see, therefore, the materiality of the

argument of the defendants-appellants on this point in their brief, which is to the effect that there must be a reliance upon a fact before a charge of fraud can be made out; their contention being that the complainant did not rely upon the description in the contract as the basis of the fraud, which is true, and with which the complainant-appellee agrees. The misrepresentation charged was the statement of the defendant about the frontage and not the description in the contract.

Defendants also argue under this point that the court in deciding they were guilty of fraud concluded that the contract of sale permitted the complainant to assume that the property fronted on the highway. We again agree with the Vice Chancellor in this regard, and also in the manner in which we feel that he meant the complainant had a right to assume that he was getting frontage on the highway. It is our belief and contention that in the colloquy which took place between the court and counsel appearing for the defendants (State of Case, pp. 22, 23 and 24), that when the court stated that complainant had a right to assume he was buying property on the highway, and that he was buying something more than a point on the highway, the court meant, as we think and feel it must have, that when the complainant received the deed of the defendants for the premises in question, the complainant, had a right to assume at the time, that the deed was in accordance with the statements made by the defendant Joseph Gadek, concerning the frontage on the highway; that up until the time complainant actually found out he had no frontage on the highway, he certainly had a right to assume that the property he was buying was on the highway in accordance with defendants representations, and

not a mere point, as stated by the court (State of Case, p. 23, ll. 37 to 40).

It is therefore respectfully submitted, that the learned court who heard this cause properly found under the evidence that there was a misrepresentation by the defendants concerning frontage on the highway of the premises in question, upon which representation the complainant relied, and that under all of the evidence submitted the decree entered on the advice of the Vice Chancellor was proper and should not be disturbed.

Respectfully submitted,

SMITH AND SCHWARTZ,
Solicitors of Complainant-Appellee.

JOSEPH B. SCHWARTZ,
Of Counsel.