New Jersey Court of Errors and Appeals

Between

THE TAXPAYERS' PROTECTIVE ASSOCIATION OF NEW BRUNSWICK,

Appellant,

and

ANDREW KIRKPATRICK,

Respondent.

On Appeal from Chancery.

For Appellant,

GEORGE C. LUDLOW,
WILLARD P. VOORHEES.

The bill was filed in Chancery by the Respondent to quiet his title to certain lands situate in the City of New Brunswick, of which the Respondent has had and now has the sole ownership and possession since March, 1871.

The alleged encumbrance is the sale by the City of New Brunswick of said land for unpaid taxes of 1877 made Dec. 19, 1879.

For unpaid taxes of 1879, made Dec. 19, 1881.

For unpaid taxes of 1881 made Dec. 19, 1883.

All rights under which sales are now held by The Taxpayers Association the Appellant either by assignment from the city, or by purchase at Tax Sales by said Association.

First :—To this bill this appellant demurred.

The Chancellor over-ruled the demurrer.

The Respondent claims that these taxes became liens upon the lands, on the first Tuesday in September, in the year of assessment and continued for two years from the commencement of such lien, and that the sales are void, having been made after the period of two years had expired.

He relies upon the Charter of New Brunswick of 1883 (P. I. 1863, P. 371) and two acts entitled as follows :

"A further supplement to an act entitled "An Act concerning Taxes, approved April 14, 1846, approved March 25, 1875." (P. L. 1875, p. 384.)

"An act to amend an act approved March 25, 1875, and entitled : "A further supplement to an act entitled an act concerning taxes. Approved April 14, 1846. Approved April 9, 1875." (P. L. 1875, p. 634).

The first position taken by the Appellant is: That the power to sell lands for taxes is given by Sec. 71 and 70 of the Charter independently of the making and the continuance of the lien for taxes.

And that lands, whereon taxes have been imposed, may be sold at any time as against the person who was the owner thereof at the time of the assessment.

The Chancellor has considered this point principally with regard to the lien given by Sec. 62 of the Charter, holding in effect that no sale will be valid except it be made during the existence of the lien.

He denies that the lien can be extended as against the owner and not as against the encumbrance.

That such doctrine would annul the limitation altogether. (Opinion P. 19).

It will be observed that taxes are not made paramount liens by any express words of the Charter. It is only by judicial construction that they have been so de-

clared as to encumbrances existing before the assessment.

Campbell v. Dewick, 5 C. E. Green, 186.
O'Neil v. Dringer, 4 Stewart, 507.
Paterson v. O'Neil, 5 Stewart, 386.
Howell v. Essex Road Board, 5 Stewart, 677.

In the case last cited the Chancellor deduces the law on this subject from a consideration of all the causes.

The object of Sec. 62 of the Charter was to create for a certain period (2 years) a lien upon lands paramount to all encumbrances existing before the levying of the tax or to be placed thereon after such levy, and also paramount to devise, descent or alienation.

This section is construed in State, Macknet v. Newark, 13 Vroom, 45.

By virtue of this Section, 62 of Charter, and Sections 74 and 75, the Courts have held that taxes are impliedly paramount liens for the space of two years after the same are due and payable. It is the lien and right of lienors to redeem and the notice to mortgagors which make the tax a paramount lien to prior encumbrances. That exists for two years. But after the lien has expired the land may yet be sold under the power in Sections 70 and 71, but the rights acquired by such sale will be subservient to prior encumbrances.

Section 62 of Charter provides for two things:

First:—The making of personal taxes liens upon all lands of the person assessed.

Second:—The making of the taxes imposed upon land liens upon those lands for two years, notwithstanding encumbrances, etc.

But no power to sell is given by this section.

Section 68 provides for the making of a transcript of unpaid taxes as far as the same have been assessed upon any land or are a lien upon any lands.

The time for making this transcript is not fixed, but is dependent upon the order of Common Council.

Sections 70 and 71 provide for the advertisement and sale of land whereon taxes have been imposed or may be a lien and for adjournments from time to time until these lands are disposed of.

Throughout the whole Charter these two cases are contemplated, viz: Lands whereon taxes have been imposed or are a lien. And the power of sale is given as to each distinctly.

Hence we conclude that it is not necessary in order to sell lands whereon taxes have imposed under the power of sale given that there should be any lien at all, that power of sale would operate without such lien.

This view is also strengthened by the fact that the power of sale is effective for assessments for street improvements (Section 69), although no lien is anywhere in the Charter created upon any lands for such improvement. It is a simple power of sale.

As against the State this power of sale can never be questioned by the owner on the ground of delay.

By the owner no laches can be imputed to the State.

Blackwell Tax tittles, p. 196.

Hetfield v. Plainfield. 17 Vroom, 122.

There is also an implied lien for taxes as between the Government and the owner until the tax is paid.

Blackwell on Tax titles, 649 and 650

Swan v. Knoxville, 11 Hump., 130.

Doe dem Gledney v. Deavors, 8 Ga., 479.

Parkham v. Justices, 9 Ga., 341.

So also when a period for lien is fixed and has expired the lien may be continued and the land sold, provided the owner has not aliened the land.

Holden v. Eaton, 7 Pick., 15.

Nothing in Section 62 can be construed as a limitation upon the power of sale.

Section 72 provides that the certificate of sale shall constitute a lien npon the lands and premises therein described.

This power of sale must be exercised while the lien continues in order to be effectual as against alienations, encumbrances, etc., but as against the estate of the owner it may be exercised at any time.

If it be true that this lien cannot be extended by delay, nevertheless it is undeniable that the power of sale is effectual as to land whereon taxes have been imposed, until the tax has been paid.

The cases of The State Johnson, Pros., v. Van Horn, 16 Vroom, 136.

State v. Gugel were both as to questions arising between the State and a purchaser from the owner after assessment.

The question was not between the owner assessed and the State. These cases were expositions, of the act of 1876, P. L., page 340, and in the first case much stress was laid upon the effect given by that act to the tax deed. Section 10 of Act of 1879, which is very broad, and conveys the land free from all estates whatsoever.

But the act of 1879 referred to is an act to inforce a specific lien, by a sale within a limited time, and no other power of sale is given.

The Charter of New Brunswick, Section 76, makes the declaration of sale effective to convey the estate of the owner and persons claiming under him.

This means persons claiming under him after the assessment of the tax or the recording of the certificate sale.

Hopper v. Malleson, 1 C. E., Green, 382.

Morrow v. Dows, 1 Stewart, 459.

In the the latter case this Court said, respecting the general tax act of 1854, which is identical with the New Brunswick Charter, " The resonable construction of the Statute is that the purchaser shall take the estate of the owner and all persons claiming under him after the assessment is made."

The Court also says (page 465) "It would be an inconvenient and unreasonable rule to make some mortgages subject to the sale and to exclude others."

The Chancellor, in his opinion in the present case, says, "it is noticeable that no discrimination is here made in favor of encumbrances holding under the owner by encumbrances existing before the making of the assessment, but the declaration is to pass title as against the owner and all persons claiming under him, whether upon encumbrances created before or after the assessing of the tax.

But if that be so, it still would not cut off a mortgage created by the owner's grantor, and the unreasonableness of the rule as pointed out in the above case would be apparent.

But if the sale in the present case was made under the power of sale [Sec. 70–71, Charter,] regardless of the statutory lien, [Sec. 62,] then the case of State v. Van Horn has no application whatever.

The foregoing argument has been made upon the supposition that the above-mentioned acts of March 25, 1875, P. L., p. 384, and April 9, 1875, P. L., p. 634, are valid amendments to the Charter of New Brunswick.

The second position taken by this Appellant is that the above two acts are not valid amendments to the Charter of New Brunswick.

If the position is correct, then unquestionably the sales were made in time, viz: two years from December 20, of the year of Assessment, as prescribed by the original Charter, Section 62.

There are two grounds for this position.

These supplementary acts are void:

A. Because incontravention of Article 4, Section 7, Paragraph 4, of the State Constitution, which reads: "To avoid improper influences which may result from "intermixing in one and the same act such things as

"have no proper relation to each other, every law shall "embrace but one object and that shall be expressed in "the title."

The legislature is required by the Constitution to frame a title for every act, and to express in the title the object.

Evernham v. Hulit, 16 Vroom, 53.

The object of this provision is to prevent surprise upon the legislators by the passage of bills, the object of which is not indicated by their titles, and also to prevent the combination of two or more distinct matters in one bill.

State, Walter, Pros., v. Town of Union, 4 Vroom, 350.

Grover v. Trustees, etc., 16 Vroom, 399.

These acts profess to be supplements to "an Act concerning Taxes," approved April 14, 1846.

They in effect amend the Charter of New Brunswick in express terms, and they do nothing else, and they do nothing in the way of changing or dealing with the matter embraced in the act concerning taxes, approved April 14, 1846.

They deal with taxation as it is regulated by the special Charter of the City of New Brunswick; they amend that Charter by express words; change its special rights and powers and confer other special rights and powers on that city as to taxation in that city only, and not in any way connected with the general law; the "act concerning taxes," approved April 14, 1846. This object is not expressed in the title of either act.

Their titles are both false and deceptive.

No one, on reading such titles, could reasonably understand that the body of the acts was to have so limited an effect.

Rader v. Town of Union, 10 Vroom, 509.

Coutieri v. New Brunswick, 15 Vroom, 59

State, Walter, Pros., v. Town of Union, 4 Vroom, 354.

Grover v. Trustees, etc., 16 Vroom, 399.

The "Act concerning Taxes" does not at all apply to the City of New Brunswick, therefore it is misleading to attempt by an amendment to an act not applying to a particular subject matter, to alter an act which does apply to such subject matter. Evernham v. Hulit

The supplement of April refers to a matter (i. e. the amendment of the Charter of New Brunswick) which could not have been included in the original act (March) under its title.

In such an amendatory act with such a title nothing can be introduced except such matters as might have been incorporated in the original act under its title. So both acts are to be construed as one act a supplement to the act entitled "An Act concerning Taxes," approved April 14, 1846.

State v. Bowers, 14 Ind., 195.
16 Ind., 197.

Evernham v. Hulit, 16 Vroom, 53.

Then again, the act of April 9, 1875, Section 2, provides in terms for an amendment to the Charter of the City of New Brunswick, by striking out certain words wherever they occur in said Charter and substituting others, which clearly cannot come with the purview of the title to these supplements. This amendment may or may not apply to taxes alone, but might apply also to other matters as Elections, Streets, Officers, etc.

These supplementary acts are void:

B. Because they were repealed by the amendment to the Constitution, Article —, Section 7, Paragraph 12, which took effect September 28, 1875, and which reads: "Property shall be assessed for taxes under general laws and by uniform rules according to its true value."

North Ward Bank v. Newark, 10 Vroom, 380.

Same case, 11 Vroom, 558. Trustees v Trenton 8 Stew. 667.
Stratton v. Collins, 14 Vroom, 564.
Murphy v. Trenton, 18 Vroom, 79.
Auryansen v. Hackensack, 16 Vroom, 117.

These two acts are special, so conceded by the Chancellor and counsel, applying a mode of asessment for Middlesex County and for the City of New Brunswick different from the rest of the State, and are therefore upon their face in violation of the requirement of the Constitution.

If they are to stand the taxes are not assessed under general laws.

These laws are objectionable also in their workings and destroy equality in assessment.

The object of the Constitutional Amendment was to secure to the people equalization of taxation.

Public Schools v. Trenton, Ubi Supra.

First. Assessments throughout the State are made between May 20 and third Monday in August in each year, and take effect as of the former date, May 20.

Revision, page 1140, Section 1.
1150, Section 61.

By these supplements the assessment is to be made between April 15 and June 15.

There is therefore a lack of uniformity in time and in levying assessments for taxes; in order to equalize the burden there must be one stated time as which the assessment shall be made.

Blackwell Tax Titles, p. 13.

In Trustees v. Trenton it is said that this constitutional provision concerns only such equalization of the burdens of taxation as will result from the designation of the persons and the property to be taxed and the apportionment of the taxes among such persons and things in the ratio required by law.

It is insisted that uniformity in time is an essential element of the assessment, according to true value, as

distinguished from the more machinery in it, and without it there can be no uniform designation of the persons and property to be taxed, and apportionment of the tax among them as will make taxation equal.

Cooley Constitutional Lim., ed. 1871, 496 [547].

Cooley on Taxation, ed. 1876, page 260-161.

The State taxes are levied with reference to the assessments made in the several counties and are on the same basis apportioned among the counties.

Revision, p. 1141, Section 3.

A tax for State purposes must fall upon the State at large.

State, Baldwin, Pros., v Fuller.
10 Vroom, 578.

If the time of levying the assessment is not uniform throughout the State then some people may escape taxation entirely and others be taxed doubly.

There can therefore be no proper designation of persons.

The same reasoning will apply to property, both real and personal, the former may be either depreciated or appreciated in value between the time of asking assessmant under the special law and the time when it is made under the general law, and personal property may be removed or transferred. This principal of uniformity in time is recognized in case.

State, Shippen, Pros., vs. Hardin, 5 Vroom, 79.

Under these special acts there can not be an apportionment of taxation in the ratio prescribed by law.

There cannot be such an equalization of the burdens of taxation as will result from apportionment of taxes under general law and by uniform rules, because of the lack of uniformity as to time of making the assessment.

But it may be said that it is only the lien with which we have to deal in this case and that is a part merely of the machinery for the collection of the tax.

If it is determined that the assessment cannot be

made under these special acts of 1875, then we are driven back to the State law for the making thereof, and the Charter.

The assessment will under the general law be made between May 20 and 3d Monday in August.

It is therefore impossible for the assessors of County to meet on last Tuesday in June, 1875, Supra.

The assessor under Sec. 5 of supplement of Charter, approved February 18, 1869, P. L. page 85, possesses all powers and performs all duties of like offices in County of Middlesex.

He is therefore after concluding his assessment on the 3d Monday in August to meet with all other assessors of County on first Monday in September, general Tax Act, Sec. 3.

It is therefore impossible that the taxes should become due and payable on first Tuesday of September. So far therefore a portion of the law applying to collection falls with the part of the assessment.

It is therefore necessary that the taxes should become due and payable not before 15 days have expired after the first Monday in September which can never be earlier than September 16th, Sec 5.

Then follows the right of the Taxpayers to be notified of the amount of taxes. Sec. 11, Tax Act.

For the supplements of 1875 do not provide for any notice and demand upon taxpayers.

The only notice required by them was a newspaper publication, Sec. 6, P. L., 1875, page 385 Sec. 4, of that supplement being repealed by Sec. 2 of act of April 9, 1875, P. L. page 634. If the tax could not become due on first Tuesday in September then such newspaper notice would be nugatory.

It seems therefore clear that if the assessment can not be made under these supplements of 1875 then the taxes must not only be assessed but also collected under the provision of the general State law, and the pro-

vision of the Charter of the City as they stood prior to the enactment of these supplements of 1875.

But it may still be contended that by virtue of the third and fourth sections of supplements of April 9, 1875, P. L., p. 635, the lien for taxes will cease in two years after first Tuesday in September although taxes may not become due until December 20.

In the case of State vs. The Coms. of New Brunswick, 9 Vroom, p. 322, Knapp J. says, "It has been stated as a rule, that all provisions of an act which are connected so as to warrant the belief that the legislature intended them as a whole, stand or fall together under the test of the constitutionality of any such provision.

It seems to be quite clear that the date of first Tuesday in September as time from which lien should date, was made only because the taxes were made payable on that date, and that it was one scheme, the lien being made to commence at an earlier date, because of and depending upon the fact that the taxes were made payable earlier.

This is the more perceptible from the wording of Sec. 3 of Act of April 9, 1875, p. 635.

"Taxes shall become due and payable on first Tuesday in September and shall be a lien for two years thereafter," that is, after the time fixed for payment.

The time so fixed for payment being changed the reason for change of time of lien ceases.

There is no change made in the time of the duration of the lien. It is two years in each case.

The law-makers seem to have intended to make it the same as it originally stood, with the exception that it should date from the time when taxes were to be payable by these special laws and then continue two years.

There can be no doubt but that the several parts of these enactments are so connected and dependent as to warrant the belief that the legislature intended them as a whole, and so must stand or fall together.

For the principle allowing one part of an act to stand while another part of the same act is unconstitutional is limited to those cases where the enactments thus separated as constitutional and unconstitutional are wholly independent of each other.

Morris vs. Carter, 17 Vroom, 260.

It is therefore respectfully submitted that the Complainant cannot prevail, because:

I.—As against him the power of sale derived under the Charter of New Brunswick was valid and in force at the time the sale was made.

II.—The acts under which he claims the lien and power of sale to exist are unconstitutional because of defective titles, and therefore the sales were made in time under the law as it stood prior to the passage of these acts of 1875.

III.—These special acts are repealed wholly by the constitutional amendment.

Art. 4, Sec. 7, Paragraph 12.

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N. J. Court of Errors and Appeals.

Between
THE TAXPAYERS' PROTECTIVE ASSOCIATION OF NEW BRUNSWICK,
Appellant,
and
ANDREW KIRKPATRICK,
Respondent.
} *On Appeal.*

The bill is filed under the act entitled "An act to compel the determination of claims to real estate in certain cases, and to quiet the title to the same." (Revision, page 1189.)

In general terms it alleges that certain property of the complainant (particularly described) in the city of New Brunswick, was assessed for taxes by its municipal authorities, in the years 1875, 1877, and 1879; that by the law in force, in said city, during these years, the said taxes were liens on said property for two years only, from the *first Tuesday of September* in each of these years; that said property was sold for non-payment of said taxes *after* the expiration of the two years during which the said taxes were liens; and that by reason thereof, said sales were *ultra vires*, and a cloud upon complainant's title, which the bill is filed to remove.

To this bill a general demurrer is interposed.

It appears, then, at the outset, that the following facts alleged in the bill are *admitted* by the demurrer, viz:

a. That the complainant, since 1871, has been in peaceable possession of the premises described in the bill;

and that he has ever since claimed, and still claims, to own the same, and to have a good title in fee simple thereto.

b. That the Mayor and Common Council, and the Taxpayers' Protective Association, of New Brunswick, claim to own, or have some interest in, said premises by reason of certain pretended tax sales therein referred to; and that no suit is pending to enforce or test the validity of such pretended claims.

c. That in 1877 a tax, amounting to five hundred and ninety-seven dollars and sixty cents, was assessed upon said property, together with certain adjoining property; and that said tax being unpaid, *on the 19th day of December, 1879*, the Collector of the City of New Brunswick sold said premises, so assessed, to the Mayor and Common Council of New Brunswick, who subsequently assigned the certificate of such sale to the Taxpayers' Protective Association; and that said association afterwards (July 20th, 1884,) procured a declaration of sale of said premises from the city.

d. That in 1879 and 1881 other taxes, amounting in 1879 to $490.03, and in 1881 to $596.38, were assessed upon the said property, together with other property adjoining, and *on the 19th day of December, 1881 and 1883, respectively*, said taxes being unpaid, the property so assessed was sold to the Mayor and Common Council of New Brunswick to satisfy the tax of 1879, and to the Protective Association of New Brunswick to satisfy the tax of 1881, and certificates of said sales were duly issued to the said purchasers.

e. That by virtue of the public acts entitled "An act to revise and amend the charter of the city of New Brunswick," approved March 18, 1863, (P. L., page 347,) an act entitled "A further supplement to an act entitled 'An act concerning taxes, approved March 25, 1875,'" (P. L., page 384,) and an act to amend an act approved March 25, 1875, entitled "A further supplement to an act entitled 'An act concerning taxes, approved April 9, 1875,'" (P. L., page 634,) the said taxes became liens upon the said lands on the *first Tuesday in September* in

the years 1877, 1879 and 1881, (in which they were respectively levied,) and continued to be liens thereon for two years from said *first Tuesday in September* in said years; and that in order to continue said liens beyond said periods, it was necessary that said lands should be sold *before* the expiration thereof; but that *in fact* each and every of the sales aforesaid was made *after* the expiration of the period of two years from the date on which the said tax, for non-payment whereof said property was sold, became a lien, and *after* the said tax had ceased to be a lien thereon.

In view of these admissions, it is difficult to assent to the contention of the defendants, that the bill fails to disclose an equitable ground of relief.

The equity of the bill is that the sales of complainant's land under the *admitted* facts of the case, are *ultra vires* and void; and that to permit the unfounded claims of the defendants to any right or interest in complainant's property growing out of said sales, to remain as apparent liens on the property, would be unconscionable and inequitable.

In *Johnson* vs. *Van Horn*, 16 Vroom, 136, the Supreme Court of this State declared that the sale of lands for non-payment of taxes *after* the expiration of the period during which said taxes were declared to be liens, was void, and conveyed no right to the purchaser.

To same effect is the case of *Field* vs. *West Orange*, 10 Stew., 434.

As also the case of *State* vs. *Gugel*, decided in Supreme Court in 1884.

Trustees v Trenton, 3 Stew. 674

That these decisions have a firm foundation is apparent from the decisions of the Court of Errors and Appeals of this State in

Bogert vs. *Elizabeth*, 12 C. E. Green, 568.
Jersey City vs. *Lembeck*, 4 Stew., 272.
Schuh vs. *Newark*, 7 Stew., 265.

It must be evident, then, that if the acts which limit the duration of the lien of taxes in New Brunswick to two years from the first Tuesday of September in the

year in which they are assessed, are valid legislative acts, the complainant is entitled to the relief which he seeks.

That relief is that his "title to his said lands may be settled, and the aforesaid tax sales may be adjudged and decreed to be illegal and void."

But it is contended that the acts which limit the duration of the tax lien to two years from the first Tuesday in September in each year, are unconstitutional, and ineffective to repeal the previous provision of the charter of New Brunswick which made said taxes liens for two years from the 20th of December in each year. It is argued that if the latter law was in full force at the date of these sales, then they were made while the taxes were still liens upon the lands in question, and therefore the sales are, so far, valid.

Let me briefly refer to the provisions of the charter, and the changes effected, or attempted to be effected, by the subsequent acts.

Section 60 of charter, approved March 18, 1863, page 370, provides that the assessors shall meet on the last Monday in August in each year. By act approved March 25, 1875, entitled "A further supplement to an act entitled 'An act concerning taxes, approved April fourteenth, one thousand eight hundred and forty-six,'" page 384, section 1, it is provided that assessments of taxes in Middlesex county and the city of New Brunswick shall be made between April 15 and June 15, and the assessors shall meet on the last Tuesday in June in each year.

Section 61 of the charter provides that commissioners of appeals shall meet on the third Tuesday in November. Section 2 of the act of 1875, page 384, changes the time of this meeting to the third Tuesday in July.

Section 62 of charter declares that taxes shall be liens for two years, from 20th day of December. The act approved April 9, 1875, entitled "An act to amend an act approved March 25, 1875," and entitled "A further

supplement to an act entitled 'An act concerning taxes, approved April 14, 1846,'" page 634, section 1, provides that taxes upon real estate in New Brunswick shall become due and payable *on the first Tuesday in September, and remain liens thereon for two years thereafter.*

Section 63 of charter, page 371, provides that a list of delinquents shall be given to a justice of the peace within ten days after the 20th of December, in each year.

Section 2, act of 1875, (last mentioned,) page 635, provides that this list shall be given to the justice within ten days after the first Tuesday in September.

Section *64* of *charter*, page 371, provides that the justice shall issue his warrant for the collection of arrears to the collector of arrears. An act approved February 18, 1869, page 85, section 2, provides that the duties imposed on the collector of arrears shall be discharged by the collector, and abolishes the office of collector of arrears.

Section 65 of charter, page 372, directs the collector to execute warrant, and make return of uncollected taxes on or before the first day of March next, after receiving the same. This date was changed by the act of 1875, page 634, to 15th of December.

Section 68 of charter, page 374, provides that after such return has been made, the collector shall make a transcript thereof, and enter the same in the proper book, and publish notice that the transcript has been made, and that unless taxes are paid within twenty days, he will sell the property on which they are liens, &c.

Section 70 of the charter, page 375, directs that after the expiration of said twenty days, the collector shall sell, upon notice of sale published once a week for six weeks, the land on which taxes are a lien, &c.

Section 71 of charter makes provisions regarding sale.

Section 72 of charter provides that certificates of sale shall be recorded, and constitute a lien.

Section 73 of charter declares that certificates of sale shall be assignable.

Section 75 of charter gives three years for redemption.

Section 76 of charter provides that if lands sold as aforesaid are not redeemed within three years, &c., a declaration of sale may be executed, and recorded in office of city clerk. Under it the purchaser acquires the right to the rents, issues and profits during the running of the lease, "against the owner and all persons claiming under him."

The significant provision of the laws to which I have referred is, that by the acts of 1875, (pages 384 and 634,) the taxes referred to in the bill became liens on the *first Tuesday in September*, in the year in which they were assessed, and continued liens for *two years only after that date.* The necessary provisions as to time of meeting, &c., by which the assessors are enabled to complete their assessments by the first Tuesday in September, are also contained in these acts.

(1.) Are these acts, or either of them, unconstitutional?

I say, are they UNconstitutional? For the burden of proving them so rests on the person who attacks them. *Presumably* they are constitutional, for they were passed by a legislature sworn to respect and obey the constitutional limitations upon its power, and it must be assumed that it has done its whole duty. They were approved, too, by a Governor, who, but a short time before a Justice of this Court, was always quick to detect and prevent any attempt on the part of the legislature to exceed its constitutional powers.

Under such circumstances, this Court will hesitate to efface these deliberate acts of the legislature.

The language of Judge COOLEY on this subject enunciates a familiar doctrine. See *Cooley on Constitutional Limitations*, pp. 181–183.

The contention is, that these acts are unconstitutional, because while the titles are general, the body of the acts relates only to taxes in Middlesex county and the city of New Brunswick.

But this objection is untenable. The power of the legislature is limited only by the constitution, and the constitution, *as it existed when these acts were passed*, contained no limitation upon the power of the legislature to pass local laws under a title general in its terms.

The constitutional provision invoked, *then* was—Article IV., Section 7, par. 4:

"To avoid improper influences which may result from intermixing in one and the same act such things as have no proper relation to each other, every law shall embrace but one object, and that shall be expressed in the title."

Subsequently, in September, 1875, this paragraph was amended by adding to it the following: "No general law shall embrace any provision of a private, special or local character."

Of course, in this discussion, the constitution as it was when these acts were passed, can only be discussed.

Now, what was the evil to be avoided? The constitution says, "To avoid improper influences, which may result *from intermixing in the same act things which have no proper relation to each other*," &c.

But in the acts in question there is *no intermixture of different subjects of legislation.* They relate to a single thing, viz., to taxes and their assessment and collection—in Middlesex county and the city of New Brunswick, it is true—but still they relate to taxes and to nothing else. And, hence, the *improper influences* which the constitutional provision was intended to prevent, could not have existed.

The acts, then, had but one object, and that object was *truly* expressed in the title.

Is not a law, relating to taxes in Middlesex county, or in the city of New Brunswick, an act concerning taxes? Most certainly. And under this general designation was not the attention of every person in the State charged with the assessment and collection of taxes, directed to it, and was not a duty imposed on him to apply it, so far as it might affect his official acts? In a legal sense,

the assessing and collecting officers of New Brunswick were informed of the provisions of these acts. Examine the charter of New Brunswick, and observe that the legal principles governing the assessment of taxes therein are fixed by the *general law* concerning taxes. The charter provides merely the *machinery* by which these principles are executed. Under these circumstances a public officer, charged with assessing and collecting taxes, who failed to inform himself of the provisions of such acts as those in question, would be culpably remiss. *In fact*, the municipal authorities of New Brunswick had full knowledge of these laws, and assessed and collected taxes thereunder for two years immediately after their passage, (though this does not appear in the pleadings.) Under these circumstances, their disregard of the laws, which limited the duration of the lien, was deliberate—and they cannot complain if they reap the logical result of their indifference.

Let it be borne in mind, also, that when these acts were passed, the constitutional requirement that general laws should contain nothing of a local, special or private character, did not exist.

It is true, that an act entitled "An act concerning taxes in Middlesex county and the city of New Brunswick," would more certainly and particularly have indicated the legislative purpose; but with the particularity of titles to legislative acts our courts had, when these acts were passed, no concern, so long as the object was single and truthfully expressed.

In support of this principle, I refer to the following cases:

Cooley's Constitutional Limitations, page 141 through 148.
State, (*Walter*, *Pros.*,) vs. *Union*, 4 Vr. 350.
State, *Curry*, vs. *Elvins*, 3 Vr. 362.
State, *Doyle*, vs. *Newark*, 5 Vr. 236.
Deegan vs. *Morrow*, 2 Vr. 136.
Rader vs. *Township of Union*, 10 Vr. 509.
Payne vs. *Mahon*, 12 Vr. 294.

State, (*ex rel. Richards*) vs. *Hammer*, 13 Vr. 438.
Van Riper vs. *North Plainfield*, 14 Vr. 350.

See also—

8 N. Y. 253, *Sun Mutual Ins. Co.* vs. *N. Y.*
16 N. Y. 58, *People* vs. *McCann.*
19 N. Y. 116, *Brewster* vs. *Syracuse.*
50 N. Y. 553, *People* vs. *Briggs.*
67 N. Y. 568.
20 Ind. 304, *Hall* vs. *Bunte.*
13 Mich. 495, *People* vs. *O'Mahony.*
7 Ind. 681, *Md. Cent. R. R.* vs. *Potts.*
Durdee vs. *Janesville*, 26 Wis. 697, *contra*, but see 29 Wis. 400, *Mills* vs. *Charlton.*

Evenham v. Hu
16 Vr. 59
Grover v. Inc
16 Vr. 404

That the acts in question were not interdicted at the time of their passage, is apparent from the fact already stated, that subsequently an amendment to the Constitution was adopted, which provided that no general law should embrace any provisions of a special or local character.

This amendment went into effect on the *28th of September*, 1875.

See proclamation of Governor, Pamphlet Laws, 1876, page 433.

This clause was placed in the same paragraph as that we are considering. *Now*, provisions of a local character in a general law, or one that seems general, cannot be permitted. But if this were true before the adoption of this amendment, what occasion was there for it?

Courtieri vs. *New Brunswick*, 15 Vr. 59, is relied on as an authority against this position.

But the act referred to in this case was manifestly unconstitutional, because of a defective title. Its title was, "An act to fix and regulate the salaries of city officers in *cities of this State*," approved March 19, 1878. Yet it did not apply to *the cities of the State*, but to a *single city*. It was clearly invalid, then.

1st. Because *it was false*, and did not indicate the true purpose of the act. *It did not state the object truly.*

However *general* the title, it has always been held that it must be *true*. The mandate is not only that each bill shall have but one object, but also that *that object shall be expressed in its title;* and

2d. Because although its title indicated that it related to all the cities in the State, it really affected but one, and hence was open to the criticism that while its title was general, its body contained local provisions, and as it was passed after the amendment, to which I have referred, went into effect, it was void. *Under a general title* it contained provisions of a special character, which were *then* prohibited.

It results, then, (1,) that an act relating to taxes, passed before September, 1875, is not void, because it relates to taxes in a particular locality only. The *particularity* of the *title* rests in the legislature, and with this courts will not interfere. It might have been—probably would have been better to have made these titles more specific; but, still, the acts are not bad because their titles might, and even ought, to have been more precise.

It appears (2,) that there is no intermixture of different things in these acts. They have but one object. They relate to taxes alone.

(3.) The titles, although general, disclose the *object of the act, i. e.*, the acts contain no provision inconsistent with the object expressed in the titles. The general titles were notice to all.

(4.) The titles contain no false statement. No one could have been deceived by them.

(2.) But it is further contended, on the part of the appellants, that notwithstanding the constitutionality of these acts of 1875, the lien of the tax still continues, without sale, after the expiration of the two years, *against the owner*, though not against an encumbrancer or subsequent *bona fide* purchaser. And it is said that it appears that Kirkpatrick was the owner at the time of the assessment, and continued to be such at the time of sale; and so the sale was good as to him. And in sup-

port of this view the cases of *Holden* vs. *Eaton*, 7 Pick., 15, and *Swan* vs. *Knoxville*, 11 Humph., 130, are referred to.

With reference to these decisions it is sufficient to say that they are in direct conflict with the decisions of our own courts, already referred to on this same question; and, further, that they are against well-established legal principles, as will appear from the following reasons:

(1st.) Because the *statute* makes no such discrimination; and the *existence* of the lien, and therefore its duration, are regulated wholly by statute.

Johnson vs. *Van Horn*, 16 Vr., 137, and cases cited.

The statute does not say that the lien shall continue for two years only if the property be encumbered or subsequently sold; nor that it shall be continued beyond the two years if the owner at the time of the assessment continue the owner at the time of sale; nor is there anything in the act anywhere which justifies such a contention. On the other hand, the act says in terms that "All taxes hereafter assessed in the city of *New Brunswick* shall become due and payable on the first Tuesday in September in each and every year, and shall be and remain liens, for two years thereafter, *upon the lands*, &c. ※

The *legislature* has said the lien for real taxes in New Brunswick shall remain on the lands assessed for two years from the first Tuesday of September in the year in which said taxes are assessed. Will the *Court* say that this meant that the lien of such taxes shall remain without sale for non-payment, for three years, or four years, or until they are paid? This would be judicial legislation.

(2d.) So far from this being the proper construction, it is manifest from other portions of the charter that no discrimination between the owner and an encumbrancer or subsequent purchaser was intended. The tax is upon the *land*, not against the *owner*. It is the *land* that must be looked to for the tax, not the *owner*. He could not

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be *sued* for it, and so it is provided (section 62,) that the tax upon the land shall remain a lien for two years, notwithstanding any mistake in the name of the owner, or omission to name the owner of the lands.

In the nature of things there is no reason why the legislature should have discriminated in this matter between the owner at the time of assessment and sale, and an encumbrancer or subsequent purchaser. Why should not a subsequent purchaser or an encumbrancer, who has notice of the tax, (as all such must have,) be called to as strict an account as the owner at the time of the assessment?

(3d.) Section 62 of the charter also provides that real taxes shall be a lien for two years, &c., notwithstanding any devise, descent, alienation, encumbrance, &c. These words have been construed to indicate the paramount character of the lien—and that is their whole meaning.

Trustees vs. *Trenton*, 3 Stew. Eq. 667.
Paterson vs. *O'Neill*, 5 Stew. Eq. 386.
State (*Macknet, pros.*) vs. *Newark*, 13 Vr. 38.

Clearly, there is nothing in this section (and it is on this appellant mainly relies,) to indicate that a purchaser or encumbrancer of real estate assessed for taxes is to be treated differently, so far as the lien of the tax is concerned, from the owner at the time of the assessment.

The only discrimination in this section is between taxes against *persons*, (*i. e.*, personal taxes,) which are declared to be liens on all their real estate, and taxes assessed upon *lands* which are declared to be liens only upon the specific land assessed. This distinction is referred to in ~~subsequent~~ sections 20 & 21 of the charter. Thus, taxes, which "*are liens* on real estate," mean personal taxes; while taxes, "which are assessed upon real estate," refer to real taxes. But ~~this~~ section, (62,) ~~to which I refer~~, makes *taxes on real estate*, (like that in question,) paramount liens, while personal taxes are subsequent liens to prior encumbrances.

Macknet vs. *Newark*, 13 Vr.

Yet there is no discrimination between real and personal taxes

(4th.) By Section 76 of the charter it is provided, that the purchaser at the sale, &c., shall, by virtue of the declaration of sale, lawfully hold and enjoy the lands and real estate, with the rents, issues and profits thereof, against the owner and all persons claiming under him, until the time for which the property shall have been sold, shall be completed and ended.

By this section a person buying the tax title holds the land and its profits for a term of years, as well against a subsequent purchaser, or an encumbrancer, as against the *owner*, at the time of the assessment. If a sale, after the expiration of the two years, is valid against the owner, is it not manifest that it is valid also against a subsequent purchaser, or an encumbrancer, both of whom hold under the owner?

Johnson vs. *Van Horn.*

(5th.) In order to support a sale for taxes, all the requirements of the statute must be strictly complied with. "The sale of land for taxes or assessments," says DEPUE, *J.*, "is the execution of a naked power. Every requirement of the statute imposing the liability and prescribing the procedure to enforce it, * * * must be strictly conformed to."

State, Baxter, vs. *Jersey City*, 7 Vr. 188.
State, Alden, vs. *Mayor of Newark*, 7 Vr. 288.
State, Alden, vs. *Mayor of Newark*, 15 Vr. 648.

(3.) Nor can it be successfully contended that the constitutional provision adopted in September, 1875, which provides that property shall be *assessed* under general laws, &c., repealed the provisions of prior laws which fixed the time of assessing and collecting taxes *in special localities.* These provisions remained as before. The whole purpose of this amendment is to secure uniformity in taxation. It provides that property should be *assessed* under general laws. It does not say that taxes so assessed shall be *collected* under general laws. And the *lien of the tax*, and *its duration, and the sale in case of non-payment, are all matters which relate to the col-*

lection of taxes. Hence the persons by whom these taxes shall be collected, the continuance of the lien, &c., remain unaffected by the constitutional amendment.

If this be not true, the effect of the amendment would be to repeal the provisions of all charters which provide a special tribunal for assessing and collecting taxes, and to leave these localities without officers who may assess and collect such taxes.

For the general law of the State relating to taxation, at the time of the adoption of this amendment, provided only the machinery for the assessment and collection of taxes *in townships.*

Of course this law contained general rules for assessing and collecting taxes throughout the State, but contained no provision by which officers might be appointed to assess, or the taxes assessed collected in special localities *outside of townships.*

See, (as to effect of this constitutional amendment upon the machinery of assessing and collecting taxes in special localities):

Trustees vs. *Trenton*, 3 Stew. Eq. 667.
Paterson vs. *O'Niell*, 5 " " 386.
State, North Ward Nat. Bank, vs. *Newark*, 10 Vr. 380.
S. C., Court of Errors, 11 Vr. 558.

The objection that under the provisions of the acts in question, taxes in New Brunswick are made payable earlier than under the general law; and the further objection based upon criticisms of the methods of assessing and collecting taxes under these laws, or the working of the machinery provided for those purposes, cannot prevail. They are settled adversely to the appellant by the decisions of our courts already cited. No difficulty in the method of procedure *in fact* exists, and if it did, it would be sufficient to reply, that the act of April, 1875, *explicitly declares* that the lien of taxes shall exist for two years from the first Tuesday of September of the year in

which the taxes are assessed. This, then, is the duration of the lien, and this authoritative legislative declaration cannot be controlled by any argument founded on the allegation of cumbersome or imperfect methods, real or imaginary, erroneously said to exist in the present system of assessing and collecting taxes in the city of New Brunswick.

HENRY YOUNG,
Sol. of Respondent.

J. Heidingsfeld, Printer, New Brunswick, N. J.

New Jersey Court of Errors and Appeals.

BETWEEN

THE TAXPAYERS' PROTECTIVE ASSOCIATION OF NEW BRUNSWICK, *Appellant*,
and
ANDREW KIRKPATRICK, *Respondent*.

On Appeal from Chancery

For Appellant,

GEORGE C. LUDLOW,
WILLARD P. VOORHEES.

For Respondent,

HENRY YOUNG.

Complainant's Bill.

In Chancery of New Jersey.

TO THE HONORABLE THEODORE RUNYON, CHANCELLOR OF THE STATE OF NEW JERSEY:

Humbly complaining, shows unto your Honor, your orator, Andrew Kirkpatrick, of the City of Newark, in the County of Essex and State of New Jersey, that on or about

the seventeenth day of April, in the year of our Lord one thousand eighteen hundred and fifty-nine, one Littleton Kirkpatrick departed this life, having first in due form of law made and executed his last will and testament, wherein and whereby he devised to your orator, subject to a certain estate for life therein given to one Sophia Astley Kirkpatrick, the land and premises situated in the City of New Brunswick, in the County of Middlesex, in this State, and described as follows: Beginning in the northwesterly line of Livingston avenue at a point one hundred and thirty-two feet six inches from the northerly line of New street, thence running along the northwesterly line of Livingston avenue south forty-five degrees and eight minutes' west one hundred and thirty-two feet and six inches to the northerly line of New street, thence along the last mentioned line north seventy-three degrees and forty-nine minutes' west two hundred and twenty feet and eight inches, to the line of land now or late of one Banker; thence along that line north sixteen degrees and eleven minutes, east seventy feet and eight inches, thence south eighty-five degrees and fifty minutes, west one hundred and eight feet and five inches, to the easterly line of Kirkpatrick street; thence along Kirkpatrick street north three degrees and twenty-one minutes, west one hundred feet to line of land now or late of John S. Clark, thence along that line north eighty-five degrees and fifty minutes, east two hundred feet, thence north three degrees and twenty-one minutes, west one hundred and five feet, to land now or late of one Cogswell; thence north eighty-five degrees and fifty minutes, east eighty-seven feet and nine inches, to land now or late of one Janeway; thence south twenty-two degrees and fifty-five minutes, east two hundred and fifty feet, and thence south forty-three degrees and twenty-nine minutes, east thirty-one feet eight and one-

half inches to Livingston avenue and the place of beginning:

Which said last will and testament was duly proved before the Surrogate of the said County of Middlesex, as by the record thereof remaining in the office of said Surrogate will more fully appear, and to which record your orator begs leave to refer to, if it shall be necessary so to do.

And your orator further shows unto your Honor that, in the month of March, in the year of our Lord one thousand eight hundred and seventy-one, the said Sophia Astley Kirkpatrick, the life tenant of said premises, departed this life, and thereupon your orator entered into possession of said premises, and has ever since been in peaceable possession thereof; that he believes that he acquired by said last will and testament a good title to said lands in fee simple, and that he has ever since claimed, and still claims, to own the same.

And your orator further shows that the Mayor and Common Council of the City of New Brunswick, and the Taxpayers' Protective Association of New Brunswick, claim to own some interest in said premises by reason of the tax sales hereinafter mentioned, and that no suit is pending to enforce or test the validity of such pretended claims.

And your orator further shows that, in the year eighteen hundred and seventy-seven, the said the Mayor and Common Council of the City of New Brunswick levied and assessed upon said premises, together with lot or lots adjoining the same, and not the property of your orator (which land of your orator was assessed with the said adjoining property as one plot), a tax amounting to five hundred and ninety-seven dollars and sixty cents; that on the nineteenth day of December, in the year eighteen hundred and seventy-nine, the Collector of the City of New Brunswick proceeded to sell said premises for non-payment of said tax, and at

said sale, the said premises, together with the adjoining property aforesaid, with which it was assessed as a whole, were struck off and sold to the Mayor and Common Council of the City of New Brunswick for the term of fifty years, or some other term. And a certificate of said sale, numbered one thousand two hundred and six, was made and delivered to said purchaser; and that said certificate has since been assigned by the said The Mayor and Common Council of the City of New Brunswick, the said purchaser to the said The Tax-payers' Protective Association of New Brunswick, by the name of the Tax-payers' Protective Association of the City of New Brunswick. And further, that on the twenty-eighth day of July, in the year eighteen hundred and eighty-four, a declaration of sale for the said premises, so sold as aforesaid, was made and delivered by the said The Mayor and Common Council of the City of New Brunswick to the said The Tax-payers' Protective Association of New Brunswick, by the name of The Tax-payers' Protective Association of the City of New Brunswick.

And your orator further shows that in the year eighteen hundred and seventy-nine, the said The Mayor and Common Council of the City of New Brunswick levied and assessed upon the said premises, together with a lot or lots adjoining the same, and not the property of your orator (which lands of your orator were assessed with the said adjoining property as one plot) a certain other tax, amounted to four hundred and ninety dollars and three cents; that on the nineteenth day of December, in the year eighteen hundred and eighty-one, the Collector of the City of New Brunswick proceeded to sell said premises for non-payment of the said last mentioned tax; that at said sale the said premises, together with the adjoining property aforesaid, with which it was assesssed as a whole, were struck off and sold to the said The Mayor and Common Council of the

City of New Brunswick, for the term of fifty years, or some other term; and that a certificate of said last mentioned sale, numbered one thousand nine hundred and five, was made and delivered to said purchaser.

And your orator further shows that, in the year eighteen hundred and eighty-one, the said The Mayor and Common Council of the City of New Brunswick levied and assessed upon the said premises, together with a lot or lots adjoining the same, and not the property of your orator (which land of your orator was assessed with the said adjoining property as one plot) a certain other tax, amounting to five hundred and ninety-six dollars and thirty-eight cents; that on the nineteenth day of December, in the year of eighteen hundred and eighty-three, the Collector of the City of New Brunswick proceeded to sell said premises, together with the adjoining property aforesaid, with which it was asssessed as a whole, for non-payment of the last mentioned tax; that at said sale the said premises were struck off and sold to the said The Tax-payers' Protective Association of New Brunswick, by the name of The Tax-payers' Protective Association of the City of New Brunswick, for the term of fifty years, or some other term, and that a certificate of the last mentioned sale, numbered two thousand six hundred and nine, was made and delivered to the said The Tax-payers' Protective Association of New Brunswick, by the name of The Tax-payers' Protective Association of the City of New Brunswick, the said purchaser.

And your orator further shows that under and by virtue of the provisions of the public act, entitled "An Act to revise and amend the Charter of the City of New Brunswick," approved March eighteenth, eighteen hundred and sixty-three, "A further supplement to an Act entitled 'An Act concerning taxes,'" approved April fourteenth, one thousand eight hundred and forty-six, which supplement was approved

March twenty-fifth, eighteen hundred and seventy-five, and an Act to amend an Act approved March twenty-fifth, eighteen hundred and seventy-five, and entitled "A further supplement to an Act entitled 'An Act concerning taxes,'" approved April fourteenth, one thousand eight hundred and forty-six, which amendatory Act was approved April ninth, eighteen hundred and seventy-five, the said taxes became liens upon the said land and premises on the first Tuesday in September, in the years eighteen hundred and seventy-seven, eighteen hundred and seventy-nine, and eighteen hundred and eighty-one respectively, and continued to be liens thereon for the period of two years from the said first Tuesday in September, in said years respectively, and that in order to continue said liens beyond said period of two years it was necessary that said land and premises should be sold before the expiration of said period, but that in fact each and every of the sales aforesaid was made after the expiration of the period of two years from the date on which the said tax for non-payment whereof the said property was sold as aforesaid, became a lien, and after the said tax has ceased to be a lien thereon, by reason whereof your orator charges and insists the said sales of your orator's said premises for the non-payment of the said taxes were illegal and void, and by reason of the existence of the unfounded claims of the said The Mayor and Common Council of the City of New Brunswick, and the Tax-payers' Protective Association of New Brunswick, under said tax sales, your orator's rights in said lands are injuriously affected, and his title disquieted.

In tender consideration whereof, and forasmuch as your orator is without remedy in the courts of law, and can have adequate relief only in a Court of Equity. To the end, therefore, that the said defendants, The Mayor and

Common Council of the City of New Brunswick, and the Tax-payers' Protective Association of New Brunswick, may true, full and distinct answer make to all, and singular, the matters aforesaid as fully as if the same were here repeated, and they there to particularly interrogated, and they may in manner aforesaid answer and set forth specifically what title to said lands, or any parts thereof, or interest therein, or lien, or encumbrance thereon, they may claim to have, and may state how and by what instrument the same is derived or created, and that your orator's title to his said lands may be settled, and the aforesaid tax sales may be adjudged and decreed to be illegal and void, and that your orator may have such other and further relief as the nature of his case may require and may be agreeable to equity.

May it please your Honor, the premises considered, to grant unto your orator the State's writ of subpœna, issuing out of and under the seal of this Honorable Court, to be directed to the said The Mayor and Common Council of New Brunswick, and the Tax-payers' Protective Association of New Brunswick, commanding them, and each of them, at a certain day, and under a certain penalty therein to be expressed, to be, and appear, before your Honor, in this Honorable Court, then and there to answer, the premises in manner aforesaid, and to stand to, abide by and perform such order and decree as your Honor shall make therein.

HENRY YOUNG,

Solicitor for and of Counsel with the Complainant.

In Chancery of New Jersey.

BETWEEN

ANDREW KIRKPATRICK,

Complainant,

and

THE MAYOR AND COMMON COUNCIL OF THE CITY OF NEW BRUNSWICK, ET ALS.,

Defendants.

} Demurrer.

The demurrer of the Tax-payers' Protective Association of the City of New Brunswick, New Jersey, Defendant to the bill of complaint of Andrew Kirkpatrick, Complainant.

This Defendant, by protestation, not confessing all or any of the matters and things in the said Complainant's bill of complaint contained, to be true, in such manner and form as the same are therein set forth and alleged, doth demur thereto, and for cause of demurrer, shows that the Complainant hath not, in and by his said bill, made or stated such a case as entitles him, in this Honorable Court, to any recovery from, or relief against, this defendant, as to the matters contained in said bill, or any of such matters.

Wherefore, and for divers other good causes of demurrer appearing in said bill, this Defendant doth demur thereto, and humbly prays the judgment of this Honorable Court whether it should be compelled to make any other or further answer to the said bill, and prays to be hence dismissed, with its costs and charges in this behalf most wrongfully sustained.

WILLARD P. VOORHEES,

Solicitor of the Defendants, the Tax-payers' Protective Association of the City of New Brunswick, New Jersey.

STATE OF NEW JERSEY, }
MIDDLESEX COUNTY. } SS:

Arthur G. Ogilby, of full age, maketh oath and saith that he is the president of "The Tax-payers' Protective Association of the City of New Brunswick, New Jersey," in the foregoing demurrer named, and the agent of said Association for this purpose; that the foregoing demurrer is not interposed for delay, but in good faith, for the causes therein set forth.

ARTHUR G. OGILBY.

Sworn to and subscribed, on this tenth day of December, A. D., 1884, before me,

JOHN WYCOFF,
Notary Public.

I certify that I have perused the Complainant's bill in the above stated cause, and that the above demurrer is well founded in point of law.

WILLARD P. VOORHEES,
Of Counsel with and for the Defendants.

OPINION---Filed June 9th, 1885.

THE CHANCELLOR:

This suit is brought to quiet the title to land in the City of New Brunswick, owned by the complainant, and of which he has been the sole owner since March, 1871. The incumbrances which he seeks to remove are a declaration of sale for unpaid taxes of 1877, and two certificates of sale for unpaid taxes of 1879 and 1881. According to the statements of the bill, the declaration of sale and the certificate of sale for the taxes of 1881 are held by the defendant The Taxpayers' Protective Association of New Brunswick, and the other certificate of sale by the city. The complainant's land was taxed with other land not owned by him, and his land and that land were sold together for the tax. The sales were made under the charter of the city. The sale for the tax of 1877 was made December 19th, 1881, and the sale for the tax of 1881, December 19th, 1883. The bill avers that those sales were all made after the expiration of the lien given by the charter for those taxes, and therefore were *ultra vires*, and consequently were and are mere nullities. The demurrer is filed by the Association, which, it is said by its counsel, holds both certificates of sale, although, according to the statements of the bill, one of them, as before mentioned, is held by the city. No objection is made on the ground of multifariousness. The Association insists, that upon the statements of the bill the tax titles are valid, and the question of the validity of those titles was the only matter discussed or suggested upon the argument of the demurrer.

The complainant insists that the lien for the taxes ex-

pired in two years from the first Tuesday of September, in the year in which the taxes were respectively levied.

By the charter of the city, approved March 18th, 1863, (*P. L., 1863, p. 371,*) entitled, "An Act to revise and amend the charter of the City of New Brunswick," it was provided (paragraph 62) as follows: "That any assessment of taxes hereafter made in the City of New Brunswick against any person or persons, shall be and remain a lien on all the lands and real estate of such person or persons within the said city for the amount of such assessment, with interest thereon at the rate of twelve per cent. per annum, and all costs and fees, for the space of two years from the Twentieth day of December of the year in which said assessment shall be made; and any assessment of taxes hereafter made upon any lands and real estate within the said city, shall be and remain a lien upon such lands and real estate with interest thereon, and all costs and fees, for the space of two years, from the Twentieth day of December of the year in which such assessment shall be made, notwithstanding any devise, descent, alienation, mortgage or other incumbrance thereof, and notwithstanding any mistake, in the name or names of the owner or owners, or omission to name the owner or owners of such lands and real estate; and any assessment of taxes in which such mistake or omission occurs, shall be valid and effectual in law, and if unpaid, shall be returned in the list of delinquent taxes, and such lands and real estate may be proceeded against and sold in the manner provided by this act."

By a supplement to the general tax law, which supplement was approved March 25th, 1875, (*P.L. 1875, p 384*), it was, among other things, provided (paragraph 3) that all taxes thereafter assessed in the City of New Brunswick

should become due and payable on the first Tuesday in September of each and every year.

By another act, approved April 9th, 1875, (*P. L., 1875, p. 634*), and entitled an act to amend that supplement, it was provided that the third section (just quoted) of the supplement should be amended so as to read as follows: "That all taxes hereafter assessed in the said City of New Brunswick shall become due and payable on the first Tuesday in September in each and every year, and shall be and remain liens, with interest thereon at the rate of fifteen per centum per annum, and all legal costs and fees for two years thereafter, upon the lands, and in the manner provided in the sixty-second section of an act to revise and amend the charter of the City of New Brunswick, approved March thirteenth, eighteen hundred and sixty-three, and said liens may be enforced and said moneys collected in the manner in said act and supplement thereto provided."

And it was thereby also enacted that the fourth section of the supplement be changed and amended so as to read as follows: "That whenever in said act to revise and amend the charter of the City of New Brunswick the words 'twentieth day of December' occur, the said words be and are hereby changed, and the said act amended to read 'the first Tuesday in September,' and whenever, in said act, the words 'first day of March' occur, the said words be and hereby are changed, and the said act amended to read 'the fifteenth day of December.'"

By the next section it was provided that all acts and parts of acts inconsistent with the provisions of the supplement at the time of the approval thereof, be and they were thereby repealed, and that the supplement should be deemed a public act.

It was also, by the next following section, provided that

all acts and parts of acts inconsistent with the provisions of that act (of April 9th) be and the same were thereby repealed.

The bill is brought to a test by a general demurrer filed, as before mentioned, by the Association. It will have been seen that the charter provides that the taxes assessed upon land shall be a lien upon the land for the space of two years from the twentieth day of December, in the year in which the assessment shall be made. By the act of April 9th, 1875, the charter was so amended as to provide that the taxes shall be payable on the first Tuesday in September in the year in which they are assessed, and shall be and remain a lien thereon for two years from that time. It is urged on behalf of the demurrant, that that act is not a valid amendment to the charter, and that if it were, the lien did not, as between the owner of the property and the city, expire with the two years, but continued, as between them, until payment of the tax. Or, in other words, if the tax was not paid within the two years, the lien still continued after that time until payment of the tax, except as against a *bona fide* purchaser for value, or a *bona fide* incumbrancer, as to whom it would expire with the period limited.

The ground for the first proposition, viz : that the act is not a valid amendment, is the claim, that the act was in contravention of that clause of the Constitution of this State, which provides that to avoid improper influences which may result from intermixing in one and the same act such things as have no proper relation to each other, every law shall embrace but one object, and that shall be expressed in the title (*Const., Art. 4. paragraph 7. Sec. 4*). And it is also argued that the act, if valid when passed, was repealed by the operation of the amendment to the Constitution, which provides that property shall be as-

sessed for taxes under general laws and by uniform rules, according to its true value (*Const., Art. 4, Sec. 7, paragraph 12.*)

The act of March 25th, 1875, is entitled, " A further supplement to an act entitled, ' An Act concerning taxes,' approved April fourteenth, one thousand eight hundred and forty-six." It provides (section 1) that the Assessors of the several townships, towns, wards, boroughs and cities in Middlesex County, shall thereafter, in every year, make and finish these assessments between certain dates fixed in that act (section 2); that the Commissioners of Appeal, in cases of taxation of the City of New Brunswick, shall meet on the third Tuesday in July in every year thereafter, to perform their duties (section 3); that all taxes thereafter assessed in that city, shall become due and payable on the first Tuesday in September in each year (section 4); that persons paying their taxes in that city before certain dates (all prior to the first Tuesday of September), shall be entitled to certain deductions (section 5); that where such taxes are not paid on or before the first Tuesday in September, but are paid on or before the first day of October, two per centum shall be added; if not paid until on or before the first day of November, three per centum shall be added; and if not paid until after that date, twelve per centum per annum in addition to the three per centum shall be added; and (section 6) that public notice of the act shall be given, and that the amounts of reductions and remissions made by the Commissioners of Appeal on taxes paid before the hearing and determination of the appeal, shall be returned to the persons entitled to receive them.

The act of April 9th, 1875, is entitled, " An Act to amend an act approved March twenty-fifth, eighteen hundred and seventy-five, and entitled, ' A further supplement to an act entitled an act concerning taxes,' approved April

fourteenth, one thousand eight hundred and forty-six." It amends (section 1) the third section of the act of March 25th, 1875, so that it shall read as follows: 'That all taxes hereafter assessed in the said City of New Brunswick, shall become due and payable on the first Tuesday in September in each and every year, and shall be and remain liens, with interest thereon at the rate of fifteen per centum per annum and all legal costs and fees, for two years thereafter upon the lands and in the manner provided in the sixty-second section of 'An Act to revise and amend the charter of the City of New Brunswick,' approved March thirteenth, eighteen hundred and sixty-three; and that said liens may be enforced and said moneys collected in the manner in said act and supplements thereto provided. It also provides (section 2) that the fourth section of the act of March 25th, 1875, be amended so as to read as follows: "That whenever in said 'Act to revise and amend the charter of the City of New Brunswick' the words 'twentieth day of December' occur, the said words be and they are hereby changed, and the said act amended to read the 'first Tuesday in September,' and whenever, in said act, the words 'the first day of March' occur, the said words be and they are hereby changed, and the said act amended to read, 'the fifteenth day of December.'"

By its third section it repeals all acts and parts of acts inconsistent with the provisions of the act amended, at the time of the approval thereof, and made the act amended a public one; and it also repealed all acts and parts of acts inconsistent with its own provisions.

The act of March 25th has reference only to the time of making and finishing the assessment of taxes of the townships, towns, wards, boroughs and cities of Middlesex County, and to taxes in New Brunswick. The other act is an amendment of it. The act of March has reference to

taxes and only taxes. It is local and special, but the amendments to the Constitution, one of which forbids that any general law embrace any provision of a private, special or local character, had not been adopted when the acts under consideration took effect. They both went into operation immediately. The amendments to the Constitution were not adopted until the twenty-eighth of September following. The act of April has reference to taxes only in New Brunswick. The sole subject of the act of March was taxation in Middlesex County. There was no intermixing in either act of things that have no proper relation to each other. The law embraced but one object, taxation, and that was expressed in its title. The unity of the object is to be sought in the end which the legislative act purposes to accomplish, and not in the details provided to reach that end, and the degree of particularity to be used in the title of the act rests in the discretion of the Legislature. *State v. Union, 4 Vroom, 350.*

Nor are these acts in contravention of the constitutional provision that property shall be assessed for taxes under general laws and by uniform rules, according to its true value. In *Trustees v. Trenton, 3 Stew. Eq.. 667*, it was held that that provision relates only to the assessment of taxes, and in that respect concerns only such equalization of the burdens of taxation as will result from the designation of the property which shall be the subject of taxation and the apportionment of the taxes thereon, under general laws, by uniform rules and upon true valuations, and that the mere machinery by which taxes shall be assessed and collected is left to legislative discretion. There is no weight in the objection that under the provisions of the acts in question taxes in New Brunswick are made payable earlier than they are under the general tax law. Nor in any of the above objections based upon criticisms of the

methods of assessing and collecting taxes under those acts, or the working of the machinery for those purposes provided by those acts. It may be added that the act of April expressly and explicitly declares that the lien of taxes shall exist for two years from the first Tuesday in September of the year in which the tax is assessed, and even though the methods of assessing and collecting were subject to objection, the statutory provision in the act, as to the duration of the lien, would still be an effectual alteration of the provision in the charter on that head.

To consider now the proposition as to the duration of the lien. The lien is wholly a creation of the Legislature. It exists only by virtue of the enactment. If the Legislature, in creating it, has given it a merely limited existence, it will not continue beyond the period fixed. If the lien has expired by limitation, the municipal authorities cannot revive it. Nor can it be revived without consent, except by legislative enactment. The municipal authorities cannot extend it merely by their delay in enforcing it. The contrary doctrine is laid down in some of the text books on the subject of taxation, but the only cases adduced in support of it are those of *Holden v. Eaton*, 7 *Pick.*, 15, and *Swan v. Knoxville*, 11 *Humph.*, 130.

In the former case it was held that a sale of land for tax under a law of Congress, giving a lien upon the land for tax for two years, was valid, although made after the expiration of that period, provided the owner had not aliened nor encumbered the land. The ground of the decision was that the act provided for enforcing payment of the tax by distress upon personal property or by sale of land; that no limitation of time was declared for making the distress, and that there seemed to the Court to be no good reason why the collector should not sell real estate after the expiration of the two years, as well as personal; that the design

of the limitation was to prevent the alienation of real estate from being encumbered for an unreasonable period. In *Swan v. Knoxville* the Court said that it would be a violation of principle to hold that a public right shall be lost by the mere delay or neglect of the public agent to enforce it, and that, too, in the absence of any law expressly limiting the time in which it may be done. The question in that case arose under a law which gave a lien without any limitation.

In *Holden v. Eaton* it will be seen that the Court would give effect to the limitation as against a grantee or an encumbrancer, and protect such persons against it after the expiration of the period fixed by the act. And yet it is quite obvious that if the limitation was of no effect against the owner, it was equally ineffectual as against his subsequent grantee or mortgagee. So that the extension of the lien, as against the owner, was merely the result of judicial construction. If Congress designed, by the limitation, to declare that the lien should not exist beyond two years, as the decision under consideration admits it did, then inasmuch as the limitation is unqualified, the lapse of the period must be equally destructive of it as against the owner as it is against his subsequent grantee or mortgagee; for the act makes no discrimination. In *Swan v. Knoxville*, the Court does not say that the lien would continue after the limitation had expired, but the doctrine enunciated is based upon the assumption that the Legislature had declared no limitation. The principle laid down in these cases wholly ignores all limitation to the existence of the lien except actual payment of the tax. And it is obviously equally applicable to the lien given upon property which is encumbered as it is to that which is unencumbered, and it is as applicable as against prior encumbrancers as it is against owners; for if the delay in enforcing the lien is to

extend the lien, then it will do so as against all persons interested in the property. The lien, under the New Brunswick charter, is paramount to all encumbrances existing at the time of making the assessment. *Trustees v. Trenton, 3 Stew. Eq., 667 ; Paterson v. O'Neil, 5 Stew. Eq., 386.* If the limitation declared in the charter is of no effect so far as the owner is concerned, it is of none so far as the prior encumbrances are concerned. The doctrine under consideration obviously annuls the limitation altogether, and if it be admitted, no reason appears for putting the limitation in the charter. It serves no purpose whatever. In this connection it is important to note the language of the charter. It is not that the lien shall exist for two years, except as against devisees, heirs, purchasers and encumbrancers, but that it shall exist for that period, notwithstanding any devise, descent, alienation, mortgage or other encumbrance. Now, it is very clear that if the delay of the municipal authorities, beyond the limited period to enforce the lien, has the effect of extending the lien on the principle that the public should not suffer by the delay or neglect of its agents; the doctrine is just as applicable as against prior encumbrancers as against the owner. There is no room for any discrimination. The words "notwithstanding any devise, descent, alienation, mortgage or other encumbrance," were used merely to declare the paramount nature of the lien for the designated period. The lien is to exist for two years, notwithstanding, &c.

And it will be observed that devise and descent are mentioned as well as conveyances and encumbrances; the Legislature thus signifying that the lien is to be good for the two years, notwithstanding the devise or descent of the land; that is, that succession arising from the death of the owner should not affect it. It is quite clear that the Legislature, by the language employed, intended merely to

give a lien for two years and no longer. Nor is any argument in favor of the construction contended for by the defendant's counsel in this case to be drawn from our statute providing for the sale of the land of a decedent to pay his debts; for that statute, by its provisions, clearly contemplates a sale of the land after the expiration of the year mentioned in it. It provides that if the order for sale be made after the expiration of a year from the death of the decedent, sale under it shall pass the title that the heirs or devisees had in the property at the time of making the order. It is, however, enough to say that the lien for the tax exists only by virtue of the legislative enactment, and its existence is limited by the terms of the provision by which it is created. To extend it further would be judicial legislation. The Legislature has not given an unlimited lien, saving the right of certain persons after the period of two years; but it has given a lien for two years, and only for that period, and has provided that it shall be paramount not only to all encumbrance, &c., created during that period, but to all previously existing ones. *Trustees v. Trenton, 667; Paterson v. O'Neil, ubi supra.* If I repeat it is valid against the owner after the expiration of the two years, it must, by the same reasoning, be equally good as against such encumbrancers until the tax be in fact paid, although it be after that period of time; for it is to be observed that the provision is not that the tax shall be a lien for two years only against devisees, heirs, purchasers and encumbrancers, but that it shall exist for two years, notwithstanding the claims of such persons.

The intention was to create a lien for two years only, and the provision against devisees, heirs, purchasers and encumbrancers was intended to make it a paramount lien, and subordinate the right and claims of such persons to it during that period, with all the consequences of the en-

forcement of it. The tax is not upon the owner, but upon the land, and under the provisions of the charter it is not necessary to give the name of the owner correctly nor at all. The charter declares that the tax upon the land shall be and remain a lien thereon for two years, notwithstanding any mistake in the name or names of the owner or owners.

From this, too. it will be seen that if the lien be extended by construction against the owner, it must be so equally against the encumbrancer. It cannot be extended against either. It is a paramount statutory lien, given upon land for tax levied upon the land. Existing only by virtue of the statute which limits its duration, its existence cannot, without consent, be extended, except by the Legislature, beyond the period fixed. As the municipal authorities could not create it by legislation of their own, it follows, necessarily, that they cannot extend it by their inaction in enforcing it. If they take no steps to enforce it within the time limited for its existence by the statute which created it, it is lost, and cannot be revived without consent, except by the same power which created it This view of the subject was taken by the Supreme Court in *State v. Van Horn, 16 Vroom, 136*; and by this Court in *Field v. West Orange, 10 Stew. Eq., 434.*

Statutes derogatory to the rights of property, or that take away the estate of a citizen, are to be construed strictly.

It is urged that the fact that the Legislature in the 68th section of the charter in making provision for the collection of taxes upon land, directs that the City Treasurer prepare a transcript of the unpaid taxes, so far as the same have been assessed upon any lands and real estate within the city, or are a lien upon any such lands and real estate; and in the seventieth and seventy-first sections, directs that if the taxes remain unpaid after notice, the Treasurer shall proceed to sell the lands and real estate whereon said taxes

"were imposed or may be a lien," is evidence that there was no intention to limit the duration of the lien; or, if there was, that the Legislature intended that the land should be liable to sale to pay the tax after the expiration of the lien.

But in *Trustees v. Trenton*, *3 Stew. Eq.*, *667*, it was, as before stated, held that the tax was a paramount lien to prior encumbrances, &c., and that if the land be sold for the tax within the period fixed for the continuance of the lien, the purchaser will take it free from such encumbrances, &c. If it be held that the Legislature intended that the land should be liable to sale after the expiration of the time limited for the lien, it must also be held that sale after that period will equally, with sale before the expiration of that time, convey a title free from all encumbrances, &c., existing prior to the assessment of the tax. Such was not the intention of the Legislature.

In *State v. Van Horn*, which was decided in 1883, the tax was assessed in 1879, against the land of Agnes Berry, who then owned the property. She sold the property in 1880. The tax warrant was issued in 1881.

That case was followed by *State v. Gugel*, decided on similar facts in 1884, by the same Court, on the authority of the former case. In those cases the tax was assessed against the owner, but he parted with his title before the tax warrant was issued, and the warrant was not issued within the two years.

The case of *State v. Van Horn* holds that the sale, in order to prolong the lien, must be made before the period fixed in the statute for the duration of the lien expires.

The Court says that if a sale may be made after the limit fixed for the lien, which will pass a complete title against every person and estate, the limit of the lien is without meaning and absurd. It also says that the effect given by

the act to the deed received by the purchaser renders it manifest that the lien must be continued by a sale before the two years have elapsed; for the act under which the proceedings in that case were taken, declares that the deed shall vest in the purchaser a title good against the owner and every person claiming under him and against any estate, in the lands legal or equitable, and against any "mortgages, alienations, devisees, descents, lien and encumbrances of every kind and nature." In that case the person who brought the *certiorari* claimed, under the person who owned the property when the tax was assessed, by a conveyance made after that time and before the expiration of the two years limited for the existence of the lien. He therefore was chargeable with full notice of the lien, and must have purchased subject to it. The Court did not in anywise base its decision in the case on the fact that the property had been transferred after the assessment was made. It makes no distinction between that case and such a case as this, where the person who owned the property when the assessment was made continued to own it. The charter of New Brunswick provides that the purchaser or purchasers at the sale and his and their legal representatives shall, by virtue of the declaration of sale lawfully hold and enjoy the lands and real estate, with the rents, issues and profits thereof, for his and their own proper use, against the owner or owners thereof, and all persons claiming under him or them, until the time for which the property shall have been sold shall be completed and ended. The purchaser then is to hold the property against the owner and all persons claiming under him.

It is noticeable that no discrimination is made in favor of encumbrancers holding under the owner, by encumbrance existing before the making of the assessment, but the declaration of sale is to pass title as against the owner

and all claiming under him, whether upon encumbrances created before or after the assessing of the tax.

The language of the charter of Trenton passed upon in *Trustees v. Trenton, 3 Stew. Eq., 667*, on this head, is the same as that of the charter of New Brunswick.

It is impossible to avoid the conclusion that if the lien is to be extended by construction beyond the time fixed in the charter, such extension must necessarily embrace in its effects and operation the interests of prior as well as subsequent encumbrancers. By such construction the limitation is disregarded and made of no effect whatever. The decision of the Supreme Court in *State v. Van Horn*, governs this case. In view of the provision above alluded to as to the title which a purchaser acquires under the declaration of sale, it is impossible to hold that the Legislature intended that in case the land was sold after the expiration of the two years, the sale should be good only as against the owner and those claiming under him by conveyance or encumbrance made or created after the assessment of the tax; for the provision, as before stated, extends to all conveyances and encumbrances made by the owner, existing at the time of the sale. Subsequent grantees and subsequent as well as prior encumbrancers have a right to conclude that the lien will not exist after the expiration of the time limited for its continuance by the act.

The demurrer will be overruled.

In Chancery of New Jersey.

BETWEEN

ANDREW KIRKPATRICK,
Complainant.

and

THE MAYOR AND COMMON COUNCIL OF THE CITY OF NEW BRUNSWICK, ET AL.
Defendants.

On Demurrer.

This cause coming on to be heard at the regular term of this Court, in the presence of Henry Young, of Counsel with the Complainant, and Willard P. Voorhees and George C. Ludlow, of Counsel with the defendants, and the Chancellor having heard the arguments of the Counsel of the respective parties on the demurrer filed in the above stated cause.

It is on this twenty-second day of May, in the year of our Lord one thousand eight hundred and eighty-five, on motion of Henry Young, of Counsel with the Complainant, ordered that the said demurrer be overruled, with costs, and that the defendants answer the Complainant's bill within forty days, and that if they fail so to do, the Complainant's bill be taken as confessed against them.

THEODORE RUNYON,
Chancellor.

A true copy:

G. S. DURYEE,
Clerk.

In Chancery of New Jersey.

BETWEEN

ANDREW KIRKPATRICK,
Complainant.
and
THE MAYOR AND COMMON COUNCIL OF NEW BRUNSWICK, ET ALS.
Defendants.

On Bill to Quiet Title.

Notice of Appeal.

The defendant, The Taxpayers' Protective Association of the City of New Brunswick hereby appeals from an order made in this Court in the above stated cause, on the twenty-second day of May, in the year eighteen hundred and eighty-five, and from the whole and every part thereof, overruling the demurrer filed by this defendant therein, to the Court of Errors and Appeals in the last resort in all causes.

WILLARD P. VOORHEES,
Solicitor of said Defendant.

Dated May 29, 1885.

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

G. C. LUDLOW.
of Counsel.

Served upon Henry Young, Complainant's Solicitor, June 1st, 1885.

New Jersey Court of Errors and Appeals.

BETWEEN

THE TAXPAYERS' PROTECTIVE ASSOCIATION OF THE CITY OF NEW BRUNSWICK, *Appellants.*

and

ANDREW KIRKPATRICK, *Respondent.*

} Petition of Appeal.

To the Honorable the Court of Errors and Appeals in the last resort in all causes.

The humble petition of the Taxpayer's Protective Association of New Brunswick, the Appellant in the above stated cause, respectfully shows that your petitioner finds itself aggrieved by an order made in the Court of Chancery by his Honor, Theodore Runyon, Chancellor of New Jersey, bearing date the twenty-second day of May, in the year eighteen hundred and eighty-five, wherein the said Andrew Kirkpatrick was complainant and the Mayor and the Common Council of the City of New Brunswick and your petitioner were defendants in this respect, to wit: that it is therein ordered that the demurrer filed by your petitioner in said causes be overruled with costs.

And your petitioner humbly appeals from that part of said order of the Chancellor which orders as aforesaid, upon the grounds that the same is erroneous.

Your petitioner therefore prays that the said order of the said Chancellor may be wholly reversed, set aside and for nothing holden.

And that your petitioner may have such relief in the premises as to this court shall seem meet.

WILLARD P. VOORHEES.
Solicitor and of Counsel with Appellant.
G. C. LUDLOW,
of Counsel.

New Jersey Court of Errors and Appeals.

BETWEEN

THE TAXPAYERS' PROTECTIVE ASSOCIATION OF THE CITY OF NEW BRUNSWICK, *Appellant*,

and

ANDREW KIRKPATRICK, *Respondent*.

} On Appeal.

The answer of the above-named respondent to the petition of appeal of the above-named appellant:

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

HENRY YOUNG,

Solicitor and of Counsel with Respondent.