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NEW JERSEY SUPREME COURT.

<p style="text-align: center;">FORT LEE AND MANHATTAN REALTY CORPORATION, Prosecutor-Appellant,</p> <p style="text-align: center;">vs.</p> <p style="text-align: center;">HARRINGTON COMPANY, et al., Defendant-Appellee.</p>	<p style="text-align: center;">On Certiorari. Action No. 1. Notice of Appeal.</p>	<p>10</p>
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<p>TO—Harry B. Brockhurst, Esq., Attorney of Defendant:</p>	<p>20</p>
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TAKE NOTICE that the Prosecutor appeals from the whole of the judgment entered in this cause on the following ground;

1: Because the Supreme Court dismissed the Writ of Certiorari herein, whereas it should have given judgment for the Prosecutor reversing the proceedings brought up by the Writ of Certiorari herein.

WRIGHT, VANDER BURGH & McCARTHY,
Attorneys for Appellant.

Approved: June 2nd, 1926.

WENDELL J. WRIGHT,
Of Counsel.

Duly Served and Filed June 15, 1926.

NEW JERSEY SUPREME COURT.

10	<p style="text-align: center;">FORT LEE AND MANHATTAN REALTY CORPORATION, Prosecutor-Appellant,</p> <p style="text-align: center;">vs.</p> <p style="text-align: center;">HARRINGTON COMPANY, et al., Defendant-Appellee.</p>	<p>On Certiorari. Action No. 2. Notice of Appeal.</p>
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20 TO—Harry B. Brockhurst, Esq.,
Attorney of Defendant:

TAKE NOTICE that the Prosecutor appeals from the whole of the judgment entered in this cause on the following ground:

30 1: Because the Supreme Court dismissed the Writ of Certiorari therein, whereas it should have given judgment for the Prosecutor reversing the proceedings brought up by the Writ of Certiorari herein.

WRIGHT, VANDER BURGH & McCARTHY,
Attorneys for Appellant.

Approved: June 2nd, 1926.

40 WENDELL J. WRIGHT,
Of Counsel.

Duly Served and Filed June 15, 1926.

Action No. 1.**Rule Affirming Record of Title of Defendant,
Harrington Company, and Dismissing Writ.**

The Court having inspected the transcript of the Record of the Proceedings and the Title thereby acquired by the defendant, Harrington Company, as the same appears on file in the Clerk's office of the County of Bergen, and also as recorded in Book 1236 of Deeds for said County, at page 392 &c. in said Clerk's office returned with the Certiorari in this cause, the reasons for setting aside the said Record of Proceedings and Title acquired thereby as aforesaid, and having heard the arguments of counsel therein, and having duly considered the same;

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It is ORDERED that the Record of the Proceedings and the Title thereby acquired, to the lands and premises described in the said Record, appearing in Book 1236 of Deeds for the County of Bergen, at page 392 &c. in the said defendant, Harrington Company, be in all respects affirmed and the writ of Certiorari granted herein, be dismissed with costs of suit to be taxed in favor of the defendant, Harrington Company, and against the Prosecutor, Fort Lee and Manhattan Realty Corporation.

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Rule actually entered, May 21, 1926.

On motion of

HARRY B. BROCKHURST,
Attorney for Defendant,
Harrington Company.

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Action No. 2.

**Rule Affirming Record of Title of Defendant,
Harrington Company, and Dismissing Writ.**

10 The Court having inspected the transcript of
the Record of the Proceedings and the Title there-
by acquired by the defendant, Harrington Com-
pany, as the same appears on file in the Clerk's
office of the County of Bergen, and also as record-
ed in Book 1236 of Deeds for said County, at page
386 &c. in said Clerk's office returned with the
Certiorari in this cause, the reasons for setting
aside the said Record of Proceedings and Title
acquired thereby as aforesaid, and having heard
the arguments of counsel therein, and having
duly considered the same;

20 It is ORDERED that the Record of the Pro-
ceedings and the Title thereby acquired, to the
lands and premises described in the said Record,
appearing in Book 1236 of Deeds for the County
of Bergen, at page 386 &c. in the said defendant,
Harrington Company, be in all respects affirmed
and the writ of Certiorari granted herein, be dis-
missed with costs of suit to be taxed in favor of
the defendant, Harrington Company, and against
30 the Prosecutor, Fort Lee and Manhattan Realty
Corporation.

Rule actually entered, May 21, 1926.

On motion of

HARRY B. BROCKHURST,
Attorney for Defendant,
Harrington Company.

NEW JERSEY SUPREME COURT.

Opinion.

Argued January 21st, 1926; decided May 13th, 1926.

1.

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Quare. Has the prosecutor a standing to attack the proceedings?

2.

The "TAX Sale Revision Act" P. L. 1918 p. 883 sec. 59 is a remedial Statute and it is to be liberally construed.

3.

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The Court will not set aside proceedings to bar the right of redemption of a tax sale upon a doubtful construction of a Statute in reference to advertisement.

4.

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The failure to note on the margin of the original record of a certificate of a tax sale in the book of mortgages by the clerk, a reference to the place where the certificate of sale and affidavits have been re-recorded as a deed cannot be charged against the defendant under P. L. 1918 p. 896 sec. 48.

Before Justices Parker, Minturn and Black.

For the prosecutor: Messrs. Wright, Vander Burgh and McCarthy.

For the Defendant: Messrs. Harry B. Brockhurst and Adolph L. Engelke.

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The opinion of the Court was delivered by
BLACK, J.

10 There are two cases of the same title Nos. 224 and 225. Both cases involve the same questions. Two writs of certiorari were allowed, as two sets of proceedings are to be reviewed. There is but one paper book and one set of briefs.

The writ of ceritorari in No. 224 is to review proceedings affecting lots Nos. 27 to 30 in Block No. 2 on the McMichael Map at Fort Lee, Bergen County. The writ of certiorari in No. 225 is to review similar proceedings affecting lots Nos. 56 to 73 on the same map.

20 The writs of certiorari bring up proceedings, made in pursuance of the "Tax Sale Revision Act" of 1918 p. 883 to bar the right of redemption of the owners and mortgagees of the lands so described.

The prosecutor writes down three reasons in each case, which are identical for setting aside the proceedings.

30 1. Because, the alleged notice to redeem given to Clarence V. Kellogg was not given, served and published in the manner required by law.

2. Because, the Bergen Daily News was not a newspaper in which ordinances of the Borough of Fort Lee were published.

3. Because, the record recorded as aforesaid fails to show that the notice to redeem was served upon Clarence V. Kellogg in the manner required by law.

40 Two additional reasons were filed in each case, the substance of which is, the prosecutor is the bona fide purchaser for a valuable consideration

without notice of the deed or instrument in the nature of a conveyance, by virtue of which the prosecutor Harrington Company claims title to the premises.

The defendant, the Harrington Company purchased the lands at a tax sale on December 22, 1919. The title of the lands stood in the name of the Bergen County Realty Co. as owner. The certificates of sale then made were recorded on March 23, 1920, in book of mortgages and thereafter on October 27, 1923, the notice, affidavits and certificate of tax sale were re-recorded in the book of deeds of Bergen County P. L. 1918 p. 896 sec. 48. The lands were sold for the unpaid taxes of 1918. The proceedings were held under the "Tax Sale Revision Act" of 1918 p. 883. It seems to be conceded, as no question is raised, that the tax sale was regular and the lien acquired by the Harrington Company valid by virtue of the tax sales certificates. The questions argued relate only to the validity of the subsequent proceedings, which were had for the purpose of barring the right of redemption.

We are met at the outset with a declaration in the Statute that, the "Act shall be deemed and taken "to be a remedial act, "and be liberally "construed to effectuate the remedial objects thereof" P. L. 1918 p. 899 sec. 59.

Moore Securities Co. v. Hammell Co. 3
N. J. Adv. R. 128; 127 Atl. 207.

We find in these proceedings on certiorari no substantial reason for setting them aside, even, if there is anything before us to set aside.

The land was assessed for the taxes in 1918 in the name of the Bergen County Realty Company

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as owner. The property by deed came to the Alcalde Realty Co. on December 17, 1920. The notice to redeem was dated February 17, 1921 and was served February 24th, 1921. No point is made as to the service of this notice upon the Alcalde Realty Co., then it came into the possession of the Palisades Estates Inc. on December 24, 1921. On June 3rd, 1920 the property was mortgaged to Clarence V. Kellogg for \$5,000. On May 20, 1925 he was paid in full and the mortgage cancelled of record. He has no standing to attack the service of a "notice to redeem" upon him, his interest in the property as "mortgagee" having been paid in full. If he can be considered an "owner" he takes through the Alcalde Realty Co. and its assigns. He is bound by the "notice to redeem" served upon the Alcalde Realty Co. So, Kellogg is barred and cannot assert any right to redeem, as he has no interest. So, the prosecutor derives his right from Kellogg, who has no right, or through the Alcalde Realty Co. on whom the notice to redeem was regular, in either event so, it is argued, the prosecutor would seem to have no standing or right to redeem. But let that be as it may, the proceedings as set out in the return to the writs of ceritorari seem to be in all things regular under the Statute. It shows:

1. The certificate of sale dated December 22, 1919 by the collector.

2. Proceedings to bar the right of redemption dated December 22, 1919.

3. Notice to redeem addressed to the Alcalde Realty Corporation, Clarence V. Kellogg dated February 17, 1921 affidavit of service.

4. Affidavit of non-redemption dated August 22, 1923. The proceedings as a deed were not recorded until October 27, 1923, but there is no statutory time limit P. L. 1918 p. 896 sec. 48.

It seems hardly necessary to follow in detail the points and argument made on behalf of the prosecutor, but to refer briefly to the points stressed. The notice to redeem which is the crux of the case seems to have been served in compliance with the Statute P. L. 1918 p. 895 sec. 46, personally on the persons interested who reside in the municipality "and on others it may be served personally, or by mailing to their post office address" "or by posting on the premises sold" which was done "if not served personally "published once in a newspaper "in which ordinances of the municipality may be "published." Notice was sent by registered mail to Clarence V. Kellogg the mortgagee No. 910 Glengyle Avenue, Chicago, Illinois on February 24, 1921. There was no attempt to show in the evidence, that he did not receive it. Even so, the Court, upon certiorari, would not set aside the proceedings upon a doubtful construction of Statute in reference to advertisement **McCarty v. Boulevard Commissioners** 91 N. J. L. 137; affirmed 92 *Ib.* 519. This disposes of the first three reasons.

It is next argued that, as the Statute P. L. 1918 p. 896 sec. 48 provides, "said County Clerk or Register "shall also note in the margin of the "original record of said certificate in the books "of mortgages a reference to the place where "said certificate and affidavits have been re- "recorded as a deed." The testimony taken under the rule allowed shows, that the clerk failed to make any notation on the margin of the original record of the certificate of the tax sale in the

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book of mortgages, which should show a reference to the place where the certificate of sale had been re-recorded as a deed. This omission of duty by the clerk cannot be charged to the defendant. The other points argued are without legal merit. The proceedings are affirmed and the writs dismissed in each case with costs.

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Writ of Certiorari.

State of New Jersey, to wit:

To, William P. Eager, County Clerk,
(Seal) County of Bergen and Harrington
Company.

We being willing for certain reasons to be certified of the record of the proceedings filed and recorded in the office of the County Clerk of the County of Bergen on October 27th, 1923, in Book 1236 of Deeds, page 392, by virtue whereof, the Harrington Company claims to have secured title to all those lots of land situate, lying and being in the Borough of Fort Lee, County of Bergen and State of New Jersey, shown and designated on a certain map filed in the Bergen County Clerk's Office, September 29th, 1874, as Map No. 239, and entitled, "Map No. 1 Property of Catharine M. McMichael at Fort Lee Center" as and by the Lot numbers 27, 28, 29 and 30 in Block Number 2.

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We do COMMAND that you send the said notice to redeem, affidavit of service, affidavit of publication, affidavit of failure to redeem, certificate of non-redemption and certificate of tax sale made by Charles L. Bender, Collector of the Borough of Fort Lee, certifying to the sale of the said lands for taxes for the year 1918, which said certificate of tax sale is dated December 22nd, 1919, and was theretofore recorded in the office of the County Clerk of the County of Bergen on March 23rd, 1920, in Book 464 of Mortgages on page 142, and which notice, affidavits and certificate of tax sale were thereafter recorded in the office of the County Clerk of the County of Bergen on October 27th, 1923, in Book 1236 of Deeds on pages 392, etc., together with all things touching and concerning the said record, filed and recording

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Writ of Certiorari.

thereof as fully and entirely as before you they remain to our Justice of the Supreme Court of Judicature at Trenton on the seventh day of November, 1925, you certify and send together with this Writ that therein may be done what of right and according to the laws of this State to be done.

10

WITNESS, William S. Gummere, Chief Justice of our Supreme Court, at Trenton, this 19th day of October, nineteen hundred and twenty-five.

EDWARD J. KELLEHER,
Clerk.

WRIGHT, VANDER BURGH & McCARTHY,
Attorneys.

20

This Writ is allowed. Let it be sealed.

C. W. PARKER,
J. S. C.

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Return to Writ of Certiorari.

To the Honorable Justices of the Supreme Court
of Judicature of New Jersey:

I, WILLIAM P. EAGER, County Clerk of the
County of Bergen, in obedience to the command
of the writ hereto annexed directed to me, do
hereby certify and send to you, the said Justices,
the said notice to redeem, affidavit of service, 10
affidavit of publication, affidavit of failure to re-
deem, certificate of non-redemption and certifi-
cate of tax sale made by Charles L. Bender, Col-
lector of the Borough of Fort Lee, certifying to
the sale of all those lots of land situate, lying and
being in the Borough of Fort Lee, County of Ber-
gen and State of New Jersey, shown and desig-
nated on a certain map filed in the Bergen Coun-
ty Clerk's office, September 29th, 1874, as Map No.
239 and entitled, "Map No. 1 Property of Cath- 20
erine M. McMichael at Fort Lee Center", as and
by the lots numbered twenty-seven (27), twenty-
eight (28), twenty-nine (29), and thirty (30) in
Block No. 2, for taxes for the year 1918, which
certificate of tax sale is dated December 22nd,
1919, and was recorded in the office of the County
Clerk of the County of Bergen on March 23rd,
1920, in Book 464 of Mortgages on page 142, and
which notice and affidavits and certificate of tax
sale were thereafter recorded in the office of the 30
County Clerk of the County of Bergen on Octo-
ber 27th, 1923, in Book 1236 of Deeds on pages
392, etc., all as appears by the schedules hereun-
der written.

IN WITNESS WHEREOF, I have hereunto set
my hand and seal of the County of Bergen this
26th day of October, nineteen hundred and
twenty-five.

(L.S.)

WILLIAM P. EAGER,
Clerk.

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Return to Writ of Certiorari.

Schedule.

10 The following schedule contains true copies of the certificate of tax sale made by Charles L. Bender, Collector of the Borough of Fort Lee, certifying to the sale of the lands above described for taxes for the year 1918, which said certificate of tax sale was recorded in the office of the County Clerk of the County of Bergen on March 23rd, 1920, in Book 464 of Mortgages on page 142, and which notice, affidavits and certificates were thereafter recorded in the office of the County Clerk of the County of Bergen on October 27th, 1923, in Book 1236 of Deeds on pages 392, etc.

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114924

Bergen County Realty Co. by Charles L. Bender,
Collector, to Harrington Co.
Tax Sale, dated Dec. 22, 1919.

30

I, CHARLES L. BENDER, Collector of Taxes of the taxing district of Fort Lee in the County of Bergen and State of New Jersey, do hereby certify that at a public sale of real estate for delinquent taxes made at Schlosser's Hotel in said taxing district, on the twenty-second day of December A. D. 1919, I sold to Harrington Co. of Jersey City, N. J., for twenty-one dollars and twenty-one cents, the lands described and designated as follows, lots 27 to 30, block 2, McMichael Map, on the tax duplicate of said municipality and assessed thereon to Bergen County Realty Co. as owner for the year 1918. The amount of the sale was

40

made up of the following items:

Return to Writ of Certiorari.

Taxes	\$17.62	
Interest59	

Costs as follows:

Preparing and publishing notices of sale	\$.25	
Service in making sale.....	.25	10
Certificate of sale.....	.50	
Acknowledgements and affidavits.....	.50	
Printing and postage.....	1.50	
Total costs	3.00	
Amount of sale.....	21.21	

Said sale is subject to redemption on repayment of the amount of the sale together with interest at the rate of 8 per centum per annum from the date of sale and the costs incurred by the purchaser. Said sale is subject only to municipal liens accruing after July 1, 1919. The right to redeem will expire in six months after service of notice to redeem except the right to redeem shall in all cases extend for two years from the date of sale. In case no notice is given and there shall be no redemption within twenty years after the purchaser has entered into open possession since continued under the sale then in either case the right to redemption shall be barred.

IN WITNESS WHEREOF I have hereunto set my hand and seal this 22nd day of December, 1919.

CHAS. L. BENDER, (L.S.)
Collector.

In the presence of
JOHN McGLOIN.

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Return to Writ of Certiorari.

STATE OF NEW JERSEY, }
 COUNTY OF BERGEN, } ss:

10 Be it remembered that on this 29th day of December, 1919, before me a Commissioner of Deeds, personally appeared Charles L. Bender, Collector of Taxes of the taxing district of Fort Lee in the County of Bergen, State of New Jersey, who I am satisfied is the individual described in and who executed the above certificate of sale, and I having made known to him the contents thereof he thereupon acknowledged to me that he signed, sealed and delivered the same as his voluntary act and deed for the uses and purposes therein expressed.

20 JOHN McGLOIN,
 Commissioner of Deeds,
 Bergen Co., N. J.

Received in the office and recorded Mar. 23, 1920, at 1.46 P. M.

GEORGE VAN BUSKIRK,
 Clerk.

120896

30 Bergen County Realty Co., The Alcalde Realty Corporation and Clarence V. Kellogg to Harrington Company.

Affidavit to make Title dated August 22, 1923.

40 Know all men by these presents that the following proceedings have been taken under the provisions of an Act of the Legislature of the State of New Jersey entitled "An Act concerning unpaid taxes, assessments and other municipal charges on real property and providing for

Return to Writ of Certiorari.

the collection thereof by the Creation and Enforcement of liens thereon (Revision of 1918)", approved March 4th, 1918, and the various Acts supplemental thereto and amendatory thereof, for the purpose of barring the right of redemption as provided in said Act in and to the following described lands and premises situate, lying and being in the Borough of Fort Lee, County of Bergen and State of New Jersey, and more particularly described as follows: 10

All those certain lots, tracts or parcels of land and premises, hereinafter particularly described, situate, lying and being in the County of Bergen and State of New Jersey, known and designated on a certain map entitled "Map No. 1 of property of Catherine M. McMichael at Fort Lee Center", made by J. H. Servis, Surveyor, and filed in the office of the Clerk of Bergen County, September 29th, 1874, as Map No. 239 as lots Nos. 27, 28, 29 and 30 in block No. 2, said lots having a frontage of fifty feet each on Main Avenue and a depth of one hundred feet on both sides. Being the same premises certified to have been sold to Harrington Company, a corporation of the State of New Jersey, having its principal office and place of business at No. 550 Montgomery Street, in the City of Jersey City, County of Hudson and State of New Jersey, by the following certificate of tax sale, to wit: 20 30

Certificate of Tax Sale.
(Chapter 237, Law of 1918).

I, CHARLES L. BENDER, Collector of Taxes of the taxing district of Fort Lee in the County of Bergen and State of New Jersey, do hereby certify that at a public sale of real estate for 40

Return to Writ of Certiorari.

10 delinquent taxes made at Schlosser's Hotel in said taxing district on the twenty-second day of December A. D., 1919, I sold to Harrington Co. of Jersey City, N. J., for twenty-one dollars and twenty-one cents the lands described and designated as follows, lots 27 to 30, block 2, McMichael Map on the tax duplicate of said municipality and assessed thereon to Bergen County Realty Co. as owner for the year 1918.

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

Taxes	\$17.62
Interest59

Costs as follows:

20	Preparing and publishing notices of sale	\$.25
	Service in making sale.....	.25
	Certificate of sale.....	.50
	Acknowledgements and affidavits....	.50
	Printing and postage.....	1.50
	Total costs.....	3.00
	Amount of sale.....	21.21

30 Said sale is subject to redemption on repayment of the amount of the sale together with interest at the rate of 8 per centum per annum from the date of sale and the costs incurred by the purchaser. Said sale is subject only to municipal liens accruing after July 1, 1919.

40 The right to redeem will expire in six months after service of notice to redeem, except the right to redeem shall in all cases extend for two years from the date of sale. In case no notice is given and there shall be no redemption within twenty years after the purchaser has entered into open possession since continued under the sale then in

Return to Writ of Certiorari.

either case the right to redemption shall be barred.

IN WITNESS WHEREOF I have hereunto set my hand and seal this 22nd day of December, 1919.

CHAS. L. BENDER, (L.S.) 10
Collector.

In the presence of
JOHN McGLOIN.

STATE OF NEW JERSEY, }
COUNTY OF BERGEN, } ss:

Be it remembered that on this 29th day of December, 1919, before me, a Commissioner of Deeds, personally appeared Charles L. Bender, Collector of Taxes of the taxing district of Fort Lee in the County of Bergen, State of New Jersey, who I am satisfied is the individual described in and who executed the above certificate of sale, and I having made known to him the contents thereof he thereupon acknowledged to me that he signed, sealed and delivered the same as his voluntary act and deed for the uses and purposes therein expressed. 30

JOHN McGLOIN,
Commissioner of Deeds,
Bergen Co., N. J.

Return to Writ of Certiorari.

In re Sale of lots 27 to 30, block 2, Tax Duplicate of Fort Lee on McMichael Map to The Alcalde Realty Corporation, Clarence V. Kellogg.

Notice to Redeem.

10

Please take notice that at a public sale held by the Collector of Taxes of the taxing district of the Borough of Fort Lee in the State of New Jersey on the twenty-second day of December, 1919, the undersigned purchased

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All the lands, tenements and hereditaments situate in the Borough of Fort Lee, County of Bergen and State of New Jersey fronting on Main Avenue which is laid down and designated as lot or plot numbered 27 to 30 in block numbered 2 as shown on the tax duplicate of Borough of Fort Lee, said sale being made and held pursuant to the provisions of an Act of the Legislature of the State of New Jersey entitled "An Act concerning unpaid taxes, assessments and other municipal charges on real property and providing for the collection thereof by the creation and enforcement of liens thereon (Revision of 1918)", approved March 4th, 1918, and the various Acts supplemental thereto and amendatory thereof

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And you are further notified that you appear to have a title lien interest claim estate or other right in, to or upon said lands and real estate or a part thereof and that you have a right to redeem said lands and real estate from the said sale, and that unless the said land and real estate shall be redeemed by you within the term of two

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Return to Writ of Certiorari.

(2) years after the sale your right to redeem said lands and real estate will be barred.

Dated Jersey City, N. J.
February 17, 1921.

HARRINGTON COMPANY, 10
By Joseph T. Harrington,
President.
Purchaser.

We hereby appoint Frederick Atanasio our agent to serve the annexed notices upon all the persons and corporations above named and to make due proof of such service.

Dated Jersey City, N. J. 20
February 17th, 1921.

(L.S.) HARRINGTON COMPANY,
By Joseph T. Harrington,
President.

Attest:
FREDERICK ATANASIO,
Secretary.

Affidavit of Service. 30

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

FREDERICK ATANASIO, of full age, being duly sworn on his oath according to law, deposes and says that he is secretary of Harrington Company, a corporation of the State of New Jersey, which company is the purchaser named in the 40

Return to Writ of Certiorari.

foregoing certificate of sale covering lots 27 to 30 in block 2, McMichael Map on the tax duplicate of the Borough of Fort Lee for the year 1918, being the lands and premises more particularly described on the first page of these proceedings.

10 Deponent further says that he is agent of said Harrington Company under the foregoing appointment and authority, that he served the foregoing annexed notice upon said Alcalde Realty Corp., one of the persons named in and to whom said notice is directed, on Thursday, the twenty-fourth day of February A. D. 1921, by delivering a true copy of said notice to redeem to Thomas J. McEhan, president of said Alcalde Realty Corporation personally at his office at No. 52 Wall
20 Street, in the Borough of Manhattan, City and State of New York, and informing him of the contents thereof.

That he served the foregoing annexed notice upon Clarence V. Kellogg, one of the persons named in and to whom said notice is directed, on Thursday, the 24th day of February A. D. 1921, by mailing a true copy of said notice to redeem in a prepaid registered envelope addressed to the said Clarence V. Kellogg at No. 910 Glengyle
30 Avenue, Chicago, Illinois.

That deponent deposited the said registered envelope containing the said notice to redeem addressed as aforesaid in the General Post Office at Jersey City on the 24th day of February A. D. 1921.

That deponent posted on the above described premises so sold a true copy of the said foregoing annexed notice to redeem addressed to the said Clarence V. Kellogg on Saturday the 26th day
40 of February A. D. 1921.

Return to Writ of Certiorari.

That deponent caused a true copy of the said foregoing annexed notice to redeem addressed to the said Clarence V. Kellogg to be published once in the "Bergen Daily News," a newspaper in which ordinances of the Borough of Fort Lee may be with proof of publication is hereinafter set out.

10

FREDERICK ATANASIO.

Subscribed and sworn to before me
this 22nd day of August A. D. 1923.

HARRY B. BROCKHURST,
Master in Chancery
of New Jersey.

20

Affidavit of Non-Redemption.

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

JOSEPH T. HARRINGTON, being duly sworn on his oath according to law, deposes and says that he is the president of Harrington Company, a corporation duly organized and existing under the laws of the State of New Jersey, and agent of the said company, for the purpose of making this affidavit that said company is the purchaser of the lands described in and the holder and owner of the foregoing certificate of sale.

30

Deponent further says that more than two years have elapsed since the date of the sale of said premises to the said Harrington Company and that more than two years have elapsed since the service of the notices aforesaid and that said

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Return to Writ of Certiorari.

premises have not been redeemed from the said sale, but remain wholly unredeemed.

JOSEPH T. HARRINGTON.

10 Subscribed and sworn to
this 22nd day of August A. D. 1923.
at Jersey City, N. J., before me

HARRY B. BROCKHURST,
Master in Chancery of New Jersey.

Notice to Redeem.

20

In re Sale of lots 27 to 30, block 2,
Tax Duplicate of Fort Lee on McMichael Map
to The Alcalde Realty Corporation,

Clarence V. Kellogg:

30 Please take notice that at a public sale held by
the Collector of Taxes of the taxing district of
the Borough of Fort Lee, in the State of New
Jersey, on the twenty-second day of December,
1919, the undersigned purchased

40 All the lands, tenements and hereditaments
situate in the Borough of Fort Lee, County of
Bergen and State of New Jersey, fronting on
Main Avenue which is laid down and designated
as lot or plot numbered 27 to 30 in block num-
bered 2, as shown on the tax duplicate of Bor-
ough of Fort Lee, said sale being made and held
pursuant to the provisions of an Act of the Leg-
islature of the State of New Jersey entitled "An

Return to Writ of Certiorari.

Act concerning unpaid taxes, assessments and other municipal charges on Real Property and providing for the collection thereof by the creation and enforcement of liens thereon (Revision of 1918)", approved March 4th, 1918, and the various Acts supplemental thereto and amendatory thereof,

10

And you are further notified that you appear to have a title lien, interest, claim, estate or other right in, to or upon said lands and real estate or a part thereof and that you have a right to redeem said lands and real estate from the said sale, and that unless the said land and real estate shall be redeemed by you within the term of two (2) years after the sale your right to redeem said lands and real estate will be barred.

20

Dated Jersey City, N. J.

February 23rd, 1921.

HARRINGTON COMPANY,

By Joseph T. Harrington,
President.
Purchaser.

30

STATE OF NEW JERSEY, }
COUNTY OF BERGEN, } ss:

GEORGE VIX, JR., of said County, being duly sworn, says that he is bookkeeper of Bergen Daily News, a newspaper published and printed in Hackensack, in the County of Bergen aforesaid, and that the notice of which the annexed is a printed copy was published in said newspaper

40

Return to Writ of Certiorari.

on February 26, 1921, being.....weeks successively at least once in each week.

GEORGE VIX, JR.

10

Sworn to before me
this 28th day of February, 1921.

EVAN G. RUNNER,
Commissioner of Deeds
for New Jersey.

Office of the Collector of Taxes
of the Borough of Fort Lee.

20

This is to certify that the property described as lots 27 to 30 in block 2, McMichael Map, on the tax duplicate **on the tax duplicate** of the Borough of Fort Lee and sold by me to Harrington Company under date of December 22nd, 1919, for all unpaid municipal liens assessed prior to July 1st, 1919, has not been redeemed,

30

And I do further certify that I have searched the records in my office for all subsequent liens remaining unpaid of record against the foregoing described real estate,

And I certify that no subsequent municipal liens appear thereon unpaid except as follows, none.

IN WITNESS WHEREOF I have hereunto set my hand and seal this 25th day of Oct. A. D. 1923.

40

CHAS. L. BENDER, (L.S.)
Collector of Taxes.

Writ of Certiorari.

"March" "two years" written over erasures.
 Received in the office and recorded Oct. 27,
 1923, at 9.12 A. M.

WILLIAM P. EAGER,
 Clerk.

10

Writ of Certiorari.

State of New Jersey, to wit:

To, William P. Eager, County Clerk,
 (Seal) County of Bergen, and Harrington
 Company.

We being willing for certain reasons to be cer-
 tified of the record of the proceedings filed and
 recorded in the office of the County Clerk of the
 County of Bergen on October 27th, 1923, in Book
 1236 of Deeds, page 386, by virtue whereof the
 Harrington Company claims to have secured title
 to all those lots of land situate, lying and being
 in the Borough of Fort Lee, County of Bergen
 and State of New Jersey, shown and designated
 on a certain map filed in the Bergen County
 Clerk's Office, September 29th, 1874, as Map No.
 239 and entitled, "Map No. 1 Property of Cath-
 erine M. McMichael at Fort Lee Center", as and
 by the lot numbers 56 to 73, both inclusive, in
 block number 4.

20

30

We do COMMAND that you send the said no-
 tice to redeem, affidavit of service, affidavit of
 publication, affidavit of failure to redeem, certifi-
 cate of non-redemption and certificate of tax
 sale made by Charles L. Bender, Collector of

40

Writ of Certiorari.

10 the Borough of Fort Lee, certifying to the sale of the said lands for taxes for the year 1918, which said certificate of tax sale is dated December 22nd, 1919, and was theretofore recorded in the office of the County Clerk of the County of Bergen on March 23rd, 1920, in Book 464 of Mortgages on page 142, and which notice, affidavits and certificate of tax sale were thereafter recorded in the office of the County Clerk of the County of Bergen on October 27th, 1923, in Book 1236 of Deeds on pages 386, together with all things touching and concerning the said record, filed and recording thereof as fully and entirely as before you they remain to our Justice of the Supreme Court of Judicature at Trenton on the 20 seventh day of November, 1925, you certify and send together with this writ that therein may be done what of right and according to the laws of this State to be done.

WITNESS, William S. Gummere, Chief Justice of our Supreme Court at Trenton, this 19th day of October, nineteen hundred and twenty-five.

EDWARD J. KELLEHER,
Clerk.

30 WRIGHT, VANDER BURGH & McCARTHY,
Attorneys.

This writ is allowed. Let it be sealed.

C. W. PARKER,
J. S. C.

Return to Writ of Certiorari.

To the Honorable Justices of the Supreme Court
of Judicature of New Jersey:

I, WILLIAM P. EAGER, County Clerk of the
County of Bergen, in obedience to the command
of the writ hereto annexed directed to me, do
hereby certify and send to you, the said Justices,
the said notice to redeem, affidavit of service, affi- 10
davit of publication, affidavit of failure to re-
deem, certificate of non-redemption and certifi-
cate of tax sale made by Charles L. Bender, Col-
lector of the Borough of Fort Lee, certifying to
the sale of all those lots of land situate, lying and
being in the Borough of Fort Lee, County of
Bergen and State of New Jersey, shown and
designated on a certain map filed in the Bergen
County Clerk's Office, September 29th, 1874, as 20
Map No. 239, and entitled, "Map No. 1 Property
of Catherine M. McMichael at Fort Lee Center",
as and by the lots numbered fifty-six (56) to
seventy-three (73), both inclusive, in block No. 4,
for taxes for the year 1918, which certificate of
tax sale is dated December 22nd, 1919, and was
recorded in the office of the County Clerk of
the County of Bergen on March 23rd, 1920, in
Book 464 of Mortgages on page 142, and which
notice and affidavits and certificate of tax sale
were thereafter recorded in the office of the Coun- 30
ty Clerk of the County of Bergen on October
27th, 1923, in Book 1236 of Deeds on pages 386,
etc., all as appears by the schedules hereunder
written.

IN WITNESS WHEREOF, I have hereunto
set my hand and seal of the County of Bergen
this 26th day of October, nineteen hundred and
twenty-five.

(L.S.)

WILLIAM P. EAGER,
Clerk.

40

Return to Writ of Certiorari.

Schedule.

10 The following schedule contains true copies of the certificate of tax sale made by Charles L. Bender, Collector of the Borough of Fort Lee, certifying to the sale of the lands above described for taxes for the year 1918, which said certificate of tax sale was recorded in the office of the County Clerk of the County of Bergen on March 23rd, 1920, in Book 464 of Mortgages on page 142, and which notice, affidavits and certificates were thereafter recorded in the office of the County Clerk of the County of Bergen on October 27th, 1923, in Book 1236 of Deeds on pages 386, etc.

20

 114983

Bergen County Realty Co. by Charles L. Bender,
Collector, to Harrington Co.
Certificate of Tax Sale,
Dated Dec. 22, 1919.

30 I, CHARLES L. BENDER, Collector of Taxes of the taxing district of Fort Lee, in the County of Bergen and State of New Jersey, do hereby certify that at a public sale of real estate for delinquent taxes made at Schlosser's Hotel in said taxing district on the twenty-second day of December A. D. 1919, I sold to Harrington Co. of Jersey City, N. J., for seventy-one dollars and twenty-seven cents the lands described and designated as follows, lots 56 to 73, block 4, McMichael Map, on the tax duplicate of said municipality and assessed thereon to Bergen County Realty
40 Co. as owner for the year 1918. The amount of

Return to Writ of Certiorari.

the sale was made up of the following items:

Taxes	\$66.05
Interest	2.22

Costs as follows:

Preparing and publishing notices of sale	\$.25	10
Service in making sale.....	.25	
Certificate of sale.....	.50	
Acknowledgements and affidavits....	.50	
Printing and postage.....	1.50	
Total costs	3.00	
Amount of sale.....	71.27	

Said sale is subject to redemption on repayment of the amount of the sale together with interest at the rate of 8 per centum per annum from the date of sale and the costs incurred by the purchaser. Said sale is subject only to municipal liens accruing after July 1, 1919. The right to redeem will expire in six months after service of notice to redeem, except the right to redeem shall in all cases extend for two years from the date of sale. In case no notice is given and there shall be no redemption within twenty years after the purchaser has entered into open possession since continued under the sale then in either case the right to redemption shall be barred. 20 30

IN WITNESS WHEREOF I have hereunto set my hand and seal this 22nd day of December, 1919.

CHAS. L. BENDER, (L.S.)
Collector.

In the presence of
JOHN McGLOIN. 40

Return to Writ of Certiorari.

STATE OF NEW JERSEY, }
 COUNTY OF BERGEN, } ss:

10 Be it remembered that on this 29th day of December, 1919, before me, a Commissioner of Deeds, personally appeared Charles L. Bender, Collector of Taxes of the taxing district of Fort Lee, in the County of Bergen, State of New Jersey, who I am satisfied is the individual described in and who executed the above certificate of sale, and I having made known to him the contents thereof, he thereupon acknowledged to me that he signed, sealed and delivered the same as his voluntary act and deed for the uses and purposes therein expressed.

20 JOHN McGLOIN,
 Commissioner of Deeds,
 Bergen County, N. J.

Received in the office and recorded Mar. 23,
 1920, at 1.54 P. M.

GEORGE VAN BUSKIRK,
 Clerk.

30 ———
 120895

Bergen County Realty Co., The Alcalde Realty Corporation and Clarence V. Kellogg to Harrington Company.

Affidavit to make Title,
 Dated August 22, 1923.

40 Know all men by these presents that the following proceedings have been taken under the

Return to Writ of Certiorari.

provisions of an act of the legislature of the State of New Jersey entitled "An Act concerning unpaid taxes, assessments and other municipal charges on real property and providing for the collection thereof by the creation and enforcement of liens thereon (Revision of 1918)", approved March 4th, 1918, and the various Acts supplemental thereto and amendatory thereof, for the purpose of barring the right of redemption as provided in said Act in and to the following described lands and premises situate, lying and being in the Borough of Fort Lee, County of Bergen and State of New Jersey, and more particularly described as follows: 10

All those certain tracts or parcels of land and premises, hereinafter particularly described, situate, lying and being in the County of Bergen and State of New Jersey, known and designated on a certain map entitled "Map No. 1 of property of Catharine M. McMichael at Fort Lee Center", made by J. H. Servis, Surveyor, and filed in the office of the Clerk of Bergen County, September 29th, 1874, as Map No. 239, as lots 56 to 73 in block 4. Being the same premises certified to have been sold to Harrington Company, a corporation of the State of New Jersey, having its principal office and place of business at No. 550 Montgomery Street, in the City of Jersey City, County of Hudson and State of New Jersey, by the following certificate of tax sale, to wit: 20 30

Certificate of Tax Sale (Chapter 237 Laws of 1918)

I, CHARLES L. BENDER, Collector of Taxes of the taxing district of Fort Lee, in the County of Bergen and State of New Jersey, do hereby 40

Return to Writ of Certiorari.

10 certify that at a public sale of real estate for delinquent taxes made at Schlosser's Hotel in said taxing district on the twenty-second day of December A. D. 1919, I sold to Harrington Co. of Jersey City, N. J., for seventy-one dollars and twenty-seven cents the lands described and designated as follows, lots 56 to 73, block A, McMichael Map, on the tax duplicate of said municipality and assessed thereon to Bergen County Realty Co. as owner for the year 1918.

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

	Taxes	\$66.05
	Interest	2.22
	Cost as follows:	
20	Preparing and publishing notices of sale	\$.25
	Service in making sale.....	.25
	Certificate of sale.....	.50
	Acknowledgements and affidavits.....	.50
	Printing and postage.....	1.50
	Total	3.00
	Amount of sale.....	71.27

30 Said sale is subject to redemption on repayment of the amount of the sale together with interest at the rate of 8 per centum per annum from the date of sale and the costs incurred by the purchaser. Said sale is subject only to municipal liens accruing after July 1, 1919.

40 The right to redeem will expire in six months after service of notice to redeem, except the right to redeem shall in all cases extend for two years from the date of sale. In case no notice is given and there shall be no redemption within twenty years after the purchaser has entered into open possession since continued under the sale then

Return to Writ of Certiorari.

in either case the right to redemption shall be barred.

IN WITNESS WHEREOF I have hereunto set my hand and seal this 22nd day of December, 1919.

In the presence of
JOHN McGLOIN.

10

CHAS. L. BENDER, (L.S.)
Collector.

STATE OF NEW JERSEY, }
COUNTY OF BERGEN, } ss:

Be it remembered that on this 29th day of December, 1919, before me, a Commissioner of Deeds, personally appeared Charles L. Bender, Collector of Taxes of the taxing district of Fort Lee in the County of Bergen State of New Jersey who I am satisfied is the individual described in and who executed the above certificate of sale and I having made known to him the contents thereof he thereupon acknowledged to me that he signed sealed and delivered the same as his voluntary act and deed for the uses and purposes therein expressed

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30

JOHN McGLOIN
Commissioner of Deeds,
Bergen Co N J

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Return to Writ of Certiorari.

In re Sale of
lots 56 to 73 block 4
plot

10 Tax duplicate of Fort Lee Notice to redeem
on McMichael Map
To The Alcalde Realty Corporation
Clarence V Kellogg

Please take notice that at a public sale held by the collector of taxes of the taxing district of the Borough of Fort Lee in the State of New Jersey on the twenty second day of December 1919 the undersigned purchased

20 All the lands tenements and hereditaments situate in the Borough of Fort Lee County of Bergen and State of New Jersey fronting on 4th Street Main Avenue 5th St which is laid down and designated as lot or plot numbered 56 to 73 in block numbered 4 as shown on the Tax Duplicate of Borough of Fort Lee said sale being made and held pursuant to the provisions of an act of the Legislature of the State of New Jersey entitled
30 "An act concerning unpaid taxes assessments and other municipal charges on real property and providing for the collection thereof by the creation and enforcement of liens thereon (Revision of 1918)" approved March 4th 1918 and the various acts supplemental thereto and amendatory thereof

40 And you are further notified that you appear to have a title lien interest claim (state or other right in to or upon said lands and real estate or a part thereof and that you have a right to redeem said lands and real estate from the said sale and that unless the said land and real estate shall be redeemed by you within the term of two (2) years

Return to Writ of Certiorari.

after the sale your right to redeem said lands and
real estate will be barred Dated Jersey City N J
February 17 1921

HARRINGTON COMPANY
by JOSEPH T. HARRINGTON,
President
Purchaser

10

We hereby appoint Frederick Atanasio our
agent to serve the annexed notices upon all the
persons and corporations above named and to
make due proof of such service.

Dated Jersey City N J
February 17th 1921 Harrington Company (Seal)

Attest by Joseph T Harrington
Frederick Atanasio President
Secretary

20

Affidavit of Service.

STATE OF NEW JERSEY }
COUNTY OF HUDSON } ss:

FREDERICK ATANASIO of full age being
duly sworn on his oath according to law deposes
and says that he is Secretary of Harrington Com-
pany a corporation of the State of New Jersey
which company is the purchaser named in the
foregoing certificate of sale covering lots 56 to
73 in block 4 McMichael Map on the tax duplicate
of Borough of Fort Lee for the year 1918 being
the lands and premises more particularly de-
scribed on the first page of these proceedings
Deponent further says that he is agent of said
Harrington Company under the foregoing an-
nexed notice upon said Alcalde Realty Corp one

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Return to Writ of Certiorari.

10 of the persons named in and to whom said notice is directed on Thursday the twenty fourth day of February A D 1921 by delivering a true copy of said notice to redeem to Thomas J. Meehan President of said Alcalde Realty Corporation personally at his office at No. 52 Wall Street in the Borough of Manhattan City and State of New York and informing him of the contents thereof

20 That he served the foregoing annexed notice upon Clarence V Kellogg one of the persons named in and to whom said notice is directed on Thursday the 24th day of February A D 1921 by mailing a true copy of said notice to redeem in a prepaid registered envelope addressed to the said Clarence V Kellogg at No 910 Glengyle Avenue Chicago Illinois.

That deponent deposited the said registered envelope containing the said notice to redeem addressed as aforesaid in the General Post Office at Jersey City on the 24th day of February A D 1921

30 That deponent posted on the above described premises so sold a true copy of the said foregoing annexed notice to redeem addressed to the said Clarence V Kellogg on Saturday the 26th day of February A D 1921

40 That deponent caused a true copy of the said foregoing annexed notice to redeem addressed to the said Clarence V Kellogg to be published once in the 'Bergen Daily News' a newspaper in which ordinances of the Borough of Fort Lee may be published on the 26th day of February A D 1921

Return to Writ of Certiorari.

a copy of which notice together with proof of publication is hereinafter set out.

FREDERICK ATANASIO.

Subscribed and sworn to before me
this 22nd day of August A D 1923

10

HARRY B. BROCKHURST,
Master in Chancery of N J

Notice to Redeem.

In re Sale of
lots 56 to 73 block 4

Tax Duplicate of Fort Lee on McMichael Map
to The Alcalde Realty Corporation
Clarence V Kellogg

20

Please take notice that at a public sale held by the Collector of Taxes of the taxing district of the Borough of Fort Lee in the State of New Jersey on the twenty second day of December 1919 the undersigned purchased

All the lands tenements and hereditaments situate in the Borough of Fort Lee County of Bergen and State of New Jersey fronting on 4th St Main Avenue and 5th St which is laid down and designated as lot or plot numbered 56 to 73 in block numbered 4 as shown on the tax duplicate of Borough of Fort Lee Said sale being made and held pursuant to the provision of an act of the legislature of the State of New Jersey entitled "An act concerning unpaid taxes assessments and other municipal charges on real property and providing for the collection thereof by the creation and enforcement of liens thereon

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Return to Writ of Certiorari.

(Revision of 1918)" approved March 4th 1918 and the various acts supplemental thereto and amendatory thereof

10 And you are further notified that you appear to have a title lien interest claim estate or other right in to or upon said lands and real estate or a part thereof and that you have a right to redeem said lands and real estate from the said sale and that unless the said land and real estate shall be redeemed by you within the term of two (2) years after the sale your right to redeem said lands and real estate will be barred.

Dated Jersey City N J
February 23rd 1921

HARRINGTON COMPANY

20 By Joseph T Harrington
President
Purchaser

STATE OF NEW JERSEY }
COUNTY OF BERGEN } ss:

30 GEORGE VIX JR of said County being duly sworn says that he is Bookkeeper of Bergen Daily News a newspaper published and printed in Hackensack in the County of Bergen aforesaid and that the notice of which the annexed is a printed copy was published in said newspaper on February 26 1921 being.....weeks successively at least once in each week.

GEORGE VIX, JR.

Sworn to before me
this 28th day of February 1921

40 EVAN G RUNNER
Commissioner of Deeds
for New Jersey

Return to Writ of Certiorari.

Affidavit of Non-Redemption.

STATE OF NEW JERSEY }
 COUNTY OF HUDSON } ss:

JOSEPH T HARRINGTON being duly sworn
 on his oath according to law deposes and says 10
 that he is President of Harrington Company a
 corporation duly organized and existing under
 the laws of the State of New Jersey and agent of
 the said Company for the purpose of making this
 affidavit that said Company is the purchaser of
 the lands described in and the holder and owner
 of the foregoing certificate of sale of said prem-
 ises to the said Harrington Company and that
 more than two years have elapsed since the date 20
 of the service of the notices aforesaid and that
 said premises have not been redeemed from the
 said sale but remain wholly unredeemed.

JOSEPH T HARRINGTON

Subscribed and sworn to this 22nd
 day of August A D 1923
 at Jersey City N J before me

HARRY B BROCKHURST 30
 Master in Chancery of
 New Jersey

Office of the Collector of Taxes
 of the Borough of Fort Lee

This is to certify that the property described
 as lots fifty six to seventy three in block four
 McMichael Map on the tax duplicate of said mu-
 nicipality and sold by me to Harrington Com-
 pany a corporation under date of twenty second 40

Return to Writ of Certiorari.

10 day of December A D 1919 for all unpaid municipal liens assessed prior to July 1st 1919 has not been redeemed. And I do further certify that I have searched the records in my office for all subsequent liens remaining unpaid of record against the foregoing described real estate. And I certify that no subsequent municipal liens appear thereon unpaid except as follows none

IN WITNESS WHEREOF I have hereunto set my hand and seal this 25th day of Oct A D 1923

CHARLES L. BENDER (L.S.)
Collector of Taxes

“March” “two years” written over erasures.

20 Received in the office and recorded Oct 27 1923
at 9.11 A M

WILLIAM P EAGER Clerk

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40

NEW JERSEY SUPREME COURT.

FORT LEE AND MANHATTAN
REALTY CORPORATION,

Prosecutor,

vs

HARRINGTON COMPANY, (a
corporation),

Defendant.

**On
Certiorari.
Action
No. 1.
Reasons.**

10

The Prosecutor writes down the following reasons for the setting aside of the record recorded in the Bergen County Clerk's Office on October 27th, 1923, in Book 1236 of Deeds, pages 392, &c., purporting to bar the right of redemption of lots numbered twenty seven (27), twenty eight (28), twenty nine (29) and thirty (30) in Block No. 2 on map filed in the Bergen County Clerk's Office September 29th, 1874 as Map No. 239 entitled, "Map No. 1 Property of Catherine M. McMichael at Fort Lee Center".

20

1. Because the alleged notice to redeem given to Clarence V. Kellogg was not given, served and published in the manner required by law.

2. Because the Bergen Daily News was not a newspaper in which ordinances of the Borough of Fort Lee were published.

30

3. Because the record recorded as aforesaid fails to show that the notice to redeem was served upon Clarence V. Kellogg in the manner required by law.

Respectfully,

WRIGHT, VANDER BURGH & McCARTHY,
Attorneys for Prosecutor.

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NEW JERSEY SUPREME COURT.

FORT LEE AND MANHATTAN
REALTY CORPORATION,
Prosecutor,

vs

HARRINGTON COMPANY, (a
corporation),
Defendant.

On
Certiorari.
Action
No. 2.
Reasons.

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The Prosecutor writes down the following reasons for the setting aside of the record recorded in the Bergen County Clerk's Office on October 27th, 1923 in Book 1236 of Deeds, pages 386, &c., purporting to bar the right of redemption of lots numbered fifty six (56) to seventy three (73) both inclusive in Block No. 4 on map filed in the Bergen County Clerk's Office September 29th, 1874 as Map No. 239 entitled, "Map No. 1 Property of Catherine M. McMichael at Fort Lee Center".

1. Because the alleged notice to redeem given to Clarence V. Kellogg was not given, served and published in the manner required by law.

2. Because the Bergen Daily News was not a newspaper in which ordinances of the Borough of Fort Lee were published.

3. Because the record recorded as aforesaid fails to show that the notice to redeem was served upon Clarence V. Kellogg in the manner required by law.

Respectfully,

WRIGHT, VANDER BURGH & McCARTHY,
Attorney for Prosecutor.

Rule to Take Depositions.

Action No. 1.

Application being made for leave to take depositions to be used in the argument of the above stated cause;

IT IS ORDERED that the Prosecutor and defendant have leave to take depositions to be used in the said argument. 10

Entered Oct. 19, 1925.

On motion of:

WRIGHT, VANDER BURGH & McCARTHY,
Attorneys for Prosecutor.

Dated, October 19, 1925.

Let the above rule be entered in the minutes. 20
C. W. PARKER,
J. S. C.

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Rule to Take Depositions.**Action No. 2.**

Application being made for leave to take depositions to be used in the argument of the above stated cause;

10 IT IS ORDERED that the Prosscutor and defendant have leave to take depositions to be used in the said argument.

Entered Oct. 19, 1925.

On motion of:

WRIGHT, VANDER BURGH & McCARTHY,
Attorneys for Prosecutor.

Dated, October 19, 1925.

20 Let the above rule be entered in the minutes.

C. W. PARKER,
J. S. C.

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On Certiorari.

Notice of Taking Affidavits.

Action No. 1.

Sirs:

PLEASE TAKE NOTICE, that I shall take affidavits to be used upon the argument of the Writ of Certiorari herein before the Honorable Peter W. Stagg, at No. 78 Main Street, Hackensack, New Jersey, on Thursday, December 17th, nineteen hundred and twenty five at the hour of 11 o'clock A. M., at which time we may present and cross examine the witnesses then and there to be examined.

10

Respectfully,

WRIGHT, VANDER BURGH & McCARTHY,
Attorneys for Prosecutor.

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To—JACK L. FOX,
Clerk of the County of Bergen:
HARRINGTON COMPANY:

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Notice of Taking Affidavits

Action No. 2

Sirs:

10 PLEASE TAKE NOTICE, that I shall take affidavits to be used upon the argument of the Writ of Certiorari herein before the Honorable Peter W. Stagg, at No. 78 Main Street, Hackensack, New Jersey, on Thursday, December 17th, nineteen hundred and twenty five at the hour of 11 o'clock A. M., at which time we may present and cross examine the witnesses then and there to be examined.

Respectfully,

20 WRIGHT, VANDER BURGH & McCARTHY,
Attorneys for Prosecutor.

To—JACK L. FOX,
Clerk of the County of Bergen:
HARRINGTON COMPANY:

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Notice of Motion.

Action No. 1.

Sirs:

PLEASE TAKE NOTICE, that we shall make a motion before the Honorable Charles W. Parker, one of the Chief Justices of the Supreme Court, on Saturday, December 26th, A. D. nineteen hundred and twenty five, at 10.00 A. M. at the Prudential Building, in the City of Newark for leave to file amended reasons setting forth in addition to those heretofore filed the following:

10

Because the proceedings and record thereof as returned herein are void as against the Prosecutor because of the fact that the Alcalde Realty Company, owner of the premises in question, in the month of February 1921, thereafter on November 29th, 1921 conveyed the said premises to Anderson Ave., Realty Company which last named Company was a bona fide purchaser for a valuable consideration and its deed to said premises was recorded on December 24th, 1921 prior to the recording of the Certificate of Sale; Notices and affidavits by the defendant, Harrington Company on October 27th, 1923; and also because thereafter and before the said Certificate of Sale, Notices and proofs of the defendant were recorded, said Anderson Avenue Realty Co., on December 23rd, 1921 for a valuable consideration conveyed said premises to Palisades Estates, Inc., a corporation which last named corporation was a bona fide purchaser for value, without notice of the proceedings and whose deed was duly recorded on December 24th, 1921; and also because the Prosecutor is the successor by purchase from said Anderson Avenue Realty

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Notice of Motion.

Company and Palisades Estates, Inc., of said lands and premises, for a valuable consideration and without notice of the said proceedings or claim of title of said Harrington Company.

also the following;

10 Because the Prosecutor is the bona fide purchaser for a valuable consideration without notice of the deed or instruments in the nature of a conveyance by virtue of which the Harrington Company claims title to said premises.

Respectfully,

WRIGHT, VANDER BURGH & McCARTHY,
Attorneys for Prosecutor.

20 To—JACK L. FOX,
County Clerk of the County of Bergen:
HARRINGTON COMPANY:

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Notice of Motion.

Action No. 2

Sirs:

PLEASE TAKE NOTICE, that we shall make a motion before the Honorable Charles W. Parker, one of the Chief Justices of the Supreme Court, on Saturday, December 26th, A. D. nineteen hundred and twenty five, at 10.00 A. M. at the Prudential Building, in the City of Newark for leave to file amended reasons setting forth in addition to those heretofore filed the following;

10

Because the proceedings and record thereof as returned herein are void as against the Prosecutor because of the fact that the Alcalde Realty Company, owner of the premises in question, in the month of February 1921, thereafter on November 29th, 1921 conveyed the said premises to Anderson Ave., Realty Company which last named Company was a bona fide purchaser for a valuable consideration and its deed to said premises was recorded on December 24th, 1921, prior to the recording of the Certificate of Sale; Notices and affidavits by the defendant, Harrington Company on October 27th, 1923; and also because thereafter and before the said Certificate of Sale, Notices and proofs of the defendant were recorded, said Anderson Avenue Realty Co., on December 23rd, 1921 for a valuable consideration conveyed said premises to Palisades Estates, Inc., a corporation which last named corporation was a bona fide purchaser for value, without notice of the proceedings and whose deed was duly recorded on December 24th, 1921; and also because the Prosecutor is the successor by purchase from said Anderson Avenue Company

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Notice of Motion.

and Palisades Estates, Inc., of said lands and premises, for a valuable consideration and without notice of the said proceedings or claim of title of said Harrington Company.

also the following;

10 Because the Prosecutor is the bona fide purchaser for a valuable consideration without notice of the deed or instruments in the nature of a conveyance by virtue of which the Harrington Company claims title to said premises.

Respectfully,

WRIGHT, VANDER BURGH & McCARTHY,
Attorneys for Prosecutor.

20 To—JACK L. FOX,
County Clerk of the County of Bergen:
HARRINGTON COMPANY:

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Order Permitting Amendment of Reasons.

Action No. 1.

This matter coming on to be heard in the presence of Wendell J. Wright, of Counsel with the Prosecutor and A. L. Engelke of Counsel with Harrington Company and it appearing that due notice of this motion has been given to the defendant,

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It is on this 26th day of December, A. D. nineteen hundred and twenty five, ORDERED that the Prosecutor may, within ten days from the date hereof, file amended reasons setting up in addition to those heretofore filed, the following;

4: Because the proceedings and record thereof as returned herein are void as against the Prosecutor because of the fact that the Alcalde Realty Company, owner of the premises in question in the month of February 1921, thereafter on November 29th, 1921 conveyed the said premises to Anderson Ave., Realty Company which last named Company was a bona fide purchaser for a valuable consideration and its deed to said premises was recorded on December 24th, 1921, prior to the recording of the Certificate of Sale; Notices and affidavits by the defendant, Harrington Company on October 27th, 1923; and also because thereafter and before the said Certificate of Sale, Notices and proofs of the defendant were recorded, said Anderson Avenue Realty Co., on December 23rd, 1921 for a valuable consideration conveyed said premises to Palisades Estates, Inc., a corporation which last named corporation was a bona fide purchaser for value, without notice of the proceedings and whose deed was duly recorded on December 24th, 1921; and also

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Order Permitting Amendment of Reasons.

because the Prosecutor is the successor by purchase from said Anderson Avenue Realty Company and Palisades Estates, Inc., of said lands and premises, for a valuable consideration and without notice of the said proceedings or claim of title of said Harrington Company.

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5: Because the Prosecutor is the bona fide purchaser for a valuable consideration without notice of the deed or instruments in the nature of a conveyance by virtue of which the Harrington Company claims title to said premises.

Let this Rule be entered.

C. W. PARKER,
J. S. C.

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Order Permitting Amendment of Reasons.

Action No. 2.

This matter coming on to be heard in the presence of Wendell J. Wright, of Counsel with the Prosecutor and A. L. Engelke of Counsel with Harrington Company and it appearing that due notice of this motion has been given to the defendant,

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It is on this 26th day of December, A. D. nineteen hundred and twenty five, ORDERED that the Prosecutor may, within ten days from the date hereof, file amended reasons setting up in addition to those heretofore filed, the following:

4: Because the proceedings and record thereof as returned herein are void as against the Prosecutor because of the fact that the Alcalde Realty Company, owner of the premises in question in the month of February 1921, thereafter on November 29th, 1921 conveyed the said premises to Anderson Ave., Realty Company which last named Company was a bona fide purchaser for a valuable consideration and its deed to said premises was recorded on December 24th, 1921 prior to the recording of the Certificate of Sale; Notices and affidavits by the defendant, Harrington Company on October 27th, 1923; and also because thereafter and before the said Certificate of Sale, Notices and proofs of the defendant were recorded, said Anderson Avenue Realty Co., on December 23rd, 1921 for a valuable consideration conveyed said premises to Palisades Estates, Inc., a corporation which last named corporation was a bona fide purchaser for value, without notice of the proceedings and whose deed was duly recorded on December 24th, 1921; and also because the Prosecutor is the successor by pur-

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Order Permitting Amendment of Reasons.

chase from said Anderson Avenue Realty Company and Palisades Estates, Inc., of said lands and premises, for a valuable consideration and without notice of the said proceedings or claim of title of said Harrington Company.

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5. Because the Prosecutor is the bona fide purchaser for a valuable consideration without notice of the deed or instrument in the nature of a conveyance by virtue of which the Harrington Company claims title to said premises.

Let this Rule be entered.

C. W. PARKER,
J. S. C.

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NEW JERSEY SUPREME COURT.

FORT LEE AND MANHATTAN
REALTY CORPORATION,
Prosecutor,

vs

HARRINGTON COMPANY, (a
corporation),
Defendant.

On
Certiorari.
Action
No. 1.
Amended
Reasons.

10

The Prosecutor writes down the following reasons for the setting aside of the record recorded in the Bergen County Clerk's Office on October 27th, 1923 in Book 1236 of Deeds, pages 392, &c., purporting to bar the right of redemption of lots numbered twenty seven (27), twenty eight (28), twenty nine (29) and thirty (30) in Block No. 2 on map filed in the Bergen County Clerk's office September 29th, 1874 as Map No. 239 entitled, "Map No. 1 Property of Catherine M. McMichael at Fort Lee Center".

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1. Because the alleged notice to redeem given to Clarence V. Kellogg was not given, served and published in the manner required by law.

2. Because the Bergen Daily News was not a newspaper in which ordinances of the Borough of Fort Lee were published.

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3. Because the record recorded as aforesaid fails to show that the notice to redeem was served upon Clarence V. Kellogg in the manner required by law.

4. Because the proceedings and record thereof as returned herein are void as against the Prosecutor because of the fact that the Alcalde

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Amended Reasons.

10 Realty Company, owner of the premises in question in the month of February 1921, thereafter on November 29th, 1921 conveyed the said premises to Anderson Ave., Realty Company which last named Company was a bona fide purchaser for a valuable consideration and its deed to said
10 premises was recorded on December 24th, 1921 prior to the recording of the Certificate of Sale; Notices and affidavits by the defendant, Harrington Company on October 27th, 1923; and also because thereafter and before the said Certificate of Sale, Notices and proofs of the defendant were recorded, said Anderson Avenue Realty Co., on
20 December 23rd, 1921, for a valuable consideration conveyed said premises to Palisades Estates, Inc., a corporation which last named corporation was a bona fide purchaser for value, without notice of the proceedings and whose deed was duly recorded on December 24th, 1921; and also because the Prosecutor is the successor by purchase from said Anderson Avenue Realty Company and Palisades Estates, Inc., of said lands and premises, for a valuable consideration and without notice of the said proceedings or claim of title of said Harrington Company.

30 5. Because the Prosecutor is the bona fide purchaser for a valuable consideration without notice of the deed or instruments in the nature of a conveyance by virtue of which the Harrington Company claims title to said premises.

Respectfully,

WRIGHT, VANDER BURGH & McCARTHY,
Attorneys for Prosecutor.

NEW JERSEY SUPREME COURT.

FORT LEE AND MANHATTAN
REALTY CORPORATION,

Prosecutor,

vs

HARRINGTON COMPANY, (a
corporation),

Defendant.

On
Certiorari.
Action
No. 2.
Amended
Reasons.

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The Prosecutor writes down the following reasons for the setting aside of the record recorded in the Bergen County Clerk's Office on October 27th, 1923 in Book 1236 of Deeds, pages 392, &c., purporting to bar the right of redemption of lots numbered twenty seven (27), twenty eight (28), twenty nine (29), and thirty (30) in Block No. 2 on Map filed in the Bergen County Clerk's Office September 29th, 1874 as Map No. 239 entitled, "Map No. 1 Property of Catherine M. McMichael at Fort Lee Center".

20

1. Because the alleged notice to redeem given to Clarence V. Kellogg was not given, served and published in the manner required by law.

2. Because the Bergen Daily News was not a newspaper in which ordinances of the Borough of Fort Lee were published.

30

3. Because the record recorded as aforesaid fails to show that the notice to redeem was served upon Clarence V. Kellogg in the manner required by law.

4. Because the proceedings and record thereof as returned herein are void as against the Prosecutor because of the fact that the Alcalde Realty Company, owner of the premises in question in the month of February, 1921, thereafter

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Amended Reasons.

10 on November 29th, 1921 conveyed the said premises to Anderson Ave., Realty Company which last named Company was a bona fide purchaser for a valuable consideration and its deed to said premises was recorded on December 24th, 1921, prior to the recording of the Certificate of Sale; Notices and Affidavits by the defendant, Harrington Company on October 27th, 1923; and also because thereafter and before the said Certificate of Sale, Notices and proofs of the defendant were recorded, said Anderson Avenue Realty Co., on December 23rd, 1921 for a valuable consideration conveyed said premises to Palisades Estates, Inc., a corporation which last named corporation was a bona fide purchaser for value, without notice of the proceedings and whose deed was duly recorded on December 24th, 1921; and also because 20 the Prosecutor is the successor by purchase from said Anderson Avenue Realty Company and Palisades Estates, Inc., of said lands and premises, for a valuable consideration and without notice of the said proceedings or claim of title of said Harrington Company.

30 5. Because the Prosecutor is the bona fide purchaser for a valuable consideration without notice of the deed or instruments in the nature of a conveyance by virtue of which the Harrington Company claims title to said premises.

Respectfully,

WRIGHT, VANDER BURGH & McCARTHY,
Attorneys for Prosecutor.

Depositions.

Depositions taken upon notice, the original of which notice is hereto annexed, at the office of Peter W. Stagg, 78 Main Street, Hackensack, New Jersey, on Thursday, the seventeenth day of December, Nineteen Hundred and Twenty-five, at the hour of eleven o'clock in the forenoon, at which time and place Mr. Wendell J. Wright of the firm of Wright, Vander Burgh & McCarthy appearing for the Prosecutor, and Mr. Adolph L. Engelke, appearing as Attorney and counsel for the Harrington Company representing Harry B. Brockhurst, counsel; 10

AND I HEREBY CERTIFY that the annexed Depositions were taken before me stenographically and truly transcribed.

It was stipulated by counsel for the Prosecutor and the defendant Harrington Company that the signatures of the witnesses be waived; 20

And it was also stipulated that the Depositions taken under said Notices in said cases shall be used in both cases;

And it is further stipulated that the cases can be combined in one state of the case.

PETER W. STAGG,
Supreme Court Commissioner. 30

GEORGE D. TILLOTSON, a witness produced on the part of the Prosecutor, being duly sworn, according to law, on his oath deposes and says:

By Mr. Wright:

Q. What is your name

A. George D. Tillotson. 40

George D. Tillotson—Direct.

Q. Where do you live, Mr. Tillotson?

A. Englewood, N. J.

Q. What is your business?

A. Newspaper.

10 Q. How long have you been engaged in the newspaper business in Englewood or vicinity?

A. About 19 years.

Q. Are you in any way connected with the Fort Lee Sentinel?

A. Yes sir.

Q. In what capacity?

A. The Englewood Press, a Corporation, owns the Fort Lee Sentinel, and I am Secretary of the Englewood Press.

20 Q. How long has the Englewood Press owned the Fort Lee Sentinel?

A. Since June, 1923.

Q. How long have you known the Fort Lee Sentinel or the newspaper?

A. 18 years.

Q. Where was the Fort Lee Sentinel printed and published?

A. At Fort Lee, Bergen County, N. J.

30 Q. In the month of February, 1921, where was the Fort Lee Sentinel printed and published?

A. At Fort Lee, N. J.

Q. Was there any other newspaper published in the Borough of Fort Lee in January or February, 1921?

40 A. I don't recall just when the Bergen Citizen started in Fort Lee. I believe it was in 1921, subsequent to that date. The Fort Lee Sentinel was the official paper of the Borough of Fort Lee in 1921.

George D. Tillotson—Cross.

Adolph A. Engelke, counsel for Harrington Company, representing Harry B. Brockhurst, objects to that part of the answer where the witness says that the Fort Lee Sentinel was the official paper of the Borough of Fort Lee on the ground that he is not competent to testify to that fact. 10

Cross-examination by Mr. Engelke:

Q. You have testified that the Englewood Press published the Fort Lee Sentinel, when did it commence to publish it?

A. On the 1st of June, 1923.

Q. Where was the paper composed and printed, on what premises? 20

A. Up to the present time Englewood Press Office, Englewood, N. J.

Q. The Englewood Press didn't publish it prior to June, 1923?

A. No.

Q. Do you know what other papers besides the Fort Lee Sentinel circulated in Fort Lee in February, 1921?

A. I don't think there was. The Bergen Citizen started, but it was subsequent to February, 1921. 30

Q. Do you know of your own knowledge where the Fort Lee Sentinel was published in 1921?

A. Yes I do.

Q. Who published it at that time?

A. John M. Race.

Q. And where was it composed and printed at that time?

A. At Fort Lee, N. J. 40

Evan G. Runner—Direct.

Q. Do you know whether or not the Bergen Daily News circulated in the Borough of Fort Lee in February, 1921?

A. I don't know.

Q. What is the source of your knowledge by the publication of Race of the Fort Lee Sentinel?

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A. I knew Mr. Race very intimately, visited his office on White Avenue quite frequently and received the Fort Lee Sentinel each week as it was published.

EVAN G. RUNNER, a witness produced by the Prosecutor, being duly sworn on his oath says:

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By Mr. Wright:

Q. Where do you live, Mr. Runner?

A. Hackensack, N. J.

Q. In the year 1921 what business were you engaged in?

A. Newspaper business.

Q. What newspaper?

30

A. Bergen Daily News.

Q. Where was the Bergen Daily News printed in the months of January and February, 1921?

A. Hackensack.

Q. Hackensack, Bergen County, N. J.?

A. Yes.

Q. Where was it published?

A. In Hackensack.

Q. Was it printed and published in the Borough of Fort Lee, Bergen County, N. J.?

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A. No.

ROBERT C. SMITH, a witness produced by the Prosecutor, being duly sworn on his oath deposes and says:

By Mr. Wright:

Q. Mr. Smith, where do you live?

A. Hackensack, N. J.

Q. And what is your business?

A. Examining for the North Jersey Title Insurance Company.

10

Q. What experience have you had in regard to the examining of titles?

A. Continuously the last 20 years.

Q. Have you gone over this chain of title of the Fort Lee and Manhattan Realty Corporation to the lots which are the subject of these certiorari suits?

A. I have.

20

Q. Can you say from your examination who owned the property in the year 1918?

A. The Anderson Avenue Realty Company.

Q. When did they acquire title?

A. By deed dated May 10, 1918, and recorded July 27, 1918, from the Bergen County Realty Company and recorded in Deed Book 989, page 642.

Q. How long did the Anderson Avenue Realty Company continue to own the premises?

30

A. To September 10, 1920.

Q. Then what happened to the title?

A. The Anderson Avenue Realty Company conveyed to the Alcalde Realty Corporation by deed dated September 10, 1920, and recorded on December 17, 1920, in Deed Book 1095, page 359. A confirmatory deed dated November 8th, 1923, was recorded on January 10, 1924, in Deed Book 1249, page 303. The confirmatory deed ran as grantee to the Palisades Estates, Inc.

40

Robert C. Smith—Direct.

Q. How long did the Alcalde Realty Corporation continue to own the property?

A. To November 29, 1921.

Q. And what did they do with the property?

10 A. They conveyed it to Anderson Avenue Realty Company by deed dated November 29, 1921, recorded December 24, 1921, in Deed Book 1143, page 107.

Q. How long did the Anderson Avenue Realty Company continue to own the property?

A. To December 23, 1921.

Q. What did they do with the property?

A. They conveyed it to the Palisades Estates, Inc., by deed dated December 23, 1921, recorded December 24, 1921, in Deed Book 1143, page 115.

20 Q. How long did the Palisades Estates, Inc., continue to own the premises?

A. To April 17, 1925.

Q. Then what did they do with it?

A. They conveyed it to Clarence V. Kellogg by deed dated April 17, 1925, recorded April 24, 1925, in Deed Book 1319, page 664.

Q. And how long did Kellogg continue to own the premises?

A. To May 18, 1925.

30 Q. And what did he do with it?

A. He conveyed it to Fort Lee and Manhattan Realty Corporation by deed dated May 18, 1925, recorded June 24, 1925, in Book 1334, page 255.

Q. Was there any mortgage on the premises during the period while the property was owned by the Anderson Avenue Realty Company and Palisades Estates Company?

A. Yes sir.

40 Q. What mortgage?

Robert C. Smith—Direct.

A. Mortgage made by Anderson Avenue Realty Company to Clarence V. Kellogg dated November 25, 1919, recorded June 3, 1920, in Book 476, page 181 for \$5000.

Q. Any other mortgage?

A. Another mortgage made by Anderson Avenue Realty Company to Ellen Lyle Mahan dated September 9th, 1919, recorded June 3, 1920, in Book 476, page 176 for \$10,000.

10

Q. Have those two mortgages which you just referred to been cancelled of record?

A. They have.

Q. On what day?

A. Both were cancelled June 24, 1925.

Q. Did you find the record of any certificates of tax sale affecting the premises in question?

20

A. I did.

Q. Please state what they were?

A. Charles L. Bender, Collector of Taxes of Fort Lee to Harrington Company, dated December 22, 1919, recorded March 23, 1920, in Book 464 of Mortgages, page 142, which covered lots 27 to 30 inclusive, block 2 McMichael map, and the other certificate is Charles L. Bender, Collector, to Harrington County dated December 22, 1919, recorded March 23, 1920, in Mortgage Book 464, page 221, covering lots numbers 56 to 73 inclusive, block 4, McMichael Map.

30

Q. Did you personally examine the mortgage books in which these two last mentioned certificates of tax sale are recorded?

A. I did.

Q. Is there any notation on the margin of those books indicating the filing of affidavits, proofs, notices, etc.?

A. There is not.

40

Robert C. Smith—Recross.

Q. There is no notation of any kind on the books in connection with these certificates?

A. No.

Cross-examination by Mr. Engelke:

10 Q. When did you examine the mortgage books in which the two tax sale certificates you have testified to are recorded to learn whether or not any notation had been made on the margin?

A. Yesterday, December 16th, 1925.

Redirect-examination by Mr. Wright:

Q. And did you examine it any time previous to that?

A. No.

20 Recross-examination by Mr. Engelke:

Q. When did you personally or if not personally when did you cause any one else to make a search of the title of the property which is discussed in your testifying?

A. April 21st, 1925.

Q. And for whom?

A. I can't answer that.

30 Q. Have you no means of ascertaining from the records of the title company for whom this search was made?

A. Yes sir.

Q. Presently you say you don't know for whom it was made. You are willing to ascertain and tell us tomorrow for whom it was made?

A. Yes sir.

40 Q. In the course of the search made by or for you or under your supervision did you find or was there reported to you as recorded in Book 1236, page 386 and Book 1236, on page 392 of Deeds any record of the tax sales already testi-

Robert C. Smith—Redirect.

fied to and affidavits with notices to redeem recorded as a deed in the Bergen County Clerk's Office as of April, 1925?

A. No.

Q. Then you mean to say that as a result of your search made in April, 1925, you didn't learn of the record of the tax proceedings by the Harrington Company on the tax certificates?

10

A. Yes sir, I didn't.

Q. Can you explain why it is that you didn't learn of the record of these proceedings?

A. Bergen County Realty Company was searched in deeds from June 8, 1911, to July 28, 1918, and in mortgages from June 8, 1911, to April 21st, 1925. Alcalde Realty Corporation was searched in deeds from September 9, 1920, to December 25, 1921, and in mortgages to April 21st, 1925, from September 9, 1920. Anderson Avenue Realty Company in deeds from May 10, 1918, to July 3, 1921, and in mortgages from May 10, 1918, to April 21st, 1925. Palisades Estates, Inc., was searched in deeds and mortgages from December 1st, 1921, to April 21st, 1925.

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Redirect by Mr. Wright:

Q. Have you examined the indices to find out how these two proceedings which are recorded in Book 1236 of Deeds, on pages 386 and 392 are indexed?

30

A. I have.

Q. And how are they indexed?

A. Grantor, under name of Bergen County Realty Company, the Alcalde Realty Corporation and Clarence V. Kellogg.

Q. And when were those two proceedings just referred to recorded, on what day?

A. October 27, 1923.

40

Charles E. Gorton—Direct.

Q. You made a report of the search to some one?

A. I did.

Q. Do you know to whom it was made?

A. I don't know the name of the applicant. I understand it was for Clarence V. Kellogg.

10

Q. You will ascertain and tell us tomorrow?

A. Yes.

Adjourned to Friday, December 18th, 1925, at the same place, at 11 A. M.

On Friday, December 18th, 1925, at 11 A. M., the further taking of depositions was continued, at my office, 78 Main Street, Hackensack, New Jersey, in the presence of Mr. Wright and Mr. Engelke, representing the parties above named.

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CHARLES E. GORTON, a witness produced by the Prosecutor, being duly sworn deposes and says:

By Mr. Wright:

Q. What is your full name?

A. Charles E. Gorton.

30

Q. Where do you live?

A. Montclair, N. J.

Q. What is your business?

A. Mechanical engineer.

Q. Do you know Mr. Clarence V. Kellogg?

A. Yes sir.

Q. During 1925 have you had business connections with him?

A. Yes.

40

Q. State what they were insofar as they relate to this property.

Charles E. Gorton—Direct.

A. The relation that I had with Mr. Kellogg was as follows: Mr. Kellogg and myself took up the question. We held two mortgages, one for \$5000 and one for \$3000, on lots in the vicinity of Anderson Avenue in Fort Lee. The question in Mr. Kellogg's mind as well as my own was to how we were going to protect these two mortgages in view of the fact that they had not been paid and the interest had not been paid. After taking the question up with Mr. Ryan a proposition was entered into by which Mr. Ryan was to turn over to us a certain number of lots in order to protect these mortgages with interest. This Mr. Ryan did, but before anything was done Mr. Ryan agreed to turn over to us title to the property. 10

Q. Can you say what lots were covered by the mortgages or either of the mortgages? 20

A. The lots covered by the \$5000 mortgage were as follows: Lots numbers 27, 28, 29, 30 in block number 2, lots numbers 46, 47 and 48 in block 3, lots numbers 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72 and 73 in block number 4 as shown on Map 239 and entitled "Map No. 1, Property of Catherine M. McMichael at Fort Lee Centre, J. H. Serviss, Surveyor. The \$3000 mortgage covered other properties. 30

Q. Do you know whether other mortgages are ahead of the \$5000 on this property?

A. I don't think there were. No.

Q. Was there other mortgages on the property which was conveyed to Mr. Kellogg?

A. Yes sir.

Q. At the time of the conveyance to Mr. Kellogg by the Palisades Estate Company April, 1925, was there any agreement in writing made between Mr. Kellogg and Mr. Ryan with respect 40

Charles E. Gorton—Direct.

to the repurchase of the property?

A. Yes sir.

Q. Is that a duplicate original?

A. It is the original.

Q. Signed by whom?

10 A. Mr. Kellogg, Charles E. Gorton, as Attorney, and Edward H. Ryan.

Q. You saw it signed by Mr. Ryan?

A. Yes sir.

I offer it in evidence.

Objection by Mr. Engelke, counsel for the defendant Harrington Company.

20 I object to the agreement on the ground that it is immaterial.

Mr. Wright: I request that the Commissioner prepare and attach to the depositions a true copy of the Exhibit and certify to it.

By Mr. Wright:

30 Q. If I understand you correctly the deed from the Palisades Estates, Inc., to Mr. Kellogg conveying the lots which are the subject of these two suits was in part satisfaction of those mortgages and other monies which were advanced as referred to in this agreement.

Objection by Mr. Engelke, counsel for Harrington Company: I object on the ground that there is nothing in the evidence to indicate that this is the circumstance and on the ground that the question is leading.

40 A. Yes sir.

Charles E. Gorton—Cross.

Q. What was the consideration for the deed from the Palisades Estates, Inc., to Mr. Clarence V. Kellogg made on April 17th, 1925, conveying lots 27 to 30 in block number 2, and lots numbers 56 to 73 in block number 4 on the McMichael map.

A. It was to take care of the two mortgages that I have mentioned with interest and a loan of \$14,000.

10

Cross-examination by Mr. Engelke:

Q. Do you know Mr. Kellogg personally?

A. Yes sir.

Q. And you have testified that you and he took up the question of these mortgages. What interest do you have personally in these mortgages?

A. None whatever, more than I have known Mr. Kellogg for a great many years and he asked me what could be done in regard to them.

20

Q. And the entire transaction was in your hands?

A. Yes sir, but of course the facts ascertained were submitted to Mr. Kellogg.

Q. And what you did was with his approval?

A. Yes sir.

Q. He had knowledge of all the circumstances, and the search that was made by some Title Company here in Hackensack?

30

A. Yes sir.

Q. Did you have a report from that search?

A. I think we did.

Q. And you submitted that to Mr. Kellogg?

A. If the search itself was not submitted the information it contained was submitted to him.

Q. You also know Mr. Ryan.

A. Yes sir. Know him very well. Probably three years, four years.

Q. You know where he lives now?

40

Charles E. Gorton—Recross.

A. I won't be positive; I think I do. I understand he has changed his residence lately. I think it is 43rd Street, near Broadway.

By Mr. Wright, redirect:

10 Q. At the time of the execution and delivery of the deed on April 17, 1925, did you have any knowledge of the claim of the Harrington Company to the title to the property?

A. No sir.

By Mr. Engelke, recross:

Q. When did you learn of it if you ever did?

A. I don't know.

Q. You aren't connected with the Fort Lee and Manhattan Realty Corporation?

20 A. No sir.

Q. Have you in your files a report made by the Title Company who searched the title?

A. That I can't say. I would have to look up the files for that.

Q. You did have a report?

A. We had a report, but in what form I wouldn't want to say.

30 Q. Don't you remember that in that report there was a record of the tax sale certificate of the Harrington Company?

A. I don't remember.

Q. You have heard of the Harrington Company having some lien there?

40 A. To my knowledge the first time that I remember the Harrington Company mentioned was in regard to a matter which we had affecting another piece of property. That was the first time that I personally remember of hearing of the Harrington Company. In fact I don't even know what their business is now.

LESTER C. BURDETT, a witness, produced by the Prosecutor, being duly sworn on his oath deposes and says:

By Mr. Wright:

Q. Where do you live?

A. Palisade, N. J.

Q. Are you connected with the Fort Lee and Manhattan Realty Corporation? 10

A. Yes sir. I am treasurer.

Q. Did you have any personal knowledge of the conveyance of the lots which are the subject of these certiorari suits from Mr. Kellogg to the Fort Lee and Manhattan Realty Corporation?

By Mr. Engelke: I object to the question on the ground that it is immaterial and irrelevant. 20

A. The only knowledge I had was that which I had from Mr. Ryan which was shortly after the deal was consummated.

Q. Did you have any knowledge of the acquisition of the title by the Fort Lee and Manhattan Realty Corporation?

A. Yes. I knew of it.

Q. Who had personal charge of the transaction on behalf of the Fort Lee and Manhattan Realty Corporation? 30

A. I did.

Q. What was the consideration paid by the Fort Lee and Manhattan Realty Corporation for the property in question?

A. We bought the two pieces in question together for which we paid to Mr. Kellogg the amount of the two mortgages aggregating \$8000 plus the \$14,000 loan to Mr. Ryan with interest to the date of the closing totaling about \$25,900. 40

Lester C. Burdett—Redirect.

Q. At the time of the conveyance by Mr. Kellogg to the Fort Lee and Manhattan Realty Corporation of these plots of land on May 18, 1925, did you have any knowledge that the Harrington Company claimed title to the premises?

A. No.

10 Q. When did you first ascertain that they made any claim to the title of the property?

A. September, this year, we sold four of the lots covered by this suit and I was notified by the Title Company that the Harrington Company had a tax lien. I then wrote to the Harrington Company and asked them to let me know the amount of the tax certificate with interest so that it could be paid and the title delivered.

Q. Did you get a reply from them?

20 A. Yes. I received a reply in several days.

Q. I show you a letter dated September 17th, 1925, on your stationery and ask you if that is the letter that you refer to that you wrote to the Harrington Company?

A. Yes.

I offer it in evidence. Marked Exhibit P 3.

30 Q. I show you a letter from the Harrington Company dated September 22, 1925, and ask you if that is the reply to your letter of September 17th?

A. Yes sir.

I offer that in evidence and marked Exhibit P 4.

Redirect-examination by Mr. Engelke:

40 Q. When your Company took title of this property May 18, 1925, you took directly from Mr. Kellogg?

Lester C. Burdett—Redirect.

A. Yes sir. Mr. Kellogg and his wife.

Q. Now, did you have a search made?

A. Yes sir.

Q. By a Title Company?

A. North Jersey Title Insurance Company.

Q. And when was that search made?

A. The search was made during April and May. 10

Q. They furnished you with a report?

A. No, not a formal report. I might explain that. We took the title of this property May 18 and explained to the Title Company that we would sell it at public auction on July 25 and we made arrangements with them to furnish title policies to our purchasers.

Q. Did they point out any defects in the title to you?

A. They gave me a letter stating that the papers including Satisfaction of Mortgages, Deeds, etc., which I received on May 18, 1925, when recorded would vest the title in Fort Lee and Manhattan Realty Corporation subject to zoning ordinances, taxes and assessments. I was buying the property subject to assessments and taxes. 20

Q. You knew when you wrote the letter September 22 that the Harrington Company had a tax lien on the property?

A. I knew that we had bought subject to taxes. 30

Q. When did you find that out?

A. July 23, 1925, in a letter which I received on July 24th from the Title Company in which they reported that the taxes for certain years were paid by the Harrington Company, also that the Harrington Company had certificates of tax sales. It was after receiving this letter that I wrote the Harrington Company my letter of September 17th. 40

Adjourned Hearing.

Mr. Wright: I offer in evidence a letter of July 23, 1925, written by the North Jersey Title Insurance Company to Mr. Burdett, which has just been referred to. Marked P 2.

10 Q. You say you closed the deal with Mr. Ryan, when was that?

A. On or about May 6, 1925. My deal with Mr. Ryan was that I would exercise the option which Mr. Kellogg had given to Mr. Ryan as shown by Exhibit P 1 dated April 17, 1925.

By Mr. Wright:

20 Q. The Fort Lee and Manhattan Realty Corporation are ready and willing to redeem the property from the Harrington Company tax sales paying the amount paid with the costs and interest?

A. Yes.

It is stipulated that production of the original deeds, certificates of tax sale and other papers of record is waived subject to the testimony thereof with corrections, if necessary.

30 Adjourned to Thursday, January 7th, 1926, at the same place, at 11 A. M.

Adjourned Hearing on January 7, 1926.

Mr. Engelke, representing Harry B. Brockhurst, Attorney for the respondent, Harrington Company, makes the following statement in the record:

40 "On December 30th, 1925, while in the County Clerk's office in the Court House at Hackensack,

Exhibit P-1.

N. J., I spoke to Mr. William Blauvelt, the County Clerk's Deputy and pointed out to him the omission from the record of the tax sale certificates, which are the certificates in question in these certioraris, of notations in the margin showing where the proceedings in question had been recorded as a deed. The said Blauvelt told me that he had been informed of the fact and knew that such notations had not been made, and on my request that such notations be now made, he refused to do so, saying: 'We have decided to do nothing about the matter'".

10

Taking of Depositions closed by both parties.

20

Exhibit P-1.

MEMORANDUM OF AGREEMENT made the 17th day of April, 1925, by and between Clarence V. Kellogg of Chicago, Illinois, party of the first part, and Edward H. Ryan of New York City, party of the second part.

Witnesseth, the party of the first part hereby promises and agrees to convey to the party of the second part, or to whomsoever he may direct, all of the property in the Borough of Fort Lee, Bergen County, New Jersey, which was conveyed to him by the Palisades Estates a New Jersey Corporation, on the 17th day of April, 1925.

30

This promise is made by the party of the first part for a good and valuable consideration, and on condition that the party of the second part shall pay to the party of the first part, \$14,000.

40

Exhibit P-1.

and interest, and \$8000. and interest on the same from the date of two certain mortgages, one of \$5000. and one of \$3000., which mortgages are recorded in the Clerk's Office of Bergen County, New Jersey, and which are liens on a portion of the property conveyed to said first party on the
 10 17th day of April, 1925, by said Corporation, which mortgages are to be satisfied when paid.

In order that this Agreement may be binding on the party of the first part, said moneys must be paid to him within one year from the date hereof. It is also understood that if any taxes or other moneys are paid out on said property so conveyed, by the party of the first part, the same must be paid to him before he conveys said property as aforesaid.

20 It is understood and agreed that this Agreement is an option only, to the party of the second part to purchase said property within one year from the date hereof.

IN WITNESS WHEREOF, the parties hereto, have hereunto set their hands and seals the day and year first above written.

CLARENCE V. KELLOGG (L.S.)

By Chas. E. Gorton, Attorney

Witness.

30

EDWARD H. RYAN (L. S.)

Witness. ELIZABETH REID.

Exhibit P 2.

July 23, 1925.

Mr. Lester C. Burdett,
Woolworth Building,
New York City, N. Y.

In re Title 23621 D.

10

Dear Sir:

We have just received from the tax collector of the Borough of Fort Lee, his report as to the taxes and other municipal liens affecting the lots in Blocks 2 and 4 on the Mc Michael Map, recently purchased by the Fort Lee and Manhattan Realty Corporation.

Collector reports as to lots 27 to 30 in Block 117 (Block 2 Mc Michael Map) as follows:

20

Taxes 1918-1923 paid by Harrington Company.
Taxes 1924-1925 unpaid.

Collector report as to lots 56 to 73 in Block 111 or 124 (Block 4 Mc Michael Map) as follows:

Taxes 1918-1923 paid by Harrington Company.
Taxes 1924-1925 unpaid.

Sewer assessment paid by Harrington Company.

The Harrington Company no doubt claims a lien on the lots by reason of having paid the taxes and assessments. Deed will therefore be required from that company, conveying any interest it may have in these lots.

30

We find on the records of the County Clerk's Office, the following certificate of tax sale which should be cancelled.

1. Certificate of Tax Sale by Charles L Bender Collector to the Harrington Company, dated December 22, 1919, and recorded in Book 464 of mortgages on page 142. Certifies to sale of lots

40

Exhibit P. 3.

Telephone Whitehall 6607 Cable Address: Lestbur

LESTER C. BURDETT

Counselor at Law
Woolworth Building
New York

10

September 17, 1925.

Harrington Company,
550 Montgomery Street,
Jersey City, N. J.
Gentlemen:

I have a client who is interested in the purchase of Lots 27 to 30 in Block 2, and Lots 56 to 73 Block 4, on the McMichael Map of Fort Lee, N. J. I understand that your company has paid some taxes on these lots. Will you please send me a statement showing what tax liens you hold on Lots 27 to 30 and on Lots 56 to 73.

20

Yours very truly,

LESTER C. BURDETT.

8871-T25
8873—T26
No cards
Book Marked "TP"

30

40

Exhibit P. 4.

September 22nd, 1925

Lester C. Burdett, Esq.,
Counselor at Law,
Woolworth Bldg.,
New York.

10 Dear Sir:

Your favor of the 17th instant in Re: Lots 27-30
in Block 2, and other properties in Fort Lee, re-
ceived.

Would advise that we hold title to these prop-
erties.

Should your client be interested in purchasing
these properties, and will make us a reasonable
offer, we will take the matter into consideration
and will advise you thereon.

20

Yours very truly,

HARRINGTON COMPANY,
By R. E. Whitman,
Secretary.

CHAS. E. GORTON
253 Bway,
N. Y. C.

30

40

Exhibit P-5.

This Indenture, Made the Twenty-fifth day of November, in the year of our Lord One Thousand Nine Hundred and Nineteen, Between

ANDERSON AVENUE REALTY COMPANY,
a corporation of the State of New Jersey, party
of the first part; 10
And

CLARENCE V. KELLOGG, of the CITY OF
CHICAGO, STATE OF ILLINOIS,
party of the second part;

Whereas, the said ANDERSON AVENUE
REALTY COMPANY, is justly indebted to the
said party of the second part, in the sum of Five
Thousand (\$5,000.00) Dollars,

lawful money of the United States of America,
secured to be paid by its certain bond or obliga- 20
tion, bearing even date with these present, in the
penal sum of

Ten Thousand (\$10,000.00) Dollars,
lawful money as aforesaid conditioned for the
payment of the said first mentioned sum of

Five Thousand (\$5,000.00) Dollars,

lawful money as aforesaid, to the said party of
the second part, his executors, administrators or
assigns on the Twenty-fifth day of November 30
which will be in the year One Thousand Nine
Hundred and Twenty and interest thereon, to be
computed from the date hereof at and after the
rate of six per cent, per annum and to be paid at
maturity;

And it is thereby expressly agreed that should
any default be made in the payment of the said
interest or any part thereof, on any day whereon
the same is made payable, as above expressed, or
should any tax, assessment, water rent or other 40

Exhibit P-5.

10 municipal or governmental rate, charge, imposition or lien be hereafter imposed or acquired upon the premises described in this mortgage, and become due and payable, and should the said interest or any part thereof remain unpaid and in arrear for the space of thirty days, or said tax, assessment, water rent or other municipal or governmental rate, charge, imposition or lien, or any or either of them remain unpaid and in arrear for the space of sixty days, then and from thenceforth, that is to say, after the lapse or expiration of either of the said periods as the case may be, the aforesaid principal sum of

20 Five Thousand (\$5,000.00) Dollars,

with all arrearage of interest thereon, shall, at the option of the said party of the second part, his executors, administrators or assigns, become and be due and payable immediately thereafter although the period above limited for the payment thereof may not then have expired, anything therein before contained to the contrary thereof in anywise notwithstanding; and the said Mortgage may at his option, pay such tax, assessment or water rent in arrear, and the amount so paid shall be added to and become part of the principal sum secured by the said bond and this

30 mortgage, and shall be payable on demand with interest at six per centum per annum, as by the said bond or obligation, and the condition thereof, reference being thereunto had, may more fully appear.

40 Now this Indenture Witnesseth, that the said party of the first part, for the better securing the payment of the said sum of money mentioned in the condition of the said bond or obligation, with interest thereon, according to the true intent and meaning thereof, and also for and in considera-

Exhibit P-5.

tion of the sum of one dollar, to it in hand paid by the said party of the second part at or before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged has granted, bargained, sold, aliened released, conveyed and confirmed, and by these presents does grant, bargain, sell, alien, release, convey and confirm unto the said party of the second part, and to his heirs and assigns forever, 10

All those lots, tracts or parcels of land and premises, hereinafter particularly described, situate, lying and being in the BOROUGH of FORT LEE in the County of BERGEN and State of NEW JERSEY, shown and designated on a certain map filed in the Bergen County Clerk's Office, September 29th, 1874, as Map No. 239, and entitled "Map No. 1, Property of Catherine M. Mc Michael at Fort Lee Centre, J. H. Serviss", Surveyor, as and by the lots Numbers Twenty-seven (27), Twenty-eight (28), Twenty-nine (29) and Thirty (30) in Block Number Two (2); Lots Numbers Forty-six (46), Forty-seven (47) and Forty-eight (48) in Block Number Three (3); and Lots Numbers Fifty-six (56), Fifty-seven (57), Fifty-eight (58), Fifty-nine (59), Sixty (60), Sixty-one (61), Sixty-two (62), Sixty-three (63), Sixty-four (64), Sixty-five (65), Sixty-six (66), Sixty-seven (67), Sixty-eight (68), Sixty-nine (69), Seventy (70), Seventy-one (71), Seventy-two (72) and Seventy-three (73) in Block Number Four (4). 20 30

Together with all and singular the tenements, hereditaments and appurtenances thereunto belonging, or in anywise appertaining, and the reversion and reversions, and remainder and remainders, rents, issues and profits thereof. And Also, all the estate, right, title, interest, prop- 40

Exhibit P-5.

erty, possession, claim and demand whatsoever, as well in law as in equity, of the said party of the first part, of, in, and to the same, and every part and parcel thereof, with the appurtenances: Yo
10 have and to hold the above granted and described premises, with the appurtenances, unto the said party of the second part, his heirs, executors, administrators or assigns, to his and their own proper use, benefit and behoof forever.

Provided always, and these presents are upon this express condition, that if the said party of the first part, or its successors shall well and truly pay unto the said party of the second part, his executors, administrators or assigns, the said sum of money mentioned in the condition of said bond or obligation, and the interest thereon, at the
20 time and times, and in the manner mentioned, in the said condition, according to the true intent and meaning thereof, that then these presents, and the estate hereby granted, shall cease, determine and be void.

And the said party of the first part for itself, and its successors does covenant and agree to pay unto the said party of the second part, his executors, administrators or assigns, the said sum of money and interest, as mentioned above and
30 expressed in the conditions of the said bond.

And it is also agreed, by and between the parties to these presents, that the said party of the first part, shall and will keep the buildings erected, and to be erected, upon the lands above conveyed, insured against loss or damage by fire, by insurers, and in an amount approved by the said party of the second part, his executors, administrators or assigns, and assign the policy and certificates thereof to the said party of the second
40

Exhibit P-5.

part; and in default thereof, it shall be lawful for the said party of the second part to effect such insurance, and the premium and premiums paid for effecting the same shall be a lien on the said mortgaged premises, added to the amount of the said bond or obligation, and secured by these presents, payable on demand, with interest at the rate of six per cent, per annum, from the time of payment of such premium or premiums.

10

And the said party of the first part, the owner of the lands above described, for itself, its successors and assigns, does further covenant and agree to and with the said party of the second part, his executors, administrators and assigns, that it will pay in full, all taxes levied, or to be levied upon the lands embraced in this mortgage, and will not claim any credit on, or make any deduction from the interest or principal hereby secured by reason of the payment of any taxes so levied, or to be levied, during the continuance of the lien of this mortgage, and upon the breach of this covenant or any part thereof, this mortgage may become and be due and payable immediately, at the option of the said party of the second part hereto. And the said mortgagor does covenant with the mortgagee that it is seized of an indefeasible estate in fee simple in said premises, and will warrant and forever defend the title thereof unto the mortgagee, his heirs, executors, administrators and assigns, against all lawful claims whatsoever.

20

30

In Witness Whereof, the said party of the first part hath caused its corporate Seal to be hereto affixed and attested by its Secretary, and these

40

Exhibit P-5.

presents to be signed by its President, the day
and year first above written.

Signed, Sealed and Delivered
In the Presence of

ANDERSON AVENUE REALTY COMPANY

10

Edward H. Ryan
President.

ATTEST:

Bertha M. Ryan,
Secretary

The within mortgage having been paid and
satisfied in full both as to principal and interest,
I hereby consent that the same may be cancelled
as of record.

20

Dated, May 20, 1925.

CLARENCE V. KELLOGG

Received in the Clerk's Office of the County
of Bergen N J on the 3rd day of June A. D., 1920,
at 2.59 o'clock in the afternoon and recorded in
Book 476 of MORTGAGES for said County, on
page 181 etc.

30

GEO. VAN BUSKIRK
County Clerk.

40

63 OCT.T.1926

64 OCT.T.1926

New Jersey Court of Errors and Appeals.

FORT LEE & MANHATTAN REALTY
CORPORATION,
Prosecutor-Appellant,

vs.

HARRINGTON COMPANY,
Defendant-Appellee.

On Certiorari.
On Appeal.

BRIEF FOR APPELLANT.

Statement.

These are two appeals from judgments of the Supreme Court dismissing two Writs of Certiorari allowed to review certain proceedings had by the defendant-appellee for the purpose of perfecting a title in fee simple to lands purchased at a sale for taxes held pursuant to the "Tax Sale Revision Act of 1918."

The proceedings in each case were identical except as to the description of the property affected.

The validity of the original tax sale by the Collector and the certificates of tax sale made by the Collector to the defendant-appellee is not in question. The appellant insists however that the subsequent proceedings attempted for the purpose of making an absolute title and cutting off the right of redemption are illegal and void and should be set aside. Of course in such case the appellant would be entitled to redeem from the original sales.

Reasons for Reversal.

The appellant asserts that the attempted proceedings in question were invalid as against the appellant for the following reasons:

1: The requirement of the statute with respect to publication of the notice to redeem addressed to Clarence V. Kellogg a non-resident was illegal and contrary to the provisions of the statute. Case, pages 33 and 34.

2: Because the appellant purchased the premises in question for a valuable consideration without notice of the proceedings had to bar redemption or claim of title of the appellee. Case, pages 47 and 49.

3: Because the conveyance to the appellant was recorded before the record of the proceedings had to bar redemption by virtue of which the appellee claims title. Case, pages 48 and 50.

4: Because of the provisions of Sec. 54 of the "Conveyance Act." C. S. 1553.

The Supreme Court dismissed the writs.

In their opinion they held that the notice to redeem "was sent by registered mail to Kellogg at No. 910 Glengyle Avenue, Chicago, Illinois, on February 24th, 1921. There was no attempt to show in the evidence that he did not receive it." In this, we believe they were in error for the reasons hereinafter discussed.

The Supreme Court further held that Kellogg's mortgage upon the premises was paid in full on May 20, 1925, and the mortgage cancelled of record and that by reason thereof he had no standing to attack the service or non-service of the notice to redeem (Case, p. X). As will be pointed out hereafter, if Kellogg took nothing by virtue of the deed from the Palisades Estates, Inc., given on April

17th, 1925, then in equity he was entitled to have his mortgage reinstated and the record of the cancellation set aside. Consequently, he would have standing as a mortgagee to redeem; and under the terms of the statute to have an assignment of the Certificates of Tax Sale.

The Supreme Court further held that if Kellogg could be considered to be an "owner" he is barred by the notice served on the Alcalde Realty Corporation and has no interest and cannot assert any right to redeem. The Supreme Court then held that as the Prosecutor derives his right from Kellogg who had no right to redeem as a mortgagee because his mortgage was paid and cancelled, and no right to redeem as an "owner," that the Prosecutor did not have any standing or right to redeem (Case, p. X).

The Supreme Court further held that the omission of the County Clerk to make a notation on the margin of the original record of the Certificate of Tax Sale in the Book of Mortgages, which should show a reference to the place where the Certificate of Sale had been recorded as a deed, could not be charged to the defendant and that the Prosecutor could not take advantage thereof (Case, p. XI). The Prosecutor contends that in this the Supreme Court was in error because of the wording of the statute in question.

Facts.

In the year 1918 the lands in question were assessed in the name of Bergen County Realty Company. The Bergen County Realty Company sold the property by deed recorded July 27th, 1918 to the Anderson Avenue Realty Company. The taxes for 1918 were unpaid and on December 22nd, 1919, the Collector of Taxes of the Borough of Fort Lee held a tax sale under the provisions of the "Tax

Sale Revision Act of 1918," P. L. 1918, page 883, &c., and struck off and sold the lands to the appellee, and on the same day executed a Certificate of Sale for each of the plots. The certificate for the first tract which is the subject of Action No. 1, will be found on page 4 of the case, and the certificate for the second tract which is the subject of Action No. 2, will be found on page 20 of the case.

By deed recorded December 17th, 1920, the Anderson Avenue Realty Company conveyed the property to the Alcalde Realty Corporation.

According to the record of proceedings to bar redemption, Case, pages 15 and 30, it appears that on February 24th, 1921 a notice to redeem was served personally on the President of the Alcalde Realty Corporation. The proofs further show that Clarence V. Kellogg who held a mortgage upon the property was a non-resident, and that on February 24th, 1921, a notice of redemption was mailed by registered mail addressed to him as follows;

"Clarence V. Kellogg, 910 Glengyle Ave.,
Chicago, Ill."

It also appears that on February 26th, 1921, a copy of the notice to redeem in each case was posted on the premises affected. The proofs also show that a copy of the notice addressed to Kellogg was published on February 26th, 1921 in "The Bergen Daily News, a newspaper published and printed in Hackensack in the County of Bergen."

In February of 1921 the law required that ordinances of the Borough of Fort Lee be published in a newspaper printed and circulating in the Borough if there was one. The proofs show that at that time the Fort Lee Sentinel was a newspaper printed and circulating in the Borough of Fort Lee, and that there was no other newspaper printed and circulating therein. See Chapter 188, P. L. 1919, page 418.

By deed dated November 29th, 1921, and recorded December 24th, 1921, the Alcalde Realty Corporation conveyed the property to the Anderson Avenue Realty Corporation and by deed dated December 23rd, 1921, and recorded December 24th, 1921, the Anderson Avenue Realty Company conveyed the properties to Palisades Estates, Inc.

By deed dated April 17, 1925, and recorded April 24th, 1925, the Palisades Estates, Inc., conveyed the properties to Clarence V. Kellogg in satisfaction or part satisfaction of the mortgage held by Kellogg.

By deed dated May 18, 1925, and recorded May 18th, 1925, Kellogg conveyed the property to the appellant.

The certificate of tax sale together with the record of proceedings to bar redemption were recorded on October 27th, 1923. At that time the Palisades Estates, Inc., held the record title to the property pursuant to the deed made to it and recorded December 24th, 1921.

The appellee with-held from the County Clerk's records the certificate of tax sale and record of proceedings to bar redemption for almost two years. Assuming that the notices and proceedings were sufficient, the right of redemption would have been barred on December 22nd, 1921, which was prior to the recording of the deed to the Anderson Avenue Realty Company on December 24th, 1921.

The original certificates of tax sale were duly recorded in the County Clerk's office in the Book of Mortgages as required by Sec. 34 of the "Tax Sale Revision Act," P. L. 1918, page 892. However, no notation was made in the margin of the record of the certificates in the Book of Mortgages when the certificates and proceedings were recorded in the County Clerk's office in the Book of Deeds, as required by Sec. 48 of the "Tax Sale Revision Act,"

P. L. 1918, page 896. By reason of the fact that the appellant with-held its certificates and record of proceedings to bar redemption from the records of the County Clerk's office for almost two years and no note having been made in the margin of the record of the original certificates in the Book of Mortgages (Case, pages 57-58), they were not discovered when the appellant caused the chain of title to be examined in May 1925 by the North Jersey Title Insurance Company.

The appellant had no knowledge of the proceedings to bar redemption or claim of title of the appellee until the month of September 1925 when it applied to the appellee for the purpose of redeeming the property from the original tax sale. Case, page 66. Also Exhibits P-3 and P-4. Case, pages 58 and 69. Within a few days thereafter the Writs of Certiorari were applied for and allowed.

THE LAW.

The proceedings in question are governed by the Tax Sale Revision Act, P. L. 1918, 883, and the provisions of the Conveyance Act.

After a tax sale the Collector must deliver a certificate thereof to the purchaser. (Sections 28 and 29). The purchaser may record the certificate in the office of the County Clerk as a mortgage and thereupon the County Clerk shall index such certificate in his indices of mortgages in the name of the delinquent owner as set forth in the certificate (Section 34, page 892).

The owner, mortgagee, occupant or other person having an interest in the lands sold may redeem at any time within two years from the date of sale, or at any time thereafter until the right to redeem has been cut off in the manner provided by the Act (Section 37, page 893).

The word 'redeem' as used in this Section means "re-purchase." (*Mitsch vs. Owens*, 82 N. J. E. 404.)

This right may be exercised either by an owner of the lands sold or by one who holds a lien or right of possession, and therefore owns some estate in the lands. (*Frazier vs. Johnson*, 65 N. J. L. 673.)

Upon redemption the person, other than the owner, redeeming may at his option either have the lien cancelled or shall be entitled to an assignment of the Certificate of Sale (Sec. 39, p. 894).

There are two methods for barring redemption; one, by strict foreclosure under the provisions of Section 49, page 897; the other, by the service of notices in accordance with the provisions of Section 46, page 895.

Section 46 provides that the notice to redeem must be served personally on the persons interested who reside in the municipality; and that on others, it may be served (a) personally or (b) by mailing to their post office address if the same can be ascertained, or (c) by posting on the premises sold if their post office address cannot be ascertained; but if the notice is not served personally, a copy shall be published once in a newspaper in which ordinances of the municipality may be published.

The law with respect to the publication of ordinances in Boroughs in force in February, 1921, required ordinances to be published in a newspaper *printed* and *circulating* in the Borough if there was one (Ch. 188 P. L. 1918, p. 418).

After the time to redeem has expired without redemption (provided notices have been given) the purchaser may annex the notice to redeem and the affidavits of service to the Certificate of Sale, together with an affidavit that the sale has not been redeemed, and an official certificate of non-pay-

ment by the Collector, and record and file the same in the office of the County Clerk where the same shall be recorded as a deed or conveyance (Sec. 48 P. L. 1918, p. 896). The notice and affidavits and record thereof, when recorded as aforesaid, shall be presumptive evidence of the facts therein stated (Sec. 48). Upon the filing of such certificate, notice and affidavits with the County Clerk, the County Clerk is required to index the same in the alphabetical index of grantors in the name of the delinquent owner as shown by the Certificate of Tax Sale, and also in the name of every person who has been served with notice as an interested party as shown by the affidavit of service (Sec. 48). The County Clerk *shall also* note in the margin of the original record of such certificate in the Book of Mortgages, a reference to the place where said certificate and affidavits have been re-recorded as a deed and thereupon such record shall be notice to all the world (Sec. 48).

Section 21 of the 'Conveyance Act' as amended, P. L. 1917, p. 296, describes the instruments which may be recorded. This Section says:

"All deeds or instruments of the nature or description following, of or affecting the title to any lands, tenements or hereditaments, lying and being in this State, or any interest therein, may be acknowledged or proved and then recorded in the office of the clerk of the Court of Common Pleas of the county where the said lands, tenements or hereditaments are situated, that is to say: * * * * and all other instruments that may have been heretofore or may be hereafter directed by any statute to be acknowledged or proved and recorded."

Section 54 of the "Conveyance Act" C. S. 1553 provides that every deed or instrument of the nature or description set forth in the 21st Section of

the Act, shall, until duly recorded or lodged for record in the County Clerk's office, be void and of no effect against any subsequent bona fide purchaser for a valuable consideration not having notice thereof whose deed shall have been first duly recorded.

POINT I.

The proceedings to bar redemption are defective upon their face.

The proceedings in both cases are exactly the same excepting as to the description of the property affected.

The tax sale was held under the provisions of the "Tax Sale Revision," P. L. 1918, page 883.

The premises in question are in the Borough of Fort Lee, Bergen County. The attempted proceedings to redeem were had in the month of February, 1921 (see affidavits of Atanasio, Case, p. 11, etc., as to one parcel, and Case, p. 27, etc., as to the other parcel).

The affidavits of Mr. Atanasio as to attempted service of the notice to redeem, which are an essential part of the record of the proceedings in each case, show due service upon the Alcalde Realty Corporation but on their face show defective service upon Kellogg in the following respects:

(a) It does not appear by the affidavit (or elsewhere in the record of proceedings) that Kellogg was not a resident of the municipality and could not be served personally.

(b) It appears that a notice was mailed to Kellogg to an address in Chicago; but it does not appear that the affiant had any reason to believe that it was Kellogg's address. The statute says "by mailing to their post-office address if the same can

be ascertained" or "by posting on the premises sold if their post office address cannot be ascertained."

The affidavit does not show that any inquiry was made, either diligent or otherwise, as to the address of Kellogg and it does not appear anywhere in the case that the address to which the notice was mailed, was Kellogg's address.

The affidavit says that the notice was mailed in a registered envelope but is silent as to whether or not the registry receipt was returned, or as to whether or not the letter was ever delivered to anyone. For all that appears, the notice which was mailed may have, in due course, been returned to the sender without delivery.

The presumption of receipt does not arise because of the fact that there is no evidence that the address in question was, in fact, Kellogg's address, or that the affiant had any reason to believe that it was his address.

(c) The posting on the premises was not competent service unless the post-office address of Kellogg could not be ascertained, and there is no evidence of such a fact. The fact that the proofs show that notice was mailed to Kellogg at some address, and also that a copy notice was posted on the premises, on its face raises a conflict and negatives any presumption which might arise that the address to which the notice was mailed, was, in fact, the post-office address of Kellogg. If Kellogg's address was known then the posting was unnecessary; if, on the other hand, the defendant was unable to ascertain Kellogg's address, mailing to a speculative or incorrect address was unnecessary.

(d) In the case of a person not a resident of a municipality, where the service is not made personally, but by mail or by posting, the statute re-

quires that in addition thereto, a copy of the notice should be published once in a newspaper in which ordinances of the municipality may be published. The affidavits in this case show that the notice was published in the "Bergen Daily News" on February 26th, 1921, and the proofs of publication, which are an essential part of the proceedings as to the first tract, Case, p. 15, and the second tract, Case, p. 30), show that the "Bergen Daily News" was a daily newspaper *printed* in Hackensack in the County of Bergen.

Publication of ordinances in the Borough of Fort Lee in February, 1921, was controlled by Chapter 188, P. L. 1919, page 418, which provides as follows:

"All ordinances or other public notices which any Town, Township, Borough, Village or other municipality, except cities, of this State, may by law be required to advertise in a newspaper, shall be published in at least one newspaper printed and circulating in the said municipality, and if there be no newspaper printed and circulating in the said municipality, then in at least one newspaper printed and circulating in the County in which the said municipality is located."

The proofs show that in February, 1921, there was a newspaper printed and circulated in the Borough of Fort Lee, to wit, the "Fort Lee Sentinel" Case, p. 52) and it also appears that the "Bergen Daily News" was not printed in the Borough of Fort Lee Case, p. 54) and there is no evidence that it even circulated in the Borough of Fort Lee.

Proceedings to bar redemption by notice as set forth in Section 46 of the Tax Sale Revision" above quoted, are strictly statutory, and in the present cases the records affirmatively show that the provisions of the statute were not followed. They do

not even raise a presumption that Kellogg received the notice to redeem.

All of such proceedings, leading up to and subsequent to a tax sale, as are designated for or are conducive to the protection of the owner or person interested, must be regularly taken in accordance with the statute.

Hopper vs. Malleson, 1 C. E. Gr. 382.

Woodridge vs. Allen, 14 Vroom, 262.

Jones vs. Landis Township, 21 Vroom, 374.

Baxter vs. J. C., 7 Vroom 188.

Landis vs. Vineland, 61 N. J. L., 424.

The serving of notice to redeem is part of the tax sale proceedings which are completed only after notice is served, proof of service made and filed and time for redemption has expired.

Moore Securities Co. vs. Hammel, 3 N. J. Adv. R., 128; 127 At. Rep., 207.

There can be no doubt that the proceedings were absolutely irregular as to Kellogg and that the irregularity was in matters conducive to his interest.

POINT II.

The record of the certificate of tax sale and affidavits of service in the Book of Deeds is void as against the prosecutors and his grantors.

The Act provides that upon filing the certificate and proofs of service of notice to redeem, the same shall be recorded as a deed or conveyance Sec. 48 of Act). The certificates and proofs in the present cases were filed for record on Oct. 27th, 1923. The certificates and proofs in the present cases were

filed for record on October 27th, 1923. The notices to redeem were purported to have been served in February, 1921, and if properly served, the right of redemption would have been barred on December 22nd, 1921.

The question arises, with respect to bona fide purchasers, as to when, under this procedure, the absolute estate vests in the purchaser. Section 24 of the Act, page 888, provides that the original sale shall be made in fee, subject to redemption. From this it is apparent a conditional fee passes upon the making and recording of the Certificate of Tax Sale (see Section 35). We contend that until the certificate and proofs of service have been re-recorded as a deed pursuant to the provisions of Section 48, a purchaser or mortgagee takes the property subject to the right of redemption and that such right of redemption cannot be barred as against such purchaser or mortgagee by the subsequent re-filing and recording of the certificate and proofs of service as a deed.

Particular attention is called to the provisions of Section 48 of the Act which provides:

“Said County Clerk or register shall also note in the margin of the original record of said certificate in the Books of Mortgages a reference to the place where said certificate and affidavits have been re-recorded as a deed. Such record shall be notice to all the world.”

The certificate and affidavits of service of notice to redeem is an instrument of the nature or description of a deed and of the kind provided for in Section 21 of the Conveyance Act. If this is so, then by virtue of the provisions of Section 54 of the Conveyance Act such documents until duly recorded or lodged for record are void and of no effect against all subsequent bona fide purchasers

for a valuable consideration not having notice thereof, whose deed shall have been first duly recorded. Therefore, this record is void and of no effect against the Anderson Avenue Realty Company whose deed was recorded on December 24th, 1921, or as against the Palisades Estates Inc. whose deed was recorded December 24th, 1921, and if it was void as against these deeds it was void as against the Prosecutor which is a successor in title to the Palisades Estate Inc.

A non-recorded deed is void as against parties claiming under another conveyance from the same grantor who took without notice of the unrecorded instrument.

Post Mtge. & Land Co. vs. Davis, 89 N. J. L., 516-519.

Coleman vs. Barkelow, 27 N. J. L., 357.

The presumption is that a purchaser purchases in good faith without notice of the unrecorded instrument; and the burden of proving otherwise, is on the person claiming under the unrecorded instrument.

Black vs. Mullins & Co., 86 N. J. L., 463 at 465.

Hodges Exrs. vs. Amerman, 40 N. J. Eq., 99.

If the proceedings to bar redemption are void as against the Anderson Avenue Realty Company and Palisades Estates, Inc., because of the prior record of those deeds, then they are also void as to the Prosecutor who is their successor in title.

Sharp vs. Shea, 32 N. J. Eq., 65.

Black vs. Mullins & Co., 86 N. J. L., 463 at 465.

The record is defective upon its face and was void as to bona fide purchasers in good faith whose deeds were recorded prior to the recording of such certificate and proofs of service as deeds, even assuming that the proofs were not defective.

The Prosecutor and its predecessor in title used due diligence. They caused the title to the property to be examined by a Title Company of this State, which, in turn, employed an experienced searcher to make or supervise the making of the examination (Case, p. 55). An examination of the indices in the County Clerk's office at the time the purchaser took title, failed to disclose the record of proceedings recorded as a deed. This was due to two things:

(1) The neglect of the defendant to record its proceedings promptly.

It is true, they could not under the statute have recorded the proceedings until after December 22nd, 1921, but they withheld them from the records until October 27th, 1923. In the meantime, there had been two conveyances so that it never occurred to the searcher to examine the indices against the Alcalde Realty Corporation for a year and eleven months after it had apparently made conveyance by a deed good and sufficient upon its face.

(2) By reason of the failure of the Clerk to comply with the statute and note on the margin of the original record of the Certificates of Tax Sale in the Book of Mortgages where they were recorded, reference to the place where the said certificates and affidavits had been re-recorded as a deed.

The Supreme Court was of the opinion that this omission of duty by the Clerk could not be charged to the defendant. Certainly the omission could not be charged to the Prosecutor. It is true that in many cases it has been held that the failure of the

Clerk to enter a Rule in the minutes of the Court will not penalize the litigant in whose behalf the Rule should have been entered. This differs materially from the express statutory provision now in question. The clear intent of the statute is that this should be done as a protection to subsequent purchasers or mortgagees and it is significant that the statute makes this provision in the same Section with and immediately after the requirement as to the recording, the method of indexing and *just before* the provision that the record when made shall be notice. (See Sec. 48.)

The Supreme Court in its opinion emphasizes the fact that Section 59 of the "Tax Sale Revision" page 899 provides that the Act shall be taken to be a remedial Act and shall be liberally construed to effectuate the remedial objects thereof. The Act is not an act, the main object of which is to enable a purchaser at a tax sale to make good title to valuable property by merely paying the taxes and performing services in the way of giving notice to redeem, the value of which service the Legislature fixed at \$10.00 (see Sec. 44). The object of the Act is the protection of the municipalities with respect to the collection of taxes and the preservation of the lien therefor upon the lands assessed. The sale of the lands by the Collector and the making of title in pursuance of such sale, by purchasers, is merely incidental. The real object of the Act is as clearly stated in the title which is as follows:

"An Act Concerning Unpaid Taxes, Assessments and other Municipal Charges on Real property and Providing for the Collection thereof by the creation and enforcement of Liens thereon."

It is submitted that the Supreme Court was in error in its conclusion that it was the intention of the legislature that the Act should be construed

liberally as against the property owner whose property was being taken summarily because of his failure to pay a tax or assessment thereon.

The Act is to construe liberally in favor of the municipality with respect to the creation and enforcement of liens for unpaid taxes and that was clearly the legislative intent.

POINT III.

If Kellogg acquired nothing by his deed then he has an equitable interest as mortgagee in the premises and was entitled to redeem, which right is now vested in the prosecutor.

Assuming that Kellogg took no title as owner by virtue of the deed to him for the reasons stated by the Supreme Court, then in that case there was no consideration for the cancellation of his mortgage of record and as such mortgagee he was entitled to "re-purchase" the property, and under Section 39 of the "Tax Sale Revision" was entitled, at his election, to an assignment of the Certificates of Tax Sale.

Under this state of facts the Prosecutor was in equity, if not at law, the successor to Kellogg's interest, it having advanced to Kellogg the moneys represented by the mortgage in pursuance of the agreement between Ryan and Kellogg (Ex. P-1, Case, P. 69).

The word "redeem" as used in Section 37 means "re-purchase" (*Mitsch vs. Owens*, 82 N. J. Eq. 404) and any person having an interest in the lands was entitled to "re-purchase" the land until such right was cut off by proceedings to bar redemption, had strictly in accordance with the provisions of the Act.

The case shows that Kellogg in November, 1919, took a mortgage of the premises in question for

\$5,000 made by the Anderson Avenue Realty Company to him, dated November 25th, 1919 (Case, p. 57, line 1, etc.); that on September 10th, 1920, the Anderson Avenue Realty Company conveyed the property, subject to the mortgage, to the Alcalde Realty Corporation by deed dated September 10th, 1920 and recorded December 17th, 1920. The Alcalde Realty Corporation under date of November 20th, 1921, executed a deed to the Anderson Avenue Realty Company purporting to convey the premises in question, subject to the mortgage (Case, pp. 55, 56). Assuming that at that time (November 20th, 1921) the Alcalde Realty Corporation had no interest in the property by virtue of the tax sale and the notice to redeem which had been served upon that corporation in February of 1921; and that the deed was in fact a nullity, nevertheless Kellogg's mortgage was still a valid mortgage and lien on the premises.

Under date of December 23rd, 1921, the Anderson Avenue Realty Company executed a deed to the Palisades Estates, Inc., purporting to convey the premises, but assuming that this deed was an absolute nullity and conveyed nothing, the complainant's mortgage was still a valid lien upon the premises.

About April, 1925, Mr. Kellogg became anxious to determine how he was going to protect himself with respect to the mortgage upon this property in view of the fact that no interest had been paid (Case, p. 61) and acting through Mr. Gorton, an arrangement was made that the property in question should be conveyed by deed by the Palisades Estates, Inc., to Mr. Kellogg, subject to an agreement (Exhibit P-1, Case, p. 69) which indicates that the conveyance was solely as a mortgage and for the sole purpose of putting Mr. Kellogg in possession of the premises as a mortgagee in possession. The substance of this agreement was that

Mr. Kellogg agreed to re-convey the property (the property in question and other property) to Mr. Ryan or whoever he might direct, on condition that Ryan should pay to him \$14,000 and interest and \$8,000 and interest from the date of the mortgage in question and another mortgage covering other property which was included in the conveyance, which mortgages were to be satisfied when paid.

Shortly after the arrangement between Kellogg and Ryan and the execution of the agreement (Exhibit P-1, Case, p. 69) Mr. Burdett, the treasurer of the Prosecutor, received knowledge from Mr. Ryan with respect to the arrangement and on or about May 6th, 1925, arranged with Mr. Ryan to take over the option or agreement which Mr. Ryan had with Mr. Kellogg (Exhibit P-1, Case, p. 60, line 1). Mr. Burdett was the officer of the Prosecutor who had personal charge of the transaction (Case, p. 65), that took over the agreement between Kellogg and Ryan and paid to Kellogg the amount of the two mortgages aggregating \$8,000 plus the \$14,000 loan with interest to the date of closing (Case, p. 65, line 25). At the time the Prosecutor had no knowledge that the defendant claimed any title to the premises (Case, p. 66, line 1). He knew he was taking the property subject to taxes and assessments (Case, p. 67, line 27).

Under this state of facts the Prosecutor became subrogated to Kellogg's lien against the premises in question for the mortgage and consequently under the statute, has an interest in the lands and is entitled to redeem or "re-purchase" the same and at his option, to demand and receive an assignment of the Certificates of Tax Sale in accordance with the provisions of Section 39 P. L. 1918, p. 894.

POINT IV.

The judgment of the Supreme Court should be reversed and the proceedings to bar redemption as against the prosecutor should be set aside.

Respectfully submitted,

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Attorneys for Prosecutor-appellant.

WENDELL J. WRIGHT,
Of Counsel.

53 OCT.T.1926

64 OCT.T.1926

New Jersey Court of Errors and Appeals

FORT LEE AND MANHATTAN REALTY
CORPORATION,
Prosecutor-Appellant,

v.

HARRINGTON COMPANY,
Defendant-Appellee.

On Certiorari.
On Appeal.

BRIEF FOR APPELLEE.

Statement.

The two appeals from the judgments of the Supreme Court, it is understood between counsel, are to be argued as one. The proceedings in each case were identical except that the proceedings affect different parcels of property. The validity of the original tax sales and the certificates of tax sale made by the Collector thereupon to the appellee, is not questioned and appellee insists that the subsequent proceedings taken, filed and recorded, did make an absolute title in the appellee and cut off the right of redemption of all persons interested in the lands.

Answer to Reasons for Reversal.

The appellee insists that not one of the reasons alleged for reversal are good in law, and ought not to avail the appellant in reversing the opinion and judgment of the Supreme Court in these two matters.

1. The reason alleged under this paragraph is vague, but counsel presumes what appellant intended is that the publication of the notice was not in accord with the appellant's interpretation of the statutes relating thereto.

The sufficient answer thereto is that whether the publication be according to the statutes applicable thereto or not, is immaterial. Clarence V. Kellogg was a non-resident and *personal* service of the notice was made upon him, as permitted by statute.

2. The facts demonstrate that the appellant, whether a purchaser for a valuable consideration or not, had or ought to have had notice of the proceedings had to bar redemption. The appellant by reason of records made, was put upon notice to make inquiry, which, if made, would have resulted in acquiring the notice which it alleges it lacks.

3. The record of the proceedings under which the appellee claims title to the lands, could be recorded, under the statute, at any time after the lapse of two years and before the lapse of twenty years from the giving of the certificate of tax sale and be good and effectual to vest the appellee with the fee simple title to the lands in question.

4. The provisions of Section 54 of the Conveyance Act are inapplicable to the matters in issue on this appeal.

Facts.

The appellant has stated the facts in its brief (pp. 3, 4 and 5), and if stripped of the argument interlarded, fairly present the situation for discussion. Appellee excepts, however, to the conclusion urged in the final paragraph, wherein appellant claims that it had no knowledge of the proceedings to bar redemption, or claim of title of the appellee.

POINT I.**The rights of the Alcalde Realty Corporation and their assigns, including Clarence V. Kellogg, were barred.**

The County Clerk's returns to the writs of certiorari show that two certificates for two parcels of land were duly made and acknowledged by the Collector and recorded in the County Clerk's office in Book 462 of Mortgages, at pages 142 and 221 (Case, pp. 6, 22 and 57).

Subsequently the appellee, on October 27, 1923, more than two years having elapsed since the making of the certificates, and after due notice to redeem had been given in strict compliance with the statute, recorded the two tax sale certificates, together with affidavits showing the method of service of the notices to redeem upon the owner and mortgagee of record and proofs of non-redemption, and all requisites under the act to entitle the appellee to claim the fee simple title to the lands under the tax sales and the statutes in such case made and provided.

The law applicable to the sale of lands for taxes, the recording of the certificate, notice to redeem and recording of the proceedings, had upon a tax sale certificate, is to be found in P. L. 1918, Sections 28 to 51, pages 889 to 897. The question mainly before the Court in this appeal, are the service of a notice to redeem and the recording of the proceedings.

It is established and not denied, that the Alcalde Realty Corporation was served with "notice to redeem." A true copy of said "notice to redeem" was delivered personally to Thomas J. Meehan, President of said Alcalde Realty Corporation (Case, pp. 12 and 28).

Clarence V. Kellogg, who at that time was a mortgagee, but whose mortgage has since been paid in full and cancelled (Case, pp. 57, and 75 to 80) was served personally, by mailing a true copy of said "notice to redeem" by registered mail to him, at No. 910 Glengyle Avenue, Chicago, Illinois (Case, pp. 12 and 28).

"* * * This notice (to redeem) shall be served personally on the persons interested who reside in the municipality, *and on others it may be served personally.*" * * * (P. L. 1918, p. 895, Sec. 46.)

The appellant falls into the error of believing that the statute just quoted permits of but one mode of service where the defendant is a non-resident of the State of New Jersey. He argues that the only mode the statute permits is the *mailing* and *publishing* of the notice. He overlooks the fact that PERSONAL SERVICE can be made upon a non-resident and that if personal service is made upon a non-resident, *publication is not necessary*. In this argument appellee is sustained by the Supreme Court (Case, p. xi).

While the statute provides that notice may be served personally, it does not provide who shall make the personal service or where personal service shall be made, or in what manner. Under these circumstances ANY PERSONAL SERVICE is, of course, sufficient. ACTUAL SERVICE IS WHAT IS REQUIRED.

Brost v. Whitehall-Tatum Company, 89 N. J. L., 531; 99 Atl., 315.

If the defendant reside out of the municipality and the notice be mailed and published as required by the statute, there is *constructive* service whether the notice was in fact received or not, but IF THE NOTICE WAS, IN FACT RECEIVED, THERE

WAS ACTUAL SERVICE and it is quite immaterial that it was made by a postman.

The notice in this case was sent by registered mail. Under the rules of the Post Office Department, registered mail is delivered to the addressee and it is sufficient if actual notice to the person to be affected is conveyed to him.

There is, therefore, sufficient evidence in this case upon which the Court can base a determination that in fact Clarence V. Kellogg *was served personally*. If the rules and regulations of the Post Office Department were carried out, he was served personally. It is presumed that they were carried out.

Kruger v. Brown, 79 N. J. L., 418; 75 Atl., 171;

Town of Barnet v. Town of Norton, 99 Atl., 238.

The question is one of fact, but in the instant case, there is no denial of the personal receipt of this notice. The fact that there is no denial, of course, strengthens the presumption.

Moore Securities Co. v. Hammell, 127 Atl., 207.

The presumption in the instant case is also strengthened by the provisions of the Tax Sale Revision, Section 48 which says:

“* * * and the said notice and *affidavits* and the record thereof shall be presumptive evidence of the *service* and facts therein stated” (P. L. 1918, p. 896).

The fact that Clarence V. Kellogg does not deny the receipt of the notice mailed to him by registered mail, and that he was not a witness, should be strongly construed against the argument of the

appellant's counsel that the requirements of the statute were not complied with.

Provident Institution v. Sisters of the Poor, 87 Eq., 424; 100 Atl., 894.

In view of the failure, therefore, of Mr. Kellogg to deny receipt of this notice, the presumption stands unchallenged, and it therefore appears, beyond contradiction that *in fact* Clarence V. Kellogg was personally served with notice to redeem.

McKenna v. Harrington Company (E. & A.), 96 Eq., 700; 126 Atl., 532.

NOTWITHSTANDING MR. KELLOGG WAS SERVED PERSONALLY AS A MORTGAGEE, HE IS NOT NOW A MORTGAGEE AND HAS NO STANDING TO REDEEM THE PROPERTY AS SUCH, AND THE APPELLANT IS NOT HIS ASSIGN UNDER THE MORTGAGE, BUT TOOK THE TITLE AS AN ASSIGNEE AND IN PRIVITY WITH THE ALCALDE REALTY CORPORATION.

Appellant argues that something should appear in the affidavits appended to and made a part of the proceedings to make title, showing what had been done to ascertain the address of Clarence V. Kellogg. It is a complete answer to say that the statute (Section 48) makes no requirement such as the appellant would read into it. The part of the statute applicable reads: "may annex the notice and *affidavits of service* to the certificate of sale" &c. This language does not impose the burden upon any affiant in the affidavits made, to show what efforts he made to ascertain the post office address to which the notice to redeem was mailed. The appellant cannot insert into the statute words that it does not contain, and then urge that insertion as a ground of objection to the proceedings, which are in strict conformity

with the statute as it reads. In connection with the question of Kellogg's residence, it may be well to note that according to the appellant's exhibits, it appears that for some years before and for some years after the service of the notice upon him, Kellogg was a resident of Chicago, Illinois (Exhibit P-5, Case, p. 75, Exhibit P-1, Case, p. 69).

When service of process is made according to the statutes of this State, the serving officer is not required to show with what diligence he ascertained the abode of the defendant where he returns he served him. The presumption is that the Sheriff's return is true. By reason of the statute (Section 48), a like presumption arises in the case of the affidavits appended to the proceedings in this matter.

Cases cited by appellant's counsel on page 12 of his brief relating to the strict enforcement of a statute relating to sales, counsel insists are not applicable to the statute or the proceedings thereunder, now before the Court.

The devolution of title is set out in the testimony of Robert C. Smith (Case, pp. 55-60). From this it appears that at the time the notice to redeem was served, the Alcalde Realty Corporation was the "owner" and Clarence V. Kellogg held a \$5,000 mortgage on the premises in question. It is not denied that the service upon the President of the Alcalde Realty Corporation was such personal service as is required by the statute. It logically follows that the Alcalde Realty Corporation as the "owner" was barred on the filing and recording of the proceedings. If the Alcalde Realty Corporation is barred of its title and interest in the lands in question, its conveyance subsequently made to the Anderson Avenue Realty Company, and by the latter to the Palisades Estates, Inc., convey

nothing. If it be assumed for the purpose of argument, that Kellogg was not barred as "mortgagee," it appears that on May 20th, 1925, he was paid both principal and interest and satisfied in full his mortgage upon the property (Case, p. 80) and cancelled his mortgage of record (Case, p. 57, line 18). While it is testified that Kellogg was given a deed by the Palisades Estates, Inc. as part consideration for canceling the mortgage (Case, p. 63), the fact remains that he acquired title from the Palisades Estates, Inc., a direct assign from the Alcalde Realty Corporation and took no more than what the Alcalde could pass on. Having satisfied his mortgage, he is no longer in a position to attack or discredit the service of a "notice to redeem" upon him, his interest in the property, as "mortgagee," having been paid in full. If he can be considered an "owner," he takes through the Alcalde and its assigns and is bound by the "notice to redeem" served upon the Alcalde.

So that whether Kellogg is viewed in the light of "mortgagee" or "owner," he is now barred and cannot assert any right to redeem.

It follows that if Kellogg's right to redeem is barred and if the appellant derives his rights from Kellogg, then the appellant has no right to redeem.

POINT II.

The rights of the appellee, Harrington Company, acquired by reason of recording its tax sale certificates, affidavits, etc., barred not only the "owner" and "mortgagee" at the time of the service of the "notice to redeem," but all subsequent purchasers and their successors in title whether "owner" or "mortgagee."

Section 48 of the "Tax Sale Revision," P. L. 1918, page 896, provides:

"After the time to redeem has expired without redemption, the purchaser * * * may annex the notice and affidavits of service * * * and record and file the same therein in the office of the county clerk or register, where the same shall be recorded as a deed or conveyance, and the said notice and affidavits and the record thereof shall be presumptive evidence of the service and facts therein stated. Said county clerk or register shall index the same in the alphabetical index of grantors in the name of the delinquent owner as shown by said certificate and in the name of every person who has been served with notice as an interested party as shown by said affidavit. Said county clerk or register shall also note in the margin of the original record of said certificate in the book of mortgages, a reference to the place where said certificate and affidavits have been re-recorded as a deed. Such record shall be notice to all the world, and at the expiration of two years from date of making such records, shall, in the absence of fraud be conclusive evidence of the service and facts therein stated * * *."

In connection with the statute just cited, it is well to read Section 46 (P. L. 1918, p. 895):

"If such notice is served within eighteen months after the sale, it shall state that their

right to redeem will be barred unless they do so within the term of two years after the sale. If the notice is not served within said eighteen months, it shall state that their right of redemption will be barred unless they do so within six months after the service of said notice."

When these two sections are read together, it is manifest that a tax sale purchaser may, after the lapse of two years (and not within any prescribed period short of twenty years, P. L. 1918, p. 895, Sec. 46), record the instruments recited in the statute and thereby acquire a good title if all other prerequisites of the statute have been complied with. It is worthy of notice that the statute does not prescribe *any specified time* within which such record may be made short of twenty years. The statute does not prescribe when a "notice to redeem" shall be served. It does prescribe the length of time that must expire between the service of the notice and the time of redemption, which, is not less than six months.

If the argument of appellant's counsel that "bona fide purchasers" taking title before the recording of the tax sale proceedings by a purchaser voids the purchaser's deed, is sound, what would be the value of the conveyance made by an owner of lands pending the expiration of the six months' period within which such owner might redeem? Would his grantee or assign have a title to the lands superior to that of the tax sale purchaser, who, after the lapse of the six months' period without redemption, recorded his tax sale proceedings? If so, the provisions of the Tax Sale Revision are nugatory and no tax sale purchaser could acquire title as contemplated by the act.

If it be argued that an owner, having received six months' "notice to redeem," may, with im-

punity convey the land to another, remain silent as to his reception of a "notice to redeem," and his grantee thereby acquire, provided he records his deed before the tax sale purchaser records his tax sale proceedings, an unimpeachable title, then the provisions of the tax act are nugatory.

It is apparent that a notice once served must be binding upon the "owner" or "mortgagee" served and upon his assigns whether such notice is actually disclosed to such assigns or not, for any other interpretation of the act would require of the tax sale purchaser continuous vigilance at the recording office to learn who were new owners and mortgagees &c., to serve them with a new six months' "notice to redeem" and in case of non-redemption and further conveyance, continue this proceeding *ad infinitum* and never be in a position to realize a title in fee simple as contemplated by the act. If this be true, before the lapse of two years, it is equally true after the lapse of two years.

Section 35 of the Tax Sale Revision, P. L. 1918, page 892, amended 1919, page 283, provides:

"* * * Unless the certificate is so recorded as a mortgage within three months after the date of sale, it shall be void as against any bona fide purchaser, lessee or mortgagee whose deed, lease or mortgage is recorded before the recording of the certificate."

The tax sale certificates in the instant case were respectively recorded in Book 464 of Mortgages, at pages 142 and 221 (Case, p. 57, lines 22 to 32).

The law casts the burden upon the tax sale purchaser to give notice to all who contemplate dealing with the lands sold, of his tax sale *rights*. By the terms of this section, all purchasers have constructive notice, not only of the tax sale certificate, but of the *rights* of the tax sale purchaser in-

cluding the right to bar the "owner," "mortgagee," or "other interested person" by "notice to redeem" at any time in the future but not prior to two years and not later than twenty years after the sale.

It follows that the Alcalde Realty Corporation having received "notice to redeem," Kellogg having received "notice to redeem," the tax sale certificates of the appellee, Harrington Company, having been recorded as required, and the assigns of the Alcalde having acquired their rights subsequent to the recording of the Harrington Company's certificates, had notice *not only* of the tax sale certificates, but of *all the rights* of the Harrington Company, including the right to bar not only the Alcalde and Kellogg, but their respective assigns by giving but once the six months' "notice to redeem," as required by the statute.

In Section 29 of the Tax Sale Revision (P. L. 1918, p. 890), the form of certificate to be given by a Tax Collector is set out. Its concluding paragraph reads:

"The right to redeem will expire in six months after the service of notice to redeem, except that the right to redeem shall in all cases extend for two years from the date of sale."

Both certificates in question contain these statutory words (Case, pp. 8 and 21).

The certificates being recorded are notice to all the world and especially to the assigns of the Alcalde Realty Corporation that the Harrington Company had vested rights in the premises in question which could be and might have been perfected and that the rights of others in the premises might have been lost under the laws governing tax sales.

These laws should have been known to the

appellant and its predecessors in title. Being charged with knowledge of these laws and having properly examined the respective certificates, it would have at once become patent to the appellant that each of these certificates at the time the first predecessor in title, Anderson Avenue Realty Company, took its deed and at all subsequent times when it and its assigns made deeds, the tax sale certificates in question had reached the stage when the Harrington Company could have barred redemption and that the tax sale purchaser, Harrington Company, had acquired a right to record its tax sale proceedings and thereby acquire an indefeasible estate in fee simple in the lands. The "owners" and "mortgagees" of the land, at the time when the right to redeem might have been barred and their assigns, were put upon *notice* and *inquiry*. Notice,—that the Harrington Company might have recorded its tax sale proceedings. Inquiry,—of the Harrington Company as to the true status of the said tax sale certificates and whether or not it had exercised its right to perfect its title to the lands.

Counsel insists that "bona fide purchasers" of the appellant's brief, are not "bona fide purchasers" but are "purchasers with notice." Their failure to make inquiry to learn the true status of the Harrington Company tax sale certificates defeats their claim of "bona fide" purchasers, and, although the tax sale proceedings were not recorded until after some of the deeds were recorded, they must be presumed to have had notice of the tax sale proceedings, and such record of said tax sale proceedings is not void as to them.

"These facts, undenied, disclosed a situation in which defendant (appellant) was put on inquiry, and in which any reasonable inquiry in the proper quarter would have de-

veloped the facts. Under those conditions, he was chargeable as though he knew." (Cases cited.)

Commercial Credit Corp. v. Coover, 3 A. R., 992; 129 Atl., 187 and 188;
Lacombe v. Headley, 91 N. J. E., 63; 108 Atl., 185.

"At all events they show enough to have put Miller upon inquiry, and slight inquiry would have shown the fact. 'Whatever puts a party upon inquiry,' says Chancellor Green in *Smallwood v. Lewin*, 15 N. J. E. 60, 'amounts in judgment of law to notice, provided the inquiry becomes a duty, as in the case of *purchasers and creditors* and could lead to the knowledge of the requisite fact by the exercise of ordinary diligence and understanding.'" * * *

"'As intending purchasers,' said Danforth, Judge, in *McPherson v. Rollins*, 107 N. Y., 316, 'they must be presumed to investigate the title and to examine *every deed or instrument* forming a part of it, especially if recorded. They must, therefore, be deemed to have known every fact so disclosed, *and every other fact which an inquiry suggested by those records would have lead up to.*'"

Kellogg v. Randolph, 71 N. J. E., 127; 63 Atl., 753.

The cogency of this reasoning is manifested by the fact that when inquiry was made (September 17, 1925) of the Harrington Company (Exhibit P-3, Case, p. 73), the true status of the situation was developed (Exhibit P-4, Case, p. 74).

If the appellant and its predecessors in title did not actually learn of the record of these tax sale proceedings, it was due entirely to their own fault and not to any fault or omission that can be ascribed to the appellee, Harrington Company.

Such omission is well exemplified by the following:

“Cross examination by Mr. Engelke:

“Q. When did you examine the mortgage books in which the two tax sale certificates you have testified to are recorded, to learn whether or not any notation had been made on the margin? A. Yesterday, December 16, 1925.

“Redirect examination by Mr. Wright:

“Q. And did you examine it any time previous to that? A. No.”

The testimony of the Title Company's searcher is that he searched "mortgages" of the Bergen County Realty Company, the "owner" in whose name the taxes were assessed for which the property was sold, from "June 8, 1911, to April 21st, 1925" (Case, p. 59, line 17). The tax sale certificates were both recorded on March 23, 1920, to preserve their lien and priorities as against "a bona fide purchaser, lessee or mortgagee" as required by Section 35 of the Tax Sale Revision (Case, p. 57, lines 20 to 32), certainly within the period during which search was made. Surely we must assume that the searcher discovered these Certificates of Tax Sale which were issued and indexed in the name of Bergen County Realty Co. as owner, and gained the knowledge therefrom that the "right to redeem" could be barred any time after "two years from the date of sale" (Case, p. 8, line 36), namely, any time after December 22nd, 1921. Did this not impose upon the searcher the obligation to trace the Bergen County Realty Company through the indices to ascertain all that the records would show as to what had become of the "right to redeem," or at least was the searcher not put upon notice (he representing Mr. Kellogg) (Case, p. 60, lines 4 to 11)

to inquire of the purchaser what its rights in the premises were? It is worthy of note that this witness shows by his testimony that he made search for "Mortgages" (under which heading tax sale certificates are also indexed) against the several owners of the title prior to the appellant up to and including April 21, 1925, when Kellogg took title while against the same owners he made search for "Deeds" for much shorter periods and in the name of the Bergen County Realty Co. from June 8, 1911, to July 28, 1918. The question "Why?" is unsuppressible. The witness offers no explanation. Was it not because the searcher knew that the tax sales, of which his client, Kellogg, had received notice that defendant, Harrington Company, intended to perfect the title to, might be recorded some time prior to that date, April 21st, 1925? He has offered no explanation as to why he should have searched Bergen County Realty Company "Deeds" only to 1918 and "Mortgages" to 1925.

The statute requires:

"* * * Said County Clerk or Register shall index the same (the purchaser's tax sale proceedings) in the alphabetical index of grantors *in the name of the delinquent owner as shown by the said certificate*, and in the name of every person who has been served with notice as an interested party, as shown by said affidavit" (P. L. 1918, p. 896, Sec. 48).

The title searcher with twenty years continuous experience (Case, p. 55, line 10) must have become aware of the tax sale certificates properly recorded. A perusal of the same would show that the time of redemption might accrue as early as December 21st, 1921, and surely at any later date at the option of the purchaser up to the time that the appellant acquired title, or still later and up to the period of twenty years from the date of the

sale (Laws 1918, p. 895, Section 46). If it be a duty to search "mortgages" until the time of acquiring title against all the previous owners for tax sale certificates, it is far more important a duty to search "deeds" for the same period of time, to learn whether any proceedings had been recorded whereby the tax lien on record "in the name of the delinquent owner" (Bergen County Realty Company) might have been perfected into an indefeasible title. Such search should not cease with the date when the delinquent owner had, by its own act attempted to part with what it claimed to own, but should be made for the full statutory period of twenty years. With notice of the tax liens recorded in the Book of Mortgages, a search for any shorter time than twenty years is indefensible. If these precautions had been observed, the tax sale proceedings of the Harrington Company would have been discovered. Is the tax sale purchaser to be deprived of substantial vested rights where he has literally complied with the statute in preserving his lien and his rights, because the appellant's agent was wanting in diligence in finding the tax sale proceedings, which had been properly recorded and were indexed as required by statute:—indexed in the name of the Bergen County Realty Company, the delinquent owner; the Alcalde Realty Corporation, the "owner" when notice was served, and Clarence V. Kellogg, the "mortgagee" when notice was served?

In accordance with the Tax Sale Revision of 1918, page 883, Section 9, a municipal lien for taxes becomes a *first lien upon the lands in question* and is paramount and prior to all subsequent *alienations and descents* of said lands and encumbrances thereon;

Section 24, page 888, imposes the duty upon the Collector of Taxes to make sale at public auction

of the lands for delinquent taxes, "*in fee*" to a purchaser thereof;

Section 26, page 889, provides that the Collector, after such sale shall "on his list" mark the parcel "SOLD";

Section 54, page 899, provides that the "lien or liens" above referred to, shall pass with the title to the purchaser;

Sections 34 and 35, page 892, in effect provided that if certificates of tax sale are not recorded within three months from the date of sale, they shall be void as against bona fide purchasers, lessees or mortgagees whose instruments are recorded before the recording of the certificate;

Section 37, page 893, and Section 46, page 895, limit the time for the barring of the right to redeem to a period between two and twenty years after the sale, provided certain proceedings are taken.

From the foregoing synopsis of the tax sale legislation, it is patent that the Legislature intended that the tax sale purchaser should stand in the position of the municipality. When the land is sold for taxes, the lien thereof does not die but is carried over to the purchaser. The lien of delinquent taxes, by the statute, is ~~more~~^{made} prior and paramount to all prior and subsequent alienations, descents and encumbrances, except subsequent taxes. This superiority of the lien passes with the title to the tax sale purchaser, who thereby becomes *first in point of time and title* over, not only prior but also *subsequent bona fide purchasers*.

The legislation just referred to by use of the words "*Sale*," "*Sold*," and the like, indicate that what the purchaser acquires is not only "the lien" upon the lands, for the lien is carried over by Section 26 of the Act with the "fee" but also an abso-

lute fee simple title subject to a repurchase. While it is true that by Section 37 the lands may be “redeemed” from said sale, the Courts have construed this right of *redemption* to be a right of “repurchase.”

Mitsch v. Owens, 82 N. J. E., 404; 89 Atl., 292;

Pace v. Bartles, 47 N. J. E., 170; 20 Atl., 352.

This right to “repurchase” may not be exercised by everyone and by the terms of Section 37 is strictly limited (*Frazier v. Johnson*, 65 N. J. L., 673; 48 Atl., 573).

While the statute used the word “owner” and while it has been held that a “stranger” to the title has no right to “repurchase,” there has been no adjudication as to what person or persons had the exclusive right to “repurchase.” The circumstances of the instant case forcibly illustrate the correctness of the views taken by the Courts that “redemption” means “repurchase.” In other words, one being once seized of a title can alone “repurchase” it,—a stranger cannot “repurchase” it as he never before was seized of it. This thought necessarily leads to another,—the individual properly served with a “notice to redeem” as required by the statute is the one who, when he is served is the “owner, mortgagee or occupant,” or the one who had an *interest in the lands*,” sold to the tax sale purchaser.

It is respectfully submitted that only the recipient of the “notice to redeem” and not his assigns has the right to “repurchase.”

The assigns of the persons served with the “notice to redeem” is a *stranger to the title* as the “notice to redeem” has fixed the status of the owner, mortgagee, etc., and such owner, etc., alone has the right to “repurchase.”

The instant case furnishes conclusive argument in support of this view; the defendant (the tax sale purchaser), gave its "notice to redeem" in February, 1921, to expire on December 21st, 1921, the day when the tax sale was two years old, and the earliest when the right to redeem could be made to expire.

When the "notice to redeem" was given, the Alcalde Realty Corporation was the owner. BEFORE THE NOTICE TO REDEEM HAD EXPIRED AND ON NOVEMBER 29th, 1921, THE ALCALDE REALTY CORPORATION HAD SOLD THE LANDS IN QUESTION TO THE ANDERSON AVENUE REALTY COMPANY, FROM WHOM THEY HAD PURCHASED THESE LANDS ON SEPTEMBER 10th, 1921; TWENTY-FOUR DAYS AFTERWARD AND WITHIN TWO DAYS AFTER THE TIME OF REDEMPTION HAD EXPIRED, THE ANDERSON AVENUE REALTY COMPANY HAD SOLD THE LANDS IN QUESTION TO THE PALISADES ESTATES, INC.

It nowhere appears that any one of these various corporations caused the title to these premises to be searched; for all that appears in this case they all knew of the condition of the title and took the title with notice.

Aside from the suspicion that naturally attaches, namely, that the Alcalde Realty Corporation, the Anderson Avenue Realty Company and the Palisades Estates, Inc., or their officers, or directors representing them, had actual notice of the appellee's "notice to redeem" and its expiration, and that this juggling of the title to the lands in question was made for the express purpose of evading the direct effect of the "notice to redeem," the question arises as to whether or not the Anderson Avenue Realty Company taking its deed within the term which the appellee was compelled to wait

for redemption, was not bound by the "notice to redeem" given by the Alcalde Realty Corporation and was not an "owner" with the statutory right to "repurchase."

The preceding recital of the facts in the instant case, force upon the attention the futility of urging, as a solution of this problem, the application of the Conveyance Act (C. S. 1534).

Lacombe v. Headley, 89 N. J. E., 364; 104 Atl., 711; 91 N. J. E., 63; 108 Atl., 185.

In the instant case we are confronted with the fact that the owner upon whom a "notice to redeem" has been served attempts to convey away from itself to another the title to the lands in question before the period limited in the said "notice to redeem" has expired. To hold that its grantee is not bound by the "notice to redeem" served upon the original owner would mean that the tax sale purchaser must re-serve a "notice to redeem." If lands sold at tax sales were conveyed and reconveyed between the same parties as frequently as the lands in question, a tax sale purchaser thereof would have a burdensome task indeed. Aside from the task, he could never acquire his rights; if the divers owners of the title should see fit to make a new conveyance five months and twenty-nine days after any "notice to redeem" is served, it would be a practical impossibility for a tax sale purchaser to acquire his rights and to enjoy a fee simple absolute title to the lands which he had bought.

It follows that the holding above intimated must be unsound and that in order to give effect to the Tax Sale legislation, it becomes necessary to hold that a "notice to redeem" once served upon an "owner," or "mortgagee" or one "having an interest in the lands" binds not only the person

served but also his assigns and all those in privity with him and that said assigns and those in privity with him take the lands subject to the rights in the tax sale purchaser to bar them *at any time* after the expiration of the time limited in the "notice to redeem." If this be true, it follows that when the Alcalde Realty Corporation conveyed to the Anderson Avenue Realty Company before the time limited for redemption had expired, the Anderson Avenue Realty Company was bound by said "notice to redeem." The Anderson Avenue Realty Company being bound, they could not pass to their assigns and successors in title, which includes the Palisades Estates, Inc., Clarence V. Kellogg and the appellant, the title to the lands freed of the "notice to redeem" and of the appellee's rights acquired thereby.

It is respectfully submitted therefore that when the Alcalde Realty Corporation is bound and Clarence V. Kellogg traces his title through them and passes it on to the appellant that the appellant has no standing in this Court to complain that its predecessors in title have not been barred from the "Right of Redemption" or as the Courts of this State have put it, the "Right to Repurchase," by means of the "notice to redeem," as shown in the State of the Case.

The certificates of tax sale made by the Collector of Taxes to the appellee, conveyed to the appellee, an estate not upon "a conditional fee" as the appellant in its brief on page 13 argues, but a fee upon limitation.

The conveyance is made to the appellee subject to redemption by certain named persons, for a period of two years, or unless later terminated by an act of the purchaser, the appellee, and subject to the limitation that the purchaser perform an act, to wit, record his certificate, affidavits, proofs, &c., as required by statute.

From what has been said, it is manifest that when property has been sold at tax sale, the then owner when he conveys, can convey no more than what he then has, namely, an equity of redemption. This equity of redemption, by the lapse of time, gradually diminishes in extent, so that as the time for redemption limited by the notice to redeem, nears the period of limitation, the extent of the equity of redemption diminishes proportionately until by the recording of the certificate, affidavits, &c., by the purchaser, the equity of redemption is extinguished or barred.

Again, it follows that this equity of redemption held by the Alcalde when the notice to redeem was served, had a much greater extent than when the Anderson Avenue Realty Company and the Palisades Estates succeeded to such equity of redemption.

At the time and after the two last named corporations recorded their respective deeds of conveyance, which, as before shown, granted to them only an equity of redemption, the said right of redemption was an exceedingly attenuated right, owing to the fact that it might be foreclosed and definitely and permanently barred at any instant by the recording by the appellee of its tax sale certificates and the proceedings had by it thereon.

The thread of life of the equity of redemption passing to the Palisades Estates by the Anderson Avenue Realty Company was cut off and terminated by the appellee on October 27, 1923, recording the tax sale certificates and the proceedings had thereon.

Board of Freeholders v. Buck, 79 Eq., 472;
82 Atl., 418.

The equity of redemption of all parties concerned as owners, mortgagees or otherwise having

been cut off by the appellee on October 27, 1923, recording the tax sale certificates and the proceedings thereon, there was therefore no equity of redemption existing in any one on April 17, 1925, when the Palisades Estates attempted to make a conveyance to Kellogg. The Palisades Estates then having no equity of redemption, it could not thereafter convey an equity of redemption or any other right in the lands to Kellogg and any instrument purporting to be a conveyance of the lands thereafter made by him was a mere nullity and the appellant acquired no rights whatever under the instrument recorded by it.

POINT III.

Prosecutor is not a bona fide purchaser, for it had notice of the instruments of title under which defendant claims.

The fact, if it be a fact, that the appellant was advised by a title company that its grantor had good title, subject to certain tax liens of the appellee (Case, p. 67, line 25), was sufficient to indicate that it manifestly became its duty, in view of the fact that it is presumed to have known the law, to have exhausted an examination of the records according to that law, and if it had, it would have found not only the tax sale certificates, but also the tax sale proceedings recorded as deeds. They were properly indexed as required by law (Case, p. 59, line 34), Section 48, Tax Sale Act 1918, page 896.

The appellant and its predecessors in title did not use due diligence in searching the records of the title. As has already been pointed out, the searcher while searching for mortgages up to a short time before taking title, did not search deeds

for the same length of time. If he had made such a search, it would have revealed the proceedings the appellee filed and recorded, and which made title in fee simple in the appellee, to the lands in question.

Suffice it to say that the appellant is chargeable with the negligence of its agent in making the search. Diligence on the part of a searcher should require an examination of the records down to the date when he expects his client to take title and if this rule had been followed the tax proceedings would have been discovered when he made the search in April and May, 1925.

The fact that the appellee did not record the proceedings until October 27, 1923, can and ought to have no bearing upon the question of notice. It certainly cannot be designated as "neglect," for one cannot be said to "neglect" that which no duty imposes. It has before been demonstrated that the statute prescribes *no time* when the proceedings shall be recorded as a deed, except that it cannot be done until the time to redeem has expired.

That the Clerk failed to make notation in the margin of the original record of the certificates of tax sale in the Book of Mortgages, which should show a reference to the place where said certificates had been re-recorded as a deed, is not a fault that this appellee should be charged with.

While this precise omission is not referred to in the section about to be quoted, it seems apt, to state a part of the Tax Sale Act, which is intended to aid the courts in determining what errors should not prove fatal or vital to tax sale proceedings.

"No sale of land for municipal liens heretofore or hereafter made, shall be set aside

* * * because of failure of the Clerk or any municipal officer to record the proceedings relative to the sale * * *."

Tax Sale Revision, Sec. 52; P. L. 1918, p. 898.

The County Clerk was paid for the recording of the proceedings and the *filing* of the same. They are still on file with him as the law requires. Noting the place of record as a deed is a mere formal requirement and can add nothing to the value of the notice imparted by the actual record of the proceedings as a deed.

The tax sale purchaser has completely complied with his duty when he leaves for record the tax sale proceedings and pays the fees and the Court will not visit the Clerk's omission upon the tax sale purchaser so as to invalidate its title. The law presumes that a public officer has performed his duties and the citizen is entitled to indulge a like presumption.

The appellant was not injured by the absence of the notation in the margin of the mortgage book where the tax sale certificates are recorded. The person who made the search admits that he did not examine these mortgage books until December 16th, 1925, a day before the depositions on certiorari were taken (Case, p. 58, line 10).

A similar situation arose and was decided in the case of *Smallwood v. Lewin*, 15 N. J. E., 60 at 63. The courts of this State have held that where, through the omission or error of a Clerk, erroneous notice is given to a searcher of the title of property relating to any recorded instrument, the error of the Clerk shall not be visited upon the holder of the instrument and that the Clerk's error or omission does not affect the record or priority of the instrument recorded, whatever the result to the searcher of the title or the Clerk himself.

It has been held that the cancellation by a Clerk of a mortgage, duly recorded of record, which cancellation was without warrant or authority, is without effect and that the subsequent purchasers who relied upon the cancellation, nevertheless took the title to the property subject to the mortgage, and the mortgage was decreed to be foreclosed.

Harris v. Cook, 28 N. J. E., 345.

Upon an action being instituted by the persons aggrieved, the purchasers of the premises on which the foregoing mortgage had been held valid, although apparently cancelled of record, the Court sustained a judgment against the Clerk's sureties for the amount of the loss sustained.

Appleby v. State, 45 N. J. L., 161;

Upton v. Slater, 83 N. J. L., 373; 85 Atl., 225.

It has been held:

"Any indexing which, under existing statutes, may be lawfully authorized by the Board of Chosen Freeholders to be done, he, the Clerk is entitled AND HE ALONE AUTHORIZED TO DO."

Board of Chosen Freeholders v. Conger, 67 N. J. L., 444; 51 Atl., 488.

The Court has held that the failure to enter a rule in the minutes of the Court is a failure to be ascribed to the Clerk of the Court, but refused to penalize the litigant in whose behalf the rule should have been entered.

Thomas Harrington's Sons Company v. United States Express Company, 87 N. J. L., 154; 93 Atl., 697.

In the cited case the Court ordered the entry made *nunc pro tunc*.

The notation in the margin of the record of the tax sale certificates is simply another method of indexing the record of the proceedings as a deed, similar to the notations made by a Clerk in the margin of a mortgage to indicate its assignment, release or satisfaction. It cannot be said that the omission to perform this one act by the Clerk, when the appellant had open to him other channels of obtaining the same information, should prove fatal to the title of the defendant Harrington Company for by so doing, it is made to suffer for no act or default on its part, but as a result of the omission of a public officer, who has failed to perform a duty imposed upon him by statute, for which the tax sale purchaser has paid him.

Again, it is apparent that the appellant was doubly put upon notice. It took the title "subject to taxes and assessments" (Case, p. 67, line 20, *et seq.*). With such a burden upon the title, is it not negligence on the part of the appellant not to have made inquiry to learn what taxes and assessments were against the property until after it had acquired title? Such inquiry brought out the true status and these writs as a consequence.

Appellant is not such a one who is entitled "to redeem" or "to repurchase" the property, as has been heretofore argued.

While it may not be incumbent upon a purchaser of property when examining its title, to examine the records of *all* conveyances or instruments given by a prior owner subsequent to a conveyance made by such owner under ordinary circumstances, yet it is respectfully submitted that in view of the law relating to tax sales and tax sale certificates, IT IS INCUMBENT upon one examining the title, to follow the records as far as the law requires, to learn whether, as that law requires, proceedings have been recorded which affect the title.

POINT IV.

The proceedings had by the appellee Harrington Company entitle it to a fee simple title to the lands in question because it observed the statutory requirements.

It purchased the lands in question at a tax sale in 1919, gave notice to redeem "*personally*" to the "owner" of record at the time, the Alcalde Realty Corporation, and to Clarence V. Kellogg, the "mortgagee."

Personal service upon the Alcalde Realty Corporation is not denied. Personal service upon Kellogg and actual receipt of the notice by him is not denied and is presumed under the cases and is supported by the provisions of the statute creating the presumption that service has been made upon him.

However, if it be assumed that service upon Kellogg could only be made in the manner assumed by appellant's counsel, then by his subsequent conduct, Kellogg put himself in the shoes and in privity with the Alcalde Realty Corporation, who was barred. By surrendering his rights as "mortgagee," Kellogg lost his right to object to being barred, especially in view of the fact that he takes title under and through, and in privity with a predecessor in title, who was barred.

POINT V.

The Tax Sale Revision Act of 1918 should be liberally construed.

In the past Courts have felt bound to construe Tax Sale Acts strictly against the purchaser. The Legislature of this State, noting this tendency has expressed itself, adversely to such construction

and in the 1918 Tax Sale Revision provides, by Section 59:

“This act shall be deemed and taken to be a remedial act, * * * and be liberally construed to effectuate the remedial objects thereof” (P. L. 1918, p. 899).

It follows therefore that this Court is no longer bound to a strict interpretation of this legislation, but by legislative mandate is bound to liberally construe the provisions of this law to effectuate, rather than to destroy, what has been done by the Tax Collector, the County Clerk and the Tax Sale Purchaser.

Moore Securities Co. v. Hammell Co., 127 Atl., 207 (E & A).

It is respectfully submitted that the judgments of the Supreme Court under review in these appeals, be affirmed.

Respectfully submitted,

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