

INDEX

	Page
Bill of Complaint	1
Summons	6
Answer of the Defendant, Karl Schaffer.....	8
Order to Amended Bill, Etc.....	10
Answer to Amended Bill.....	11
Testimony	14
Conclusions	34
Final Decree	36
Notice of Appeal	39
Petition on Appeal of Karl Schaffer.....	40

COMPLAINANT'S WITNESSES

Samuel A. Crowley

Direct	18
--------------	----

James E. Scull

Direct	20
Cross	22
Re-direct	24

DEFENDANT'S WITNESS

Carl Schaeffer

Direct	25
Cross	26

INDEX

1. Introduction 1

2. The first part of the book 10

3. The second part of the book 20

4. The third part of the book 30

5. The fourth part of the book 40

6. The fifth part of the book 50

7. The sixth part of the book 60

8. The seventh part of the book 70

9. The eighth part of the book 80

10. The ninth part of the book 90

11. The tenth part of the book 100

12. The eleventh part of the book 110

13. The twelfth part of the book 120

14. The thirteenth part of the book 130

15. The fourteenth part of the book 140

16. The fifteenth part of the book 150

17. The sixteenth part of the book 160

18. The seventeenth part of the book 170

19. The eighteenth part of the book 180

20. The nineteenth part of the book 190

21. The twentieth part of the book 200

22. The twenty-first part of the book 210

23. The twenty-second part of the book 220

24. The twenty-third part of the book 230

25. The twenty-fourth part of the book 240

26. The twenty-fifth part of the book 250

27. The twenty-sixth part of the book 260

28. The twenty-seventh part of the book 270

29. The twenty-eighth part of the book 280

30. The twenty-ninth part of the book 290

31. The thirtieth part of the book 300

32. The thirty-first part of the book 310

33. The thirty-second part of the book 320

34. The thirty-third part of the book 330

35. The thirty-fourth part of the book 340

36. The thirty-fifth part of the book 350

37. The thirty-sixth part of the book 360

38. The thirty-seventh part of the book 370

39. The thirty-eighth part of the book 380

40. The thirty-ninth part of the book 390

41. The fortieth part of the book 400

42. The forty-first part of the book 410

43. The forty-second part of the book 420

44. The forty-third part of the book 430

45. The forty-fourth part of the book 440

46. The forty-fifth part of the book 450

47. The forty-sixth part of the book 460

48. The forty-seventh part of the book 470

49. The forty-eighth part of the book 480

50. The forty-ninth part of the book 490

51. The fiftieth part of the book 500

Filed 2/16/22

BILL OF COMPLAINT

10

TO HIS HONOR, EDWIN ROBERT WALKER,

Chancellor of the State of New Jersey.

Absecon Land Company respectfully shows that:

1. It is a corporation existing under and by virtue of the laws of the State of New Jersey.

20

2. On July 18, 1913, James Keernes of Absecon, New Jersey, became seized in fee subject to the liens hereinafter stated, of the following described land and premises, viz:—Situate in the city of Ventnor City, county of Atlantic and State of New Jersey, Beginning at a point in the Easterly line of Washington Avenue at the distance of one hundred feet South of Atlantic Avenue, and extends (1) Eastwardly parallel with Atlantic Avenue, sixty-two and one half feet; (2) Southwardly parallel with Washington Avenue, fifty feet; (3) Westwardly parallel with Atlantic Avenue, sixty-two and one half feet to Washington Avenue; and thence (4) Northwardly in and along Washington Avenue, fifty feet to the place of beginning—being lot 3 of Section 108 of Ventnor City Atlas.

30

3. On October 9, 1913, for the purpose of making certain taxes assessed against said land and premises, at a public sale held by the Collector of Taxes for the City of Ventnor City aforesaid, the same was struck off and sold to Ventnor City aforesaid, for \$133.29, being for taxes and assessments due with interests and costs as set forth in the certificate of tax sale of that date which was duly acknowledged and is of record in the

40

Bill of Complaint

10 clerk's office of Atlantic County, New Jersey, in Book No. 178 of Mortgages, pages 412 &c.,

4. On January 16, 1922, Ventnor City aforesaid did assign said certificate of tax sale unto said Absecon Land Company, the complainant, in consideration of the sum of \$351.82, being the amount due on said certificate of tax sale, together with interest and costs, as well subsequent taxes and assessments with interest. The indenture # of
20 assignment whereof was duly acknowledged and is of record in the clerk's office of Atlantic County aforesaid in Book No. of Assignments of Mortgages, pages &c.

5. On July 19, 1911, Ventnor Snyder, a Corporation of New Jersey, being seized of said premises mortgaged the same to the West Jersey Mortgage Company, a corporation of New Jersey,
30 to secure \$2000., payable at the expiration of three years together with interest thereon at the rate of six per cent per annum, The indenture whereof was duly acknowledged and recorded in the clerk's office of Atlantic County aforesaid in Book No. 121 of Mortgages, pages 279 &c. The lien created by said mortgage on said premises, however, is subject to that created by Complainant's certificate of tax sale as aforesaid.

40 6. On September 28, 1911, said West Jersey Mortgage Company assigned its said mortgage to Ida M. Gage, and Jessie A. Gage, Guardian for Eliabeth D. Gage, by indenture of assignment of that date duly acknowledged and of record in the clerk's office of Atlantic County aforesaid in Book No. 33 of Assignments of Mortgages, pages 179 &c.

Bill of Complaint

7. On February 6, 1912, E. G. Harris Company, a Corporation of New Jersey being then seized thereof mortgaged said premises to Reobling Realty Company a corporation of New Jersey, to secure \$800., payable within two years from the date thereof together with interest thereon at the rate of six per cent per annum, The indenture whereof was duly acknowledged and is of record in the clerk's office of Atlantic County aforesaid in Book 128 of Mortgages, pages 98 &c. The lien created by said mortgage on said premises is subject however to the lien created thereon by complainant's certificate of tax sale aforesaid.

10

20

8. On May 11, 1912, said Reobling Realty Company assigned its said mortgage to John J. Jones by indenture of assignment of that date duly acknowledged and of record in the clerk's office of Atlantic County aforesaid in Book No. 37 of assignments of Mortgages, page 206.

30

9. #On November 18, 1912, said John J. Jones assigned its said mortgage to Richard T. Bowen by indenture of assignment of that date duly acknowledged and of record in the clerk's office of Atlantic County aforesaid in Book No. 37 of Assignment of Mortgages, page 219.

10. On October 13, 1915, for the purpose of making certain taxes assessed against said land and premises for 1913, at a public sale held by the Collector of Taxes for the City of Ventnor City aforesaid, the same was struck off and sold to Karl Shaffer for \$70.65 being for taxes, interest, water and sewerage charges and costs, as set forth in the certificate of tax sale of that date, which was duly acknowledged and in of record in the clerk's

40

Bill of Complaint

10 office of Atlantic County aforesaid in Book No. 28 of Certificate of Tax Sales, page 164. Such lien as may have been created on said premises by said certificate of tax sale is subject however to that created thereon by complainants certificate as aforesaid.

20 11. On October 2, 1916, for the purpose of making certain taxes and municipal charges on said land and premises for the year 1914, at a public sale held by the Collector of Taxes for the city of Ventnor City aforesaid, the same was struck off and sold to Karl Shaffer for \$76.09 being for taxes, water and sewerage charges, interest and costs, as set forth in the certificate of tax sale of that date duly acknowledged and of record in the clerk's office, of Atlantic County aforesaid in Book No. 165 of Mortgages, page 281. Such
30 lien as may have been created on said premises thereby is subject however to that created by complainant's certificate of tax sale as aforesaid.

12. The said sum of \$351.82 mentioned in the assignment of complainant's certificate of tax sale as aforesaid, together with lawful interest thereon from January 16, 1922, is due and owing to the complainant.

40 13. #From the date of said complainant's certificate of tax sale the said James Keernes has been and still is in possession of said land and premises.

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

1. That James Keernes, Ida M. Gage, Jessie A. Gage, Elizabeth D. Gage, Richard T. Bowen, and Karl Shaffer, who are the defendants in this suit,

Bill of Complaint

may answer this bill of complaint without oath
and each statement therein made;

10

2. That an account may be taken of the amount
due on complainant's tax liens on said land and
premises.

3. That the defendants, or one of them, may be
decreed to pay the complainant the amount so
found due, with interest and costs, by a short day
to be appointed by this Court; and that in default
of such payment, they, and each of them, be de-
barred and foreclosed of all equity of redemption
in and to said land and premises;

20

4. That a writ of subpoena may issue command-
ing the defendants to answer this bill of complaint
and to abide by such decree as the court may make
in the premises.

H. W. LEWIS,

30

Solicitor and counsel with
Complainant.

40

IN CHANCERY OF NEW JERSEY.

10

SUMMONS

Between

ABSECON LAND COMPANY,
a Corporation
Complainant,

and

20

KARL SHAFFER,
Defendant.

On bill to foreclose, &c.

Sir:

30

You are made a party defendant, and subpoenaed to answer the bill of complaint exhibited in the above cause, because you hold certificates of tax sale the liens whereof are alleged to be subsequent to that of the complainant's certificate of tax sale on the premises mentioned and described in the said bill, and by virtue thereof claim to have some lien upon or interest in the said mortgaged premises.

Dated, March 9th, 1922.

40

Your ob't serv't,

H. W. LEWIS,
Sol'r for Complainant.

To Karl Shaffer, a Def't.

New Jersey, to wit: The State of New Jersey
to Karl Shaffer:

GREETING: WHEREAS a bill of complaint has lately been exhibited against you in our Court of Chancery by Absecon Land Company, a Corpora-

Summons

tion, to be relieved touching the matters therein contained.

10

THEREFORE, We command you, if you intend to make a defense, that you file an answer to said bill in the office of the Clerk of our said Court, at Trenton, on or before the expiration of twenty days from and after the twentieth day of March, 1922, and in default thereof such order or decree will be made against you as the Court shall think equitable and just.

20

WITNESS, His Honor, EDWIN ROBERT WALKER, Chancellor of our said State, at Trenton, the ninth day of March in the year of our Lord one thousand nine hundred and

JESSE R. SALMON,

Clerk.

H. W. LEWIS, Sol'r.

30

40

IN CHANCERY OF NEW JERSEY.

10

**ANSWER OF THE DEFENDANT,
KARL SCHAFFER**

*Between*ABSECON LAND COMPANY,
a Corporation,*Complainant,**and*

20

JAMES KEERNES, et als.,
Defendant.

On Bill, etc.

30 The defendant, Karl Schaffer, residing at the
Borough of Roselle, in the County of Union and
State of New Jersey, answering the Bill of com-
plaint herein, says:

1. Paragraph #1 is admitted.

2. Paragraph #2 is admitted.

3. Paragraph #3 is denied.

4. Paragraph #4 is denied.

40 5. He admits the execution, acknowledgment
and recording of the mortgage set forth in Para-
graph #5 of the Complaint, and denies the re-
maining allegations therein contained.

6. Paragraph #6 is admitted.

7. He admits the execution, acknowledgment
and recording of the mortgage mentioned and re-
ferred to in paragraph #7 of the Complaint, and
denies each and every of the other allegations
therein contained.

8. Paragraph #8 is admitted.

Answer of the Defendant, Karl Schaffer

9. Paragraph #9 is admitted.

10

10. He admits the sale mentioned and referred to in paragraph #10, and denies each and every of the other allegations therein contained.

11. He admits the sale mentioned and referred to in paragraph #11 of the Complaint, and denies that the lien created on the premises in question thereby is subject to the lien alleged and claimed by the complainant.

20

12. Paragraph #12 is denied.

13. Paragraph #13 is denied.

The defendant, Karl Schaffer, therefore prays that the Bill of Complaint may be dismissed against him, with his reasonable costs, etc.

SAMUEL KOESTLER,

Solicitor for and of Counsel
with the defendant, Karl
Schaffer.

30

40

IN CHANCERY OF NEW JERSEY

Filed 2/17/23.

10

ORDER TO AMEND BILL, ETC.

Between

ABSECON LAND COMPANY,
a Corporation,
Complainant,

and

20

JAMES KEERNES, et als.,
Defendant.

In Foreclosure.

30 This matter coming on to be heard before his Honor, Robert H. Ingersoll, one of the Vice Chancellors of this Court, to whom the same had been referred, on motion of H. W. Lewis of counsel with the complainant: It is on this 17th day of February, 1923, ordered that the bill of said complainant be, and the same is hereby amended by the substitution of "1918" in lieu of "1913" in the first line of paragraph 3 thereof; and that the defendant Karl Schaffer have leave to file his answer to said bill as amended within twenty days from the service of a copy of this order, which may be uncer-
40 tified, by the solicitor upon said defendant or his solicitor.

And it is further ordered that the complainant pay said defendant his costs on this amendment to be taxed.

Respectfully advised,

R. H. INGERSOLL, V. C.

IN CHANCERY OF NEW JERSEY

ANSWER TO AMENDED BILL

10

51/297.

*Between*ABSECON LAND COMPANY,
a Corporation,*Complainant,**and*

JAMES KEERNES, et als.,

Defendant.

20

On Bill, etc.

The answer to the defendant Karl Schaffer to the bill of complaint of the complainant as amended by order of the court, dated February 7, 1923.

30

This defendant says:

1. He admits the allegations of paragraph 1, 2, 3, 5, 6, 7, 8, 9, 10 and 11 of complainant's bill.

2. The defendant admits the assignment of such certificate to complainant as alleged in paragraph 4, but has no knowledge or information as to the consideration paid.

40

3. The defendant denies the allegation under paragraph 13.

4. Defendant has no knowledge or information as to the moneys due to complainant as alleged in paragraph 12 and prays that the same may be ascertained in order that he may pay the same in redemption of the certificate claimed to be held

Answer to Amended Bill

10 by complainant; that the defendant has on numerous occasions requested the complainant to furnish him with a statement of the moneys due in order that the defendant might redeem but that complainant has always refused to furnish said information.

20 5. The above entitled cause was set down for final hearing for February 27, 1923 and in open court this defendant did tender and offer to pay to complainant the amount of money due to complainant on its said certificate of tax sale and the offer of this defendant to make such payment was noted on the stenographic minutes of the proceedings of this Honorable Court; but notwithstanding said offer and willingness of the defendant to make such payment complainant has neglected to inform the defendant of the amount of money
30 due and then and thereafter refused to permit this defendant to make redemption from the lien of said certificate of tax sale but on the contrary said complainant then and there obtained leave to amend its bill of complaint.

40 6. This defendant did on June 13, 1922, and on divers days since that time offer to pay complainant the moneys due to it in redemption of said tax certificate and has always been and now is ready and willing to pay the amount of money which may be justly due and owing to complainant and prays that the complainants bill be dismissed with costs for the reason that the same is not brought to permit the redemption of said certificate but for the purpose of harassing and embarrassing defendant in other claims regarding the property in complainant's bill mentioned.

Answer to Ammended Bill

This defendant by way of counterclaim against the complainant the Absecon Land Company says:

10

1. Defendant repeats and makes a part hereof of the allegations of paragraph numbers 2, 3, 10, 11 of complainant's bill.

2. That on or about January 16, 1922, Ventnor City did assign, transfer and deliver unto complainant the aforesaid certificate of tax sale made and dated October 9, 1918, for a consideration, the amount of which is unknown to this defendant.

20

3. Defendants repeats the allegations of paragraph 5 and 6 of this answer.

4. Defendant alleges that the conduct of complainant in amending its bill of complaint and continuing its suit subsequent to the offer in open court February 27, 1923, to redeem from the lien of said certificate by paying the moneys justly due to complainant is vexatious and inequitable and this defendant prays:

30

1. That the complainant may answer this counter-claim and each and every paragraph thereof without oath.

2. That the amount of money due to complainant may be distinctly and definitely ascertained by this court.

40

3. That a decree may be entered permitting defendant to redeem lands and premises from the liens of complainants certificate of tax sale upon paying said sum.

4. That this defendant may be awarded his costs and counsel fees to be paid by the complainant.

SAMUEL KOESTLER,
Solicitor of Defendant,
Karl Schaffer.

1881
THE UNIVERSITY OF CHICAGO
LIBRARY



IN CHANCERY OF NEW JERSEY
**REPLICATION AND ANSWER TO
 COUNTER-CLAIM**

Between

ABSECON LAND COMPANY, a
 Corporation, &c.

Complainant

and

JAMES KEERNES, ET AL.,

Defendants.

On Bill, &c.

The complainant joins issue on the answer of Karl Schaffer, of the defendants.

As to the counter-claim of the said defendant, the complainant says:

1. That at the time of filing its bill in this cause, complainant ascertained said defendant to be the holder of certain certificates of tax sale recited in its said bill, and did then as well as divers time thereafter tender itself ready to pay said defendant the amounts necessary to redeem the premises mentioned in its bill therefrom, but that said defendant refused to accept payment thereof and cancel same of record.

2. On July 29, 1922, complainant paid unto James G. Scull, Tax Collector of Ventnor City, New Jersey, the same being the municipality wherein said premises are situate, the sum of \$351.16, the amount ascertained by said Collector as necessary for the redemption of said premises from said defendant's certificates of tax sale as aforesaid.

H. W. LEWIS

Solicitor and Counsel with Complainant.

IN CHANCERY OF NEW JERSEY

10

TESTIMONY

*Between*ABSECON LAND COMPANY,
a Corporation,*Complainant,**and*

20

JAMES KEERNES, et als.,
Defendant.

*On Bill, &c.
Final Hearing.*

Atlantic City, N. J., February 27, 1923.

TESTIMONY before HON. R. H. INGERSOLL,
Vice Chancellor.APPEARANCES: For Complainant, Henry W.
Lewis, Esq. For Defendant Schaffer, Samuel
Koestler, Esq.

Mr. Lewis: Your Honor please, this is an action to foreclose under the tax act of 1918. The Absecon Land Company held a mortgage, also a tax certificate from the city of Ventnor City. Being the holder of both the mortgage and certificate of tax sale the company elected to foreclose under its certificate of tax sale. No answer was interposed except by Mr. Schaffer a defendant who holds a certificate of tax sale in two previous years, I think 1913 and 1914. His answer interposes an answer to our right to foreclose and I think most of the facts are admitted, as alleged in the bill, except the certificate and assignment is denied and I presume we have to prove that. Other than that it

Testimony

seems to me this is mostly a question of law. I
will show here what purports to be an assignment
of a certificate of tax sale of the city of Ventnor.

10

Your Honor, I notice one thing. I will have
to amend, the certificate of tax sale in my bill it
is alleged 1913. It was copied from a search that
I had, which stated 1913 and it is evidently, the
three is intended for an eight, the certificate is for
1918 tax, and I move to amend 1913 to 1918.

20

Mr. Koestler: I object to that amendment, your
Honor please. We didn't come here to meet a
case based on a certificate of sale made in 1918.
The allegation in the bill of complaint was a cer-
tificate made in 1913. We have denied that they
had such a certificate. That is the whole case
here. We have denied it. This is a confiscatory
suit, a suit which confiscates our rights and they
are endeavoring to make a different case than that
which we have been called upon to answer. I have
looked up the decisions on that line and I find this
court will not permit an amendment in such a
case, but the proper course is for a dismissal of
the bill without prejudice to their filing a new
bill. In that connection I desire to state that on
June thirteenth, on behalf of Mr. Schaffer, I wrote
a letter to Mr. Lewis offering to redeem. I have
given notice to produce that letter. In that letter
I asked Mr. Lewis to let me know the names of the
clients he represented who had liens upon this
property, what those liens were and the amounts
claimed necessary to pay to redeem and that we
would make an appointment to come down here
with a certified check and pay him. Now he en-
deavors to set up a new claim than the one alleged
in the bill and I do not think he should be permitted
to do it at this time because he is making a differ-
ent case now after the time we offered to redeem.

30

40

Testimony

10 The Court: If that amendment is made it certainly can't proceed to a hearing today. It is an essentially different case entirely.

 Mr. Lewis: Your Honor, here is the position I was in, My bill was drawn from a search made by one of the South Jersey Title Company and it states this certificate is 1913, which the three is evidently a misprint for 1918.

20 The Court: The difficulty of that, however, is that an examination of that notation would show you that it couldn't have been 1913 because it reads the taxes in 1917 and 1916 and also speaks of 1917, 1918 and 1916, that goes over 1918.

 Mr. Lewis: I was not apprised of that until I got the certified copy of the certificate and I noticed it was a different date from what the search indicated.

30 The Court: You are entitled to amend but, of course, the other side are entitled to a continuance with costs.

 Mr. Koestler: We are willing, your Honor, upon being allowed the costs of our answer, to pay the amount due on these certificates. It is not necessary to go ahead with the suit. We claim that being brought here on an answer which denied their certificate and that, knowing that their certificate was based on a sale in 1918, the certificate
40 must have been issued afterwards, and the proper procedure would be an order dismissing that bill without costs and then we are ready at this moment to give them a check for the amount due to them with the statutory fees on their certificates.

 Mr. Lewis: Your Honor, the taxes have already been paid to the city of Ventnor by the Absecon Land Company who holds both a mortgage and also this certificate of tax sale and in the statute it is

Testimony

provided a party at interest has a right to come in and we have paid those taxes to the city of Ventnor already.

10

The Court: Yes, but that is not the proposition that is now before us. The only thing I can determine at this moment is whether the amendment should be permitted or whether the bill should be dismissed and you placed upon your burden of filing a new bill. I do not think, under the circumstances, that that is the proper practice in this case. It seems to me that the amendment may be permitted and the other side have the customary time to file an answer and bring the matter on to a hearing again.

20

Mr. Lewis: Very well.

The Court: That must be done with costs.

Mr. Koestler: We now make a tender in open court to pay the amount as set forth in the bill of complaint.

30

Mr. Lewis: I do not think that is germane here.

The Court: It is of record.

Upon the filing of that amended bill, defendants will have the customary time to file answer, with costs of this motion.

**EVIDENCE ON BEHALF OF THE
COMPLAINANTS**

Atlantic City, N. J. July 10/23
Mr. Lewis: If your Honor please, this is a bill filed by the complainant, the Absecon Land Company, for land sold for taxes in 1918.

40

The Court: Here is the original bill. Then, you amended it by changing the date from 1918 to 1913.

Mr. Lewis: Whereby he claims he has offered to pay the taxes due on a certificate of taxation, in open Court.

Samuel A. Crowley—For Complainants—Direct

10 The Court: Have you a copy of that? There does not seem to be any copy of that answer among the papers.

Mr. Lewis: What is that; the amended bill?

The Court: No; the second answer.

Mr. Lewis: Here is a copy I have here. The only one I have here.

20 Mr. Koestler: The original was mailed to the clerk, your Honor. You probably have that here, because I think the papers were here from the time of the former hearing.

The Court: Yes; that is probably the reason. Evidently it was filed. All right.

30 Mr. Koestler: Before proceeding, I want to make our position clear. We filed, in defense, not really an answer, but a counter claim, claiming the right to redeem, to which they filed in answer, setting up the same answers, which I think are irrelevant, and I wrote Mr. Lewis, under date of April 5, that I would at the appropriate time move to strike out his answer on the ground that it did not set up an equitable defense. He, by his answer, endeavors to claim a right to redeem against a prior sale by Schaeffer, which has been reduced, we claim, to title. They have not, on their bill to foreclose, any right to redeem against a prior sale. Therefore, I would like to call your Honor's attention to that as a motion to strike out.

40

The Court: You may consider that as a motion.

Samuel A. Crowley, being first duly sworn, was examined and testified as follows:

By Mr. Lewis:

Q. Where do you reside? A. Absecon.

Q. What connection have you with the Absecon

Samuel A. Crowley—For Complainants—Direct

Land Company, the plaintiff in this suit? A. 10
President.

Mr. Lewis: We desire to offer in evidence the certified copy of the assignment of the certificate of tax sale to the Absecon Land Company. It is the original certificate of the assignment.

(No objection)

The Court: Let it be admitted.

Q. Are you acquainted with the premises situate 20
in an easterly line of Washington Avenue, distant 100 feet from Atlantic Avenue, and extending parallel with Atlantic Avenue 62½ feet southerly, parallel with Washington Avenue 50 feet? A. Yes, sir.

Q. I show you this certificate of tax sale.

Mr. Koestler: What is the purpose? To show 30
him the identity of the property?

Mr. Lewis: Yes, sir.

Mr. Koestler: That is admitted.

By Mr. Lewis:

Q. At the time of this filing of the bill, about February 16, 1922, who was in possession of this lot? A. Why, James Keernes, was the owner.

Q. Did you have your sign on it?

Mr. Koestler: I object to that is immaterial. 40
This question is to determine the amount due on the tax certificate.

The Court: There is in issue as to who is in possession of the premises; is there not?

Mr. Koestler: That is not disputed, your Honor.

The Court: Your answer disputed it.

Mr. Lewis: That is about the only question that I can see that is in dispute.

James E. Scull—For Complainants—Direct

10

The Court: The defendant denies the allegation in paragraph 13, is the allegation that Keernes is in possession.

Q. Yes, sir. We have a real estate sign "For Sale" on it.

Q. And have since that time? A. Yes, sir; and before that time. It's there to-day.

20

Q. Do you know whether or not all the taxes on the premises have been paid up to the time of the signing of this bill? A. All paid.

Mr. Koestler: I object to that on the ground that it is not the best evidence.

Objection sustained.

(No cross examination)

30

James E. Scull, being first duly sworn, was examined and testified as follows:

By Mr. Lewis:

Q. Where do you reside? A. Ventnor.

Q. Are you an official of the City of Ventnor? A. Yes, sir.

Q. What position do you occupy there? A. Tax collector.

40

Q. How long have you been tax collector? A. Fifteen years.

Q. I show you what purports to be a receipt given by you to the Absecon Land Company for certain taxes paid on lot 3, of Block 105-A, on the City map of Ventnor, and ask you if that is your signature (indicating)? A. Yes, sir.

Mr. Lewis: I desire to offer this receipt in evidence.

James E. Scull—For Complainants—Direct

Mr. Koestler: I object on the ground that it is not relevant to the issue here, and not competent and admissible in evidence. It is not in reference to the tax certificate upon which this suit is founded, on which the complainants' suit is founded.

10

Mr. Lewis: In reply to that, it seems to me that the whole gist of this action rests upon the question as to who has a priority of right of redemption of these premises. The defendant Carl Schaffer, acquired a certificate at a tax sale prior to that of the defendant here. Under the law, the owner or the occupant has a right to redeem, and have the certificate of record. That is what we attempted to do. We filed our bill, and then we proceeded to clear away all the taxes on the premises.

20

We claim that our certificate of tax sale, acquired by a subsequent sale, subsequent to that of the defendant, Carl Schaeffer, is paramount to theirs, and if that is true by paying the taxes due, municipal and due to others, that we have a right to cancellation, and that these defendants and Carl Schaeffer would, therefore, have no standing in Court.

30

The Court: What is your purpose in offering the tax bills that you are now offering, or tax receipts?

Mr. Lewis: At the most, my contention is that this defendant is entitled to have his certificates redeemed. We claim that we acquired under a subsequent tax sale the certificate, and having attempted to perfect our certificate of tax sale, it seems to me that it is purely a question of law. I am showing that we have paid to the tax collector all the taxes, including the taxes on the certificate of tax sale owned by Carl Schaeffer, which they are defending here.

40

James E. Scull—For Complainants—Cross

10 The Court: How could that have any relevancy as to the question of Mr. Schaeffer?

Mr. Lewis: Well, if we have paid it, it seems to me that he is not entitled to any standing in this Court.

The Court: You have not paid it to him?

Mr. Lewis: I know, but the law gives us the right to pay it to the tax collector.

20 The Court: It does?

Mr. Lewis: Yes.

The Court: And do nothing further?

Mr. Lewis: Yes sir; and then it is the duty of the tax collector to have it cancelled, and we have done that.

The Court: Let me have the section of the law that says that.

I will permit you to prove that.

30 Objection noted for defendants by direction of the Court:

Mr. Lewis: I desire to introduce in evidence the receipt from the tax collector for taxes for the years 1913, 1914, 1915.

Admitted in evidence and marked Plaintiffs Exhibit No. 2.

40 CROSS EXAMINATION

By Mr. Koestler:

Q. Mr. Scull, after receiving this check for \$351, and giving your receipt, Exhibit 2, did you receive any word from Mr. Schaeffer that he had title under his prior tax sale? A. I sent the check to Mr. Schaeffer. Mr. Schaeffer returned it to me,

James E. Scull—For Complainants—Cross

informing me that he could not accept it; that he had some claim against the property. 10

Q. Did he not claim that he had title under his tax sales?

A. I don't remember the wording of his letter.

Mr. Lewis: Your Honor, I think that is irrelevant, for the reason that it was done under statute, when you tender these taxes to the tax collector. 20

The Court: I will permit it.

By Mr. Koestler:

Q. Did you not, after receiving word from Mr. Schaeffer, write to the Absecon Land Company to come in and get their check, and surrender your receipt? A. That's my understanding; that I did do it.

Q. Did they ever come back and get their check? 30

A. No, sir.

Q. And it has never been paid to Mr. Schaeffer, or accepted by him? A. No, sir. It is still in my office.

Q. Did you ever issue to the Absecon Land Company a certificate of redemption, as provided by the statutes? A. Not to my knowledge.

Q. All that you gave was a receipt, evidencing the receipt by you of this check? A. Yes, sir. 40

The Court: When was that done?

Mr. Koestler: The receipt is dated July 29th, 1922.

The Court: That sale was for what year?

Mr. Koestler: It shows taxes for the years 1913, 1914, and 1915. That is under the 1913 Act.

10

RE-DIRECT EXAMINATION

By Mr. Lewis:

Q. You tendered this money to Mr. Schaeffer, did you not? A. Yes, sir.

Mr. Lewis: I think, under the admissions of the answer, that is about our case.

Complainant rests.

20

Mr. Koestler: I call now for the production of a letter of June 13th, 1922, written by me to the complainants' solicitor.

Mr. Lewis: I haven't got it.

Mr. Koestler: I show you a carbon copy of it. Is that admitted.

Mr. Lewis: Yes; that is admitted.

30

Mr. Koestler: I desire to offer in evidence the letter written by Samuel Koestler, as solicitor of the defendant, Schaeffer, to Mr. H. W. Lewis, dated June 13th, 1922.

The Court: It will be admitted in evidence and marked. Paper in question marked Defendants Exhibit 1.

Mr. Koestler: I now desire to offer in evidence response by Mr. Lewis to me, dated June 14th, 1922.

40

The Court: It will be admitted and marked.

Paper in question marked Defendants Exhibit 2.

Mr. Koestler: I now desire to offer in evidence the record of the proceedings had before your Honor when this case was set for final hearing, the first time, on February 27th, 1923, at which time an offer was made in open court to pay the amount due to the complainant upon this tax lien, as set forth in the bill of complaint. I assume if there

Carl Schaeffer—For Defendant—Direct

is any objection to this, I would probably have to call the stenographer.

10

The Court: I take it that there is no objection?

Mr. Lewis: I have no objection.

Carl Schaeffer, being first duly sworn, was examined and testified as follows:

20

By Mr. Koestler:

Q. You are the defendant in this case? A. Yes, sir.

Q. Have you been ready and willing since the letter of June 13th, 1922, up to the present time to pay the amount due upon the certificate held by the complainant in this cause? A. Yes, sir.

Q. Are you now ready and willing so to do? A. Yes, sir. 30

Q. Are you the Carl Schaeffer who bought this property for taxes for the years 1913, 1914, and 1915? A. Yes.

Q. Did you do anything to perfect this title under this sale of 1913, '14 and '15? A. Yes, sir, we served notice on all the three certificates. Two of them are now on the record, as a deed, at the county collector's office at Cape May Landing. 40

Mr. Lewis: I object to that.

The Court: Yes; that last statement is inadmissible.

Mr. Koestler: If your Honor desires, we have not them here, but we could produce the certified copies of the filed certificates under the statute, if that is necessary, but I do not think it would be

10 necessary. I would like to reserve the right to offer them, if it does become necessary.

The Court: You may do that.

CROSS EXAMINATION

By Mr. Lewis:

Q. Were the taxes for all these years offered to you by the tax collector? A. Yes, sir.

20 Q. Did you accept the offer? A. No, sir.

Mr. Koestler: I rest, subject to the right, if necessary, to introduce a certified copy of the filed papers under the statute.

Defendant rests.

30 Mr. Koestler: If your Honor please, in this case, this is a bill filed by the complainant as a bill to foreclose their tax lien. It is not a bill on their behalf, seeking redemption from any other tax claim. It is a bill for foreclosure, or a bill for strict foreclosure, and the only decree that can be rendered in the case is that there is so much money due on the certificates, and unless it is redeemed within a certain time, they would be absolutely barred of their right of an equitable redemption. That is

40 under the decision of the Chancellor in Mitsch against Owens. That is the first case in which the proper practice was laid down, and it was determined that foreclosure, as determined by the statute, was one of strict foreclosure. Therefore, the Court can determine the amount due.

In passing, I do not see exactly how the Court can determine that amount by the evidence that has been supplied. The evidence here offered by the

Testimony.

complainant merely shows that they paid \$351.82, and yet there is no proof before your Honor of that fact.

10

The Court: Oh, yes.

Mr. Lewis. The certificate shows on its face.

The Court: That is, the \$351.82 they paid to Mr. Scull.

Mr. Koestler: That is not on the certificate which they are foreclosing. That is the item which they claim was due to Schaeffer. There is no other evidence to show that they paid anything more.

20

The Court: The assignment states "for and in consideration of the sum of \$351.82."

Mr. Koestler: I will take that as evidence of that fact, but here is the point I really want to argue on: The statute provides for the payment of interest on that amount of the certificate of tax sale, and the amount they paid the municipality on the tax sale, and there is no evidence before your Honor showing how much of that amount is applicable to the tax sale, and how much is applicable to subsequent taxes. The statute provides for interest on the amount of tax sale, but is silent as to other moneys paid the municipality. So, we claim that the amount they would be entitled to is the principal of \$351.82. There is no evidence before your Honor as to the amount of interest to which they can lay claim.

30

40

We further claim that the statute, in its express language, provides that where there is a tax sale it shall be a paramount lien to all claims except taxes subsequently levied. Therefore, when Schaeffer bought, in 1913, 1914, and 1915, he had a paramount lien. That was subject, however, to a subsequent lien acquired by the tax sale of 1918, so that the tax sale of 1918 became the paramount

Testimony

10 lien. So, leaving that aside for the moment, the
question that Schaeffer acquired title under his
first tax certificates, and assuming that he is still
in the possession of a mortgage, his mortgage be-
came subordinated and subject to the mortgage lien
which the complainant acquired. Therefore, we
have the position before you now, without proof
of title in Schaeffer, that the complainants hold a
20 first mortgage, and Schaeffer, under his tax title,
holds a second mortgage.

What they are endeavoring to do is to confuse
the issue before your Honor, that the defendant
Schaeffer holds the second mortgage, and that they
have a right to redeem. Now, whoever heard of the
first mortgagee redeeming from the second mort-
gagee?

30 The position we are in before your Honor is this;
That Schaeffer had a second tax sale, and, there-
fore, Schaeffer, under the express terms of the
statute, has a right to redeem under his tax cer-
tificate. That is the reason they filed their bill,
either to compel Schaeffer to redeem or to fore-
close.

40 The statute expressly says that owners and other
persons in interest may redeem it, providing their
right of redemption is not cut off. Under the 1903
Act, which was the Act in existence when Schaeffer
paid in 1913, 1914, and 1915, he can get title by
serving notice, and by filing his papers, which he
did. I am arguing it both ways: First, that he has
not title; secondly, that he has title. If he has a
title, the owner may always redeem before the
right of redemption is cut off. Surely the right of
redemption is open until the decree is made, and
the time fixed for redemption has expired.

The only conclusion that I think your Honor can

Testimony

come to is that Schaeffer has the right to redeem upon this Court ascertaining the amount due.

10

The question, however, in my mind is this: We at the time, or shortly after the time of filing the original bill, offered, by the letter of June 13th, to redeem. They ignored that, and claimed they had the right to redeem. Then, they came into Court, and by the order made by your Honor on February 27th, their bill was to be dismissed or they were to amend. Before they filed any amended bill we, in open Court, offered to redeem. They did not permit us to redeem. They ignored us entirely, and thereafter, with full knowledge on the Court records that we wanted to redeem, they came into Court again, and filed a new bill, the bill which is now before your Honor, the amended bill filed subsequent to February 27th, 1923.

20

The Court: Is there any change in that?

30

Mr. Koestler: The first bill could not be sustained, because they claimed a certificate which they did not own. They claimed a certificate of 1913, which they did not own. The Court was either bound to dismiss it, or as your Honor directed, to amend it.

We contend that they are insisting upon coming into this Court and trifling with this Court, that this litigation was entirely unnecessary. It is vexatious. It puts us to the trouble of hiring counsel, and coming to the Court, and we say, in that case, the Court should sustain our position, and give us costs and counsel fees against the complainant.

40

They not only interfere with our redeeming, but they come in, and in answer to our counter claim, setting up our right to redeem on the facts which are proven here, they say, "No; you have not the

Testimony

10 right to redeem. We have the right to redeem." Then, why do they come asking that in their bill? They are trifling with the Court. They filed a bill, in which they say, "Schaeffer, you redeem, or be foreclosed," and when we come in with our money they say, "No; we do not want your money." They are making a contest of his title. They are not trying a foreclosure suit, but trying to make
20 a contest of title to the land. The litigation is vexatious. It is almost in contempt of Court. They go ahead with their bill. It is nothing more than a statutory bill to redeem. We have come into Court twice. Schaeffer should not be mulcted for any costs, but your Honor should direct these complainants to pay these costs.

We say, "How much do we owe you? We want to pay you," and they say "No; you can't pay. We want to pay." The whole sum and substance of it
30 is that they file a bill, asking us to redeem, and then when we want to do it, they won't let us do it.

Mr. Lewis: Our certificate of tax sale is paramount to theirs. Now, what we did, as soon as we acquired, we proceeded to perfect our title by the foreclosure.

We bring these people in, and bring Schaeffer in, making him a party, to find out the amount of his
40 claim. Our purpose in doing that is to redeem under the statute. He is in the same position of anybody, just as the City of Ventnor or anybody else, who has a certificate of tax sale on taxes due.

The Court: What is your prayer for relief?

Mr. Lewis: My prayer for relief, of course, is that some of these defendants, for instance, the owner or the mortgagee, would have the right to come in and redeem from us, but so far as Schaeffer is concerned he has no right to redeem from us at

Testimony

all. He stands in the same position that the City
of Ventnor does. 10

The Court: You pray that he be decreed to
pay the costs.

Mr. Lewis: Not necessarily he; no, sir. We are
not bound strictly by the form of the prayer in the
bill. It is just a general prayer for equitable
relief.

The Court: Then, you are insisting now that
your prayer should not be granted? 20

Mr. Lewis: Not with respect to these people.
We claim this, that inasmuch as we have paid to
the tax collector under the statutes these taxes,
these people are not entitled to come into this
Court and set up a defense.

The Court: Then, why do you say that they are?

Mr. Lewis: Because we had a right to ascertain
what the claims are, so as to pay them. 30

The Court: I have never known of a case where
a complainant would argue in the Court that he
does not want the relief he asks for.

Mr. Lewis: So far as the owner or the mortgagee
is concerned—

The Court: You do not ask for any general
relief at all. The only thing you ask for is that
an accounting be taken, and that the defendants
or one of them be decreed to pay, or else be fore-
closed. 40

Mr. Lewis: Yes; under the statutes. By offer-
ing to pay to the tax collector, we claim that these
people have no right to come here and make a
defense.

The Court: Let me ask you this: What, under
your bill, could I do either than to grant you what
you ask or to dismiss the bill? Now, you say that
you do not want what you ask, and I assume you

Testimony

10 do not want the bill dismissed. What order, then, can the Court grant?

Mr. Lewis: Inasmuch as we have tendered these taxes, under the statutes, we are entitled to a decree against the defendants, all of them.

20 The Court: Yes; but you do not ask for that. Suppose the defendants had simply come in and confessed, what decree could you have taken? Suppose the defendants, instead of filing an answer, had just simply let you take your interlocutory decree and final decree, what decree could you take?

Mr. Lewis: The only decree that we could take would be a decree against them. I claim that they have a right to have their taxes paid.

30 The Court: The difficulty is that that is not before me. There is nothing in your bill or in the pleadings that gives me jurisdiction there, does it?

Your bill asks specifically for one thing, that is, that there be an accounting, and that a date be fixed to pay the amount, or that they be forever barred.

As I said a few minutes ago, I can either grant your prayer or a part of it, or dismiss your bill. Now, you say you do not want your prayer granted. Now, what can I do under your bill?

40 Mr. Lewis: I think, when we come in and show that we have paid these taxes, there is nothing that the Court can do, except that these people are precluded from setting up a defense. We have a right to do that.

The Court: You may have the right to do that, but you do not do it. Suppose I say, "I grant your prayer," and you immediately say, "We do not want it done. Do not want that decree," what am I going to do?

Testimony

Mr. Lewis: You see it is a statutory proceeding, and it seems to me that we have followed the statutes. We have made these people parties. We have come in, and paid the taxes, and it seems to me that they are not entitled—I think I have a right to insist upon their answer being dismissed.

10

The Court: Yes, sir; that is just the point. You have not done that. When we come to the issue, to a trial upon your bill and their answer, your prayer is that they be compelled to do certain things. Now, after the hearing, you say you do not want them; you want something else.

20

Mr. Lewis: If we show a condition here, which does not justify their answer, it seems to me as we are entitled to the dismissal of the answer.

The Court: There is no application for that. You do not ask for that. You still say you want a decree. If you had alleged that Schaeffer had any interest in it; that is, any redeemable interest—

30

Mr. Lewis: All the interest that is alleged in the bill is the amount of taxes due him. We have now shown to the Court that we have wiped those out, and for that reason I claim that the defendant has no standing in this Court against us.

The Court: Yes; but you bring him into Court, and then do not try to get him out. Suppose, Mr. Lewis, you give me a memorandum in the matter within five days, and send Mr. Koestler a copy of it.

40

Mr. Lewis: Will it be necessary to send your Honor a certified copy of that?

The Court: No, I think not.

IN CHANCERY OF NEW JERSEY

10

CONCLUSIONS

*Between*ABSECON LAND COMPANY,
*Complainant,**and*

20

JAMES KEERNES, et als.
Defendant.

On Bill to Foreclose. On Final Hearing.

THESE CONCLUSIONS ARE NOT TO BE PUBLISHED IN THE OFFICIAL OR UNOFFICIAL REPORTS.

30

Mr. Henry W. Lewis for the Complainant.

Mr. Samuel Koestler for the Defendants.

INGERSOLL, V. C.

The defendant, Keernes, is the owner in fee of certain premises in Ventnor City, subject to certain mortgage liens held by other defendants.

40

On October 1st, 1918, at a sale for taxes, the lands in question were sold to Ventnor City and a certificate bearing date October 9th, 1918, was issued by the Tax Collector to the City of Ventnor, which was duly proven.

On January 16th, 1922, for the consideration of \$351.82 the said City assigned said tax certificate to the complainant, which assignment was duly proven and recorded.

On October 13th, 1915, at a tax sale for taxes

Conclusions

assessed in 1913, the same was struck off and sold to the defendant, Schaffer, and on October 2nd, 1916, at a tax sale for taxes assessed for 1914, the same was struck off and sold to said Schaffer for \$76.09.

10

The original claim of the complainant was for an accounting and payment, or in default thereof a foreclosure. The answer was a denial and prayer for dismissal.

20

The issue as now framed is an offer on the part of the defendant Schaffer to redeem, and a claim on the part of the complainant that he (Schaffer) was and is not entitled to redeem.

No testimony is presented to show that Schaffer foreclosed his tax title, but it is in evidence that he failed to pay subsequent taxes thereon.

Has he the right to redeem?

I am convinced that he is not entitled to redeem. 30

Determined: August 25, 1926.

40

IN CHANCERY OF NEW JERSEY

10

FINAL DECREE

*Between*ABSECON LAND COMPANY,
a Corporation, &c.,
*Complainant,**and*20 JAMES KEERNES, et als.
Defendant.

On Bill to Foreclose, &c.

30 This matter coming on to be heard in the presence of H. W. Lewis, Esquire, of counsel with the Absecon Land Company, the complainant, and of Samuel Koestler, Esquire, of counsel with Karl Schaffer of the defendants, the other defendants having failed to appear and answer and a decree pro confesso being taken against them, and the pleadings and proofs having been read, and the arguments of respective counsel having been heard and considered, and it appearing to the Court that

40 on October 9, 1918, for the purpose of making certain taxes assessed against the lands and premises hereinafter described, at a public sale held by the Collector of Taxes of the City of Ventnor City, County of Atlantic and State of New Jersey, the same were struck off and sold to Ventnor City aforesaid for the sum of \$135.29 being the amount of taxes due thereon with interest and costs, as set forth in the certificate of sale thereof duly acknowledged and of record in the clerk's office of Atlantic

Final Decree.

County aforesaid in Book No. 173 of Mortgages at page 412; that thereafter the City of Ventnor City aforesaid caused said certificate with the covenants and conditions as therein contained to be assigned unto the complainant by indenture of assignment of date January 15th, 1922, duly executed and acknowledged, for the sum of \$351.82 being the amount due thereon with interest as well as subsequent taxes with interest due on the premises covered thereby; that said Karl Schaffer of the defendants is not entitled to redeem the same as against the complainant, and that the other defendants have wholly failed and neglected to redeem same:

It is therefore on this day of October, A. D. 1926, ordered, adjudged and decreed that the defendants, James Keernes, Ida M. Gage, Jessie A. Gage, Richard T. Bowen, and Karl Schaffer, as well as all persons claiming by, from or under them or any of them, stand debarred and foreclosed of and from all right and equity of redemption of, in and to the following described lands and premises, to wit—Situate in the City of Ventnor City, County of Atlantic and State of New Jersey, Beginning at a point in the Easterly line of Washington Avenue distant one hundred feet Southwardly from the Southerly line of Atlantic Avenue, and extending thence (1) Eastwardly parallel with Atlantic Avenue, sixty-two and one half feet thence (2) Southwardly, parallel with Avenue, fifty feet; thence (3) Westwardly, parallel with Atlantic Avenue, sixty-two and one half feet; and thence (4) Northwardly, in and along said Easterly line of Washington Avenue, fifty feet to the place of beginning,—being Lot 3 of Section 108 of Ventnor

101

20

30

40

Final Decree.

10

City Atlas, and sold under certificate of tax sale
as aforesaid.

Notice of application for the signing of the fore-
going Decree is hereby waived, subject to defend-
ant's right of appeal.

SAMUEL KOESTLER,

Of Counsel with defendant,

Karl Schafer.

20

30

40

Respectfully Advised
R. H. Fugusall.
V. C.

C. A. Walker

IN CHANCERY OF NEW JERSEY

NOTICE OF APPEAL

10

*Between*ABSECON LAND COMPANY,
a Corporation,
*Complainant,**and*JAMES KEERNES, et als.
Defendant.

20

On Bill, &c.

The defendant, Karl Schaffer, hereby appeals from the whole and every part of the Final Decree advised by Vice Chancellor Ingersoll in the above entitled cause, bearing date the 15th day of November, 1926, and particularly from the part thereof which decrees that the said defendant, Karl Schaffer, stand debarred and foreclosed of and from all right and equity of redemption in and to the lands therein described, to the Court of Errors and Appeals, the last resort in all causes.

30

Dated: November 16, 1926.

40

SAMUEL KOESTLER,
Solicitor for and of Counsel
with Defendant, Karl Schaffer.

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

SAMUEL KOESTLER,
Of Counsel with the Defendant,
Karl Schaffer.

NEW JERSEY COURT OF ERRORS
AND APPEALS.

10

PETITION OF APPEAL OF
KARL SCHAFFER

Between

ABSECON LAND COMPANY,
a Corporation, &c.,
Complainant-Respondent,

20

vs.

JAMES KEERNES, et als.
Defendants-Appellants.

On Appeal.

30 TO THE HONORABLE THE COURT OF ERRORS AND
APPEALS in the last resort in all causes :

The petition of Karl Schaffer, the appellant in
the above entitled cause, respectfully shows that
your petitioner finds himself aggrieved by a final
decree made in the Court of Chancery by his Honor,
Edwin Robert Walker, Chancellor of New Jersey,
bearing date the eighteenth day of November, 1926,
wherein the Absecon Land Company, a corporation
40 was complainant, and the said James Keernes,
Karl Schaffer and others were defendants, in this
respect, to wit :

1. That there should have been a decree in favor
of the defendant Karl Schaffer on his counterclaim.

2. That there should have been no decree in
favor of the complainant excepting a decree direct-

Petition of Karl Schaeffer

ing the fixings of the amount due to the complainant on its mortgage lien with the right to the defendant, Karl Schaffer, as subsequent encumbrancer to redeem from the same by paying such amount that the Court of Chancery should have decreed.

10

3. That the offer of Schaffer to redeem was good and the court should have dismissed complainant's bill with costs as being vexatious.

20

4. That the Court of Chancery improperly admitted evidence on behalf of the complainant tending to show that complainant had attempted to redeem from the liens or encumbrances held by the defendant, Schaffer.

5. That the conclusions of the Court of Chancery were wholly erroneous and not supported by the pleadings or by the evidence in the cause, and that a final decree should have been entered either dismissing complainant's bill or decreeing the relief as prayed by defendant, Schaffer, in his counterclaim.

30

Your petitioner, therefore prays, that the said decree of the Chancellor may be, in all things, reversed, set aside, and for nothing holden.

40

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

STAMLER STAMLER & KOESTLER,
Solicitors for Appellant,
Karl Schaffer.

SAMUEL KOESTLER,
Of Counsel with Appellant,
Karl Schaffer.

Answer to Petition of Appeal in usual form.

[2120]

EXHIBIT 1 FOR DEFENDANT

June 13, 1922.

Mr. H. W. Lewis,
 Chelsea Bank Building,
 Atlantic City, N. J.

In re. Absecon Land Co. vs. Keernes et als.

Dear Sir:—

I have just had an opportunity to take up with Mr. Schaffer your communication of the first inst. and beg to advise you that Mr. Schaffer claims title in the property under his tax searches.

If you have any clients who have outstanding liens on this property and will advise me as to who they are, what the liens are, and the amount required to pay the same, I will arrange to meet you and give you certified check for the amount of the liens.

Thanking you for a prompt response, I am

Yours truly,

SAMUEL KOESTLER.

EXHIBIT 2 FOR DEFENDANT

June 14th, 1922.

Samuel Koestler, Esq.,
 Elizabeth, N. J.

My dear Sir:—

Replying to yours of the 13th inst., I would say that my searches do not show any proceedings taken by Mr. Shafer to bar the right to redeem on the part of the owner or occupant of the premises. Unless such proceedings have been taken and perfected I am unable to see by what authority the right of my client as the occupant, or of Mr. Keernes as owner, to redeem should be taken as barred.

I would call your attention to Sections 37 and 38, Chap. 237, P. L. 1918, pg. 893, and beg to advise you that unless you can establish our being debarred as aforesaid, the amount of delinquent taxes represented by your client's certificates will be paid to the collector of taxes of Ventnor city with view of the satisfaction or cancellation of such certificates.

I am yours &c.

L/D

H. W. LEWIS

6300 FEB. 16 1922

NEW JERSEY
COURT OF ERRORS AND APPEALS

Between

ABSECON LAND COMPANY,
a corporation,
Complainant-Respondent,

and

JOHN KEERNES, et als.,
Defendants.

KARL SCHAFFER,
Appellant.

On Appeal.

**BRIEF FOR APPELLANT,
KARL SCHAFFER**

This appeal brings before the Court a decree of the Court of Chancery advised by Vice Chancellor Ingersoll, barring the appellant and others from their equity of redemption in and to certain lands in the city of Ventnor City which was sold under tax proceedings. The right to redeem was denied to the appellant, Schaffer, although he made the offer in open court, before trial, and in his pleadings filed in the cause.

THE FACTS

The Bill of Complaint was filed, February 16, 1922 and Paragraphs 10 and 11 set up the interest of the appellant, Karl Schaffer, as being the purchaser in 1915 of the premises in question under a tax sale held for the taxes assessed for year 1913 and being also the purchaser in 1916 on a tax sale to make the taxes of the years 1914 (Case Pages 3 and 4). The complainant's interest is set up in

2

Paragraph 4 of the Bill of Complaint as being the assignee of a Certificate of Tax Sale (Case Page 2). However, in Paragraph 3 of the original Bill, it was alleged that tax sale which was assigned to complainant was held on October 9th, 1913 (Case Page 1.) This allegation of Paragraph 3 was denied in the original Answer filed by the defendant, Schaffer, (Case Page 8, Line 33) and thereupon the complainant on February 17th, 1923 obtained an Order amending its Bill of Complaint by substituting the year 1918 for the year 1913 in Paragraph 3 of the Bill, so that the case made by the complainant's Bill was one to foreclose a Certificate of Tax Sale made in the year 1918 and acquired by the complainant in 1922, making among others as parties defendant, the appellant Karl Schaffer by reason of his Tax Certificates acquired in 1915 and 1916 for taxes assessed respectively for the year 1913 and 1914. To the Bill as amended, Schaffer filed his Answer in which he set up his various offers to redeem from complainant's tax certificate and asked for that relief by way of counterclaim (Case Pages 11, 12 and 13).

Complainant's Bill is filed under provision of *Section 49 of the Tax Sale Revision, 2 Cumulative Supplement to Compiled Statutes, page 3537* which reads:

"The purchaser—may file a bill in equity to foreclose the right of redemption, but on filing such bill the right to redeem shall exist and continue until barred by the decree of the Court of Chancery, but no foreclosure decree, except in cases where a municipality is the party complainant, shall be entered unless evidence is produced in the foreclosure suit that all subsequent municipal liens have been paid to the time of the commencement of the suit."

This right to a Chancery foreclosure decree was first recognized and incorporated into the Tax Revision of 1903 and will be found as part of *Section 59, 4 Compiled Statutes Page 5137* in which the pertinent language is:

“Purchaser or his assigns may in addition to the foregoing remedy (Notice to redeem) at any time after the expiration of the term of two years whether notice to redeem has been given or not, file a bill in equity to foreclose the right of redemption, but on filing such bill the right to redeem shall exist and continue until barred by the decree of sale of the Court of Chancery.”

The nature of this proceeding was firmly established by the opinion of Chancellor Walker in the case of *Mitsch vs. Owens*, 82 *N. J. Eq.* 404, in which among other things it was said:

“The right of redemption of mortgaged premises also exists against the purchaser at foreclosure sale under a senior encumbrance in favor of a junior encumbrancer who has been omitted as a party to the suit. In a similar situation a purchaser at a foreclosure sale may anticipate a suit for redemption by a subsequent encumbrancer, and, upon bill of strict foreclosure, may require the latter to redeem the premises by paying off the prior encumbrance, or be foreclosed of the right to redeem.”

POINT 1

THIS IS A FORECLOSURE SUIT

The Bill of Complaint in this case as amended, sets forth the municipal tax sale

of 1918 and makes as parties defendant those people or corporations having an interest in Paragraph 5, the assigns thereof in Paragraph 6, the mortgagee under Paragraph 6, the assignee of the mortgage under Paragraph 8, the assignee under Paragraph 9 and under Paragraphs 10 and 11 the appellant, Karl Schaffer, by reason of his previously acquired tax titles. (Case Pages 2 and 3).

The prayer of the bill is (A), that an account may be taken of the amount due on complainant's tax liens on said lands and premises and (B), that the defendants, or one of them, may be decreed to pay the complainant the amount so found due, with interest and costs, by a short day to be appointed by this Court; and that in default of such payment, they, and each of them, be debarred and foreclosed of all equity of redemption in and to said land and premises. (Case Page 5).

This Bill of Complaint strictly conforms to the practice as laid down in *Mitsch vs. Owens, supra*, and since followed in all cases relating to tax sales.

It is well settled that the rights of claimants under these tax titles which are sought to be foreclosed, must be strictly construed so that the rights of the owners will be carefully guarded. See *Harrington Co. vs. Horster*, 89 N. J. Eq. 270.

It is also well settled that the rights acquired under tax sales are governed by the law in force at the time of the sale. See *Rodgers vs. Cressman*, 98 N. J. Eq. 210; *Moore Securities Co. vs. Hammell*, 97 N. J. Eq. 292 and *Welles vs. Schaffer*, 98 N. J. Eq. 31.

By Section 57 of the Tax Act of 1903 it provides that a purchaser at his option may record the certificate of sale for taxes in the office of the clerk or register of the county where the land lies as a

mortgage of land, By *Section 57 of the same Act* it provides, that the owner, mortgagee, occupant or other person having an interest in the land sold for taxes, may redeem the same at any time within two years from the date of sale or at any time thereafter until the right to redeem has been cut off in the manner hereinafter set forth, by paying to the collector, etc. *Section 58*, makes provision for the giving by the collector of a certificate of redemption.

Under the *Statute of 1918, Section 34* provides for the recording of the Certificate as a mortgage of land, while *Section 37* provides for redemption by the owner, mortgagee, occupant or other person having an interest and *Section 38* provides for the certificate of redemption.

Section 9 of the Tax Sale Revision provides that each and every municipal lien shall be and remain a first lien on such land and paramount to all prior or subsequent alienations and descents of said lands or encumbrances thereon, *except subsequent municipal liens.*

Therefore, when Schaffer acquired the certificates of Tax Sale in 1915 and 1916 for the taxes for the years 1913 and 1914, he then had the paramount lien over all prior or subsequent encumbrances or conveyances placed on the property, subject to redemption within the time allowed by law, to-wit, two years, or sixty days after the service of a notice to redeem. Schaffer testified that he gave notice to redeem and that his certificate, with proper affidavits, was filed as a deed. (Case Page 28 line 38).

In this proceeding before your Honors it makes no difference whether we consider Schaffer as a mortgagee under the Tax Sales for the taxes for the years 1913 and 1914, or whether we consider

him an owner under the filed deed for the reason that Section 9 expressly says:

“That Schaffer’s liens shall not be prior to subsequent municipal liens.”

Therefore, by the express language of the Statute the taxes assessed subsequent to the years for which Schaffer obtained his tax titles were in turn paramount liens and when the City sold them in 1918 it acquired a first and paramount lien over Schaffer’s prior and earlier tax titles. This then paramount lien was acquired by the complainant who then assumed the position of first mortgagee and the complainant then files its bill to foreclose and cut out by foreclosure the second mortgage lien which Schaffer holds under his tax certificates.

Section 37 of the above Act, says, “Until the right to redeem has been cut off the owner, mortgagee, occupant or other person having an interest in the lands, may redeem the same.” Therefore, it again appears that Schaffer’s right to redeem is expressly given by this Section irrespective of whether Schaffer has become the owner under his filed tax certificates or simply remains as mortgagee or a person having an interest in the lands.

It is elementary that if Schaffer’s lien be subordinate and made subject to the last tax title it is and would be cut off by a final decree of foreclosure in this suit from which redemption is not made within the short day limited by the Court and under *Section 49 of the Tax Sale, Revision, P. L. 1918 at page 897*, Schaffer’s right to redeem continues until barred by the decree to be entered in this case.

POINT II**SCHAFFER IS ENTITLED TO REDEEM**

The evidence in the cause does not establish by the production of Certificates with affidavits recorded, that Schaffer has, in fact, perfected title under his tax sales and, therefore, Schaffer must rely upon the fact that he was merely the holder of the outstanding tax sale certificates. This is admitted by the Bill of Complaint (Paragraphs 10 and 11, Case Pages 3 and 4) and is also shown by the ticket annexed to the subpoena (Case page 6) in which it is said that Schaffer holds certificates of tax sale the liens whereof are alleged to be subsequent to complainant's certificate of tax sale.

The printed case shows that when the cause originally came before Vice Chancellor Ingersoll, on Feb. 27, 1923, an offer was made by Schaffer, in open court, to redeem (Case page 15 line 38; Case page 16 line 33), and this offer to redeem is also shown by a letter of June 13th, 1923 (Exhibit page 42). Notwithstanding all of this, the complainant upon filing its Bill to Foreclose shows that what it really wanted to do, was to redeem from Schaffer's outstanding tax titles and thus be in a position to claim absolute title. This is shown by the entire proceedings and particularly by the letter of Mr. Lewis dated June 14th, 1923 (Case page 42).

When the case came on for actual hearing, the same offer to redeem was renewed on behalf of Schaffer (Case page 18) and counsel for the complainant in addressing the Court admitted that the defendant, Schaffer, acquired a certificate at a tax sale prior to that of the defendant (Case page 21 line 20) and claimed that under the law complainant was entitled to redeem from Schaffer's tax title saying, "We claim that our certificate of tax sale, acquired by a subsequent sale, subsequent to that

of the defendant, Carl Schaffer, is paramount to theirs" (Case page 21 line 30).

POINT III

THE APPELLANT AGREES THAT THE LAST TAX SALE IS PARAMOUNT

The statute above quoted gave Schaffer the right to record his certificate of tax sale as a mortgage and gave the same right to the complainant and the complainant's certificate of tax sale is on record in the Clerk's Office of Atlantic County in Book 178 of Mortgages pages 412 etc. (Case page 2, line 2.)

Therefore, it cannot be questioned but that these respective certificates of tax sale are in their nature until reduced to title, mortgages, and the case comes strictly within the rule laid down by Vice Chancellor Stevens in the case of *Kuntzman vs. Smith*, 77 N. J. Eq. 30, in which he said, "The right of a senior mortgagee on the foreclosure of the junior mortgage is the right to foreclose, and not the right to redeem."

Thus we have a situation where the complainant by acquiring the last tax title and recording it became first mortgagee and filed its bill to foreclose as against every person who had the right of equity of redemption and that included owners of record, actual mortgagees and holders of certificates of tax title who, in view of the statute took the position of subsequent mortgagees.

POINT IV

COMPLAINANT IS NOT ENTITLED TO REDEEM FROM SCHAFFER'S TAX TITLE

The suit as framed by complainant's bill is not one in which complainant seeks to redeem and, therefore, Schaffer is not in this suit put to the

same degree or strictness of proof to establish absolute title as he would have been had complainant's bill been framed as a bill for redemption of a prior mortgage lien. True, the evidence offered by Schaffer may fall short of the strictest proof that he had perfected title under his certificates of tax sale. If he had perfected title, he would have been an owner of the lands in every sense; the complainant would have been a first mortgagee and complainant could not have compelled, by any theory or procedure, a conveyance to it by Schaffer of title. It could merely have obtained a decree that Schaffer redeem within a short day to be fixed by the Court or be forever thereafter foreclosed. See *Mitsch vs. Owens, supra.*; *Harrington Co. vs. Horster, supra.*; *Silver vs. Gattel*, 89 N. J. Eq. 403; *Gonzales vs. Harrington Co.* 126 Atl. 38-40.

The situation, however, is that Schaffer did not subpoena from the County Clerk's Office of Atlantic County his certificates of tax sale duly recorded with affidavits, to made a deed under the statutes (4 *Compiled Statutes* page 5137, sec. 59.) The bill of complaint by paragraphs 10 and 11 admitted Schaffer's certificates. Schaffer as a witness testified that he bought the property for the taxes of 1913, 1914 and 1915 and that he served notices upon all three certificates (Case page 25 line 38). An offer was then made to produce certified copies of the filed certificates if it should become necessary (bottom Case page 25), but the learned Vice Chancellor has never intimated that the production of the filed papers was in his opinion necessary.

The burden was not on Schaffer in this sort of a suit to establish his title as an owner under the tax certificates of sale issued to him. On examination he was asked the question:

Q. Did you do anything to perfect this title under this sale of 1913, '14 and '15?

A. Yes, sir, we served notice on all the three certificates. Two of them are now on the record, as a deed, at the county collector's office at Cape May Landing.

(Case Page 25, line 36).

This statement was not contradicted by any evidence and is, therefore, prima facie evidence unless there is some situation produced for disbelieving the truth of Schaffer's statement and there is no such circumstance in the case. It must be remembered that Schaffer was called upon by complainant's bill to redeem; his letters and conduct show that he has attempted to redeem and his answer and counterclaim are for redemption on the state of the facts set forth in complainant's own bill.

As above outlined Schaffer's rights are to be determined under the Statute of 1903. That Act gives the right to an owner, mortgagee, occupant or other person in interest to redeem. Nobody who was an owner, or a mortgagee, or an occupant, or a person in interest at the time Schaffer acquired his tax titles has ever, so far as the evidence disclosed, attempted to redeem from Schaffer's certificates or title, and no one who is an assignee of any of those persons has ever made such an attempt.

POINT V

THE COMPLAINANT IS NOT WITHIN STATUTORY CLASSIFICATION

Complainant has an interest by reason of having acquired a paramount title which cannot be in any way cut out or impaired by Schaffer's claim either as a mortgagee or owner under his tax sale certificates and, therefore, as above pointed out the only right of the complainant is a foreclosure decree and

under the practice laid down by numerous decisions above quoted, the holder of the tax title has a right to redeem.

Upon the same line of argument and reasoning, the complainant had no right to attempt to interfere with Schaffer's standing by paying money to the tax collector and the act of depositing money with the tax collector was a nullity and conferred no right upon the complainant, any more than a right was conferred upon the defendant by the filing of a foreclosure bill as was done in the case of *Millmore vs. Zimmerman*, 97 N. J. Eq. 326.

POINT VI

COMPLAINANT'S CONDUCT IN REFUSING SHAFER'S RIGHT TO REDEEM IS VEXATIOUS

It is apparent that while complainant's bill is the foreclosure bill authorized by the statute, complainant's purpose in filing said bill is to redeem from Schaffer's tax title. This is disclosed by Paragraph 1 of the complainant's answer to defendant's counterclaim (Case page 13-A, Page 12 line 20 and line 36). Schaffer endeavored at all times to ascertain the amount due to complainant and redeem (See answer and counterclaim pages 11 to 13; Statements of account pages 16 and 18; Testimony of Schaffer, page 25).

It is thus apparent that the complainant has blocked every effort of Schaffer to redeem and has merely instituted its suit for the purpose of embarrassing Schaffer and if possible to get the right to redeem as against Schaffer's outstanding certificates contrary to law.

It is conceded that if the complainant brought his cause in the ordinary way for a foreclosure and obtained a decree, Schaffer, on his request for redemption, must pay the costs of suit to the com-

plainant, but this is far from such a case and is not an honest attempt of the complainant to receive equity. It is an attempt to embarrass Schaffer and to put him to considerable expense in protecting his title and, therefore, it is claimed under the case of *Shields vs. Lozear*, 22 N. J. Eq. 447, Affirmed 23 N. J. Eq. 509, that this continued refusal of the complainant to permit Schaffer to redeem is such vexatious conduct as justifies the Court in disallowing costs to the complainant and allowing costs and counsel fee to Schaffer upon his counterclaim.

CONCLUSIONS

The learned Vice Chancellor in his conclusion said:

“No testimony is presented to show that Schaffer foreclosed his tax title, but it is in evidence that he failed to pay subsequent taxes thereon.” (Case page 35 line 26).

It is evident from this remark, that Vice Chancellor Ingersoll was confused and that he was under the impression that Schaffer was endeavoring to procure a foreclosure decree under his counterclaim against the complainant.

This was erroneous in two aspects. In the first place Schaffer was only attempting to redeem as requested in the prayer in complainant's bill and in the second place, Schaffer's rights could not be judged under the 1918 Tax Sale Revision which requires complainant to pay all subsequent taxes before being entitled to a foreclosure decree.

If it is held that Schaffer is not an owner by reason of not having perfected his tax titles, then he is at least a mortgagee. As an owner he could go on for years without paying taxes or assessments

and still his right to redeem exists until cut out by the service of proper notices or of the entry of a foreclosure decree or the lapse of twenty years.

We most respectfully urge that the decree of the Court of Chancery is erroneous in that it impairs Schaffer's rights without offering him the right to redeem and adjudges that the complainant is, in fact, entitled to redeem from Schaffer when the complainant has not filed a bill for redemption but has filed a bill to foreclose.

Thus what purports to be a decree of foreclosure is in fact a decree which does not give any right of redemption, but by the opinion adjudges that Schaffer has no rights and this must be predicated upon the fact that the complainant paid money to the collector of taxes.

Complainant by its answer to Schaffer's counterclaim for redemption alleges that complainant has tendered itself ready to redeem the premises from Schaffer's tax titles and had deposited moneys for that purpose with the collector of taxes. (Case page 13-A). On the hearing complainant endeavored to offer this evidence and it was promptly objected to (Case Pages 20 and 21). The admission of this evidence is erroneous in that the complainant was never within the statutory classification of those persons who are entitled to redeem from Schaffer's tax titles and as above pointed out, the complainant under its tax certificates occupies as against Schaffer the role of first mortgagee.

While complainant's bill is in form the statutory strict foreclosure bill, nevertheless what the complainant was seeking was to establish a right to redeem from Schaffer's tax titles and the final decree is tantamount that Schaffer's only rights are to accept the money which has been deposited with the tax collector, and, therefore, while the suit on

its face is one for foreclosure, the proceedings and decree are for redemption and this cannot be done.

“The allegations and proofs in suits in equity must set forth and support the same cause of action. A party cannot state one case in his pleading, and make a different one by his proofs.”

See *Smith vs. Artell*, 1 N. J. Eq. 494; *Parsons vs. Heston*, 11 N. J. Eq. 155; *Midmer vs. Midmer*, 26 N. J. Eq. 299; *Lehigh Val. R. Co. vs. McFarlan*, 30 N. J. Eq. 180.

In the recent case of *Fudor vs. Kunie*, 112 Atl. Rep. 598 and 92 N. J. Eq. 301, Chancellor Walker comments on the question of amendments and referred to the decision of Chancellor Green in the case of *Coddington vs. Mott*, 14 N. J. Eq. 430, in which that learned Chancellor said:

“That he knew of no case which allows an amendment in order to enable the party to make a new case, and concludes by saying that the proper practice, where the complainant has mistaken his case, is to dismiss the bill without prejudice to a new one.”

There should have been a decree referring the matter to a master to ascertain the amount due to complainant upon its certificate and fixing a time within which the defendant might redeem or be barred, or if the complainant did not want that relief, then its bill should have been dismissed with costs.

The decree of the Court of Chancery is therefore erroneous in that it decrees that Schnaffer has no right of redemption and on the bill as framed, no such decree could have been made, but the only

decree that could lawfully have been made is that Schaffer be barred of his right of equity of redemption unless he redeem by paying an amount of money fixed by the Court within a short day to be designated by the Court. Therefore, it is respectfully submitted that the decree should in all things be reversed with costs.

SAMUEL KOESTLER,

Solicitor for and of Counsel
with Appellant.

1877

STATE OF NEW YORK

IN SENATE

JANUARY 15, 1877

REPORT

OF THE

COMMISSIONERS OF THE LAND OFFICE

IN ANSWER TO A RESOLUTION PASSED BY THE SENATE

APRIL 18, 1876

ALBANY:

WEDDERBURN, BROS. & CO. PRINTERS.

1877.

1877.

1877.

1877.

1877.

1877.

1877.

1877.

1877.

1877.

1877.

1877.

1877.

1877.

1877.

1877.

1877.

1877.

1877.

1877.

1877.

1877.

1877.

1877.

1877.

1877.

NEW JERSEY
COURT OF ERRORS AND APPEALS

Between

ABSECON LAND Co., a corpora-
tion, etc.,

Complainant-Respondent,

and

JAMES KEERNES, ET AL.,

Defendants.

KARL SCHAFFER,

Defendant-Appellant.

On Appeal.

**Brief for Complainant-Respondent,
Absecon Land Co.**

The defendant-appellant, Karl Schaffer, acquired certificates of tax sales for the premises mentioned in the bill of complaint for the years 1913 and 1914, and so far as the records show, and as found by the Court below, at the commencement of the complainant's suit to foreclose, had taken no steps to perfect his tax title thereunder, or paid any subsequent taxes thereon. Complainant acquired a subsequent certificate of tax sale for the premises, that for the year 1918, and upon the expiration of the time limited, forthwith proceeded to perfect its title by foreclosure as authorized under Section 49 of the Tax Act. (P. L. 1918, p. 897.)

While the complainant in its bill did make Schaffer a party defendant, probably a proper one for the purpose of establishing the amount as might be due on his certificates and having them redeemed, he was by no means a necessary or essential party, inasmuch as under Section 37 of the Tax Act (P. L. 1918, p. 893), redemption of the premises by a party of interest from his certificates is authorized by payment to the tax collector. The defendant, Schaffer, refusing such redemption, thereby forced the complainant as a party of interest to make redemption by payment of the amounts due on his certificates to the collector, as was the complainant's right and privilege under the statute referred to. (Case p. 22, l. 39.) The payment to the collector as thus authorized did in effect eliminate his (Schaffer's) claim. Had Schaffer been vigilant to perfect his title under his certificates and paid the subsequent taxes due on the premises there would have been no necessity for the subsequent tax sale certificate acquired by complainant and upon which the foreclosure is based. The complainant's after acquired tax sale certificate prevails in respect to the premises over a former certificate. (Black on Tax Titles quoted in 37 Cyc., at p. 1478, and recognized in 58 E., p. 47.)

Equity, of course, follows the law, and the maxim that "the law is for the vigilant rather than for the dormant," as, for instance, the priorities in executions, should alike be recognized in the case at hand. (Sutton vs. Champion, 2, N. J. Misc. Rep. 1135.) As the latter certificate of

tax sale is paramount to the former, the right of occupation of the premises under the latter is alike paramount to such a right under the former, therefore, it would logically and legally follow that the paramount right of occupancy carries with it the paramount right of redemption. Having had his remedy, and being in laches for several years in laying by without effort to perfect his title under his certificates or even paying subsequent taxes on the premises, the defendant, Schaffer, should not now be permitted to divest the complainant-respondent of its right to perfect its title under its tax certificate by making a redemption after the complainant has asserted his right under the statute and redeemed the premises from the lien of Schaffer's certificates by paying the amount due thereunder to the tax collector after the refusal of Schaffer to accept same. Thus it follows that Schaffer has become eliminated, granted even though he had been a necessary rather than a mere proper party.

While it may be the complainant in its prayer did not ask specifically for the appropriate relief in respect to the defendant, Schaffer, according to the facts as developed from the evidence as well as by the law and equity applicable thereunder, still it is the province of a court of equity to grant such appropriate relief without it being specifically prayed (35 E. 408), and this the Court below has seen proper to do, and the prayer to the bill having likewise been subsequently amended.

Therefore, it is respectfully submitted that the defendant, Schaffer, having been in laches in so far as his

efforts to perfect title under his certificates or in even paying subsequent taxes on the premises, and the complainant-respondent having redeemed the same by payment to the tax collector as authorized by the statute, it would be inequitable, as held by the Court below, to now permit a redemption by the defendant-appellant to defeat the complainant-respondent's perfecting title to the premises upon the proceedings had based upon its subsequent certificate of tax sale.

Respectfully submitted,

H. W. LEWIS,

*Solicitor for and of Counsel with
Complainant-Respondent.*



