New Jersey Court of Errors and Appeals

JESSIE E. KOEWING,
Plaintiff-Appellant,
against
THE TOWN OF WEST ORANGE,
Defendant-Appellee.

This is an appeal by the plaintiff from a judgment, striking out the complaint on the ground that the same discloses no cause of action (p. 3). The grounds of appeal are set forth in full in the notice of appeal (p. 1).

POINTS

I

A brief synopsis of the complaint and of Defendant's objections to the same.

The action is brought to recover the sum of $1,455.92 collected by defendant from plaintiff under wrongful and unlawful duress and compulsion, as alleged taxes. The complaint sets forth five

counts. The first count is based upon an agreement between plaintiff and defendant relating to said alleged taxes, and broken by defendant. The four final counts are independent of agreement, and are relied on by plaintiff only in the event that plaintiff does not succeed on the first count.

First Count: In 1907 plaintiff purchased real property in West Orange, which has since been her home. Defendant previously had purchased the same property to protect its lien for unpaid 1905 taxes. Plaintiff took title subject to defendant's said lien and also the lien of unpaid 1906 taxes. Thereafter in 1907 and 1908, defendant increased the tax valuation of plaintiff's property for said years from $33,500 to $68,500. This was an unjust and grossly discriminatory increase. Subsequent determinations of the State and County Boards reduced this valuation to $50,000 which was still excessive. Plaintiff being dissatisfied, prepared to appeal from said determinations. This course would have deferred payment of taxes due, *i. e.* $4,657.60, until determination of the appeal (about one year). Defendant was in pressing need of funds. On July 13, 1909, at a meeting of defendant's Town Council, plaintiff and defendant agreed as follows: (The agreement had been previously approved at a taxpayers' meeting see page 10, paragraph 10.) (1) Plaintiff would allow said valuation of $50,000 thereafter to remain, although excessive, and would not endeavor to reduce the same. (2) Plaintiff would immediately pay to defendant the face amount of taxes then unpaid for 1905, 1906, 1907 and 1908, *i. e.*, $4,657.60. (3) Defendant would accept said sum of $4,657.60 in full of taxes interest and costs for said years, and would waive actual payment of said interest and costs on said taxes amounting to $678.

(Defendant contends (see page 5), that the said meeting of July 13th, was illegal and void, and also (see page 5), that said agreement was *ultra vires* and void.)

Plaintiff fully performed the agreement and duly paid $4,657.60 to defendant by check bearing the following notation: "In full of all demands for taxes and interest thereon for 1905, 1906, 1907 and 1908." Plaintiff also allowed said excessive valuation of $50,000 to remain down to and including the year 1913, and paid taxes thereon. Defendant cashed plaintiff's check and received, used and retained the proceeds.

Defendant's officers during succeeding years, by word and act, induced the plaintiff to believe the matter entirely settled. About January, 1913, however, plaintiff first became aware that plaintiff's payment had not been credited on the books of the tax collector. Plaintiff immediately informed the Town Council thereof. Said body on January 21, 1913, by resolution directed the collector to credit plaintiff's check according to its terms, and as *taxes* for 1905, 1906, 1907 and 1908. The collector disobeyed the directions and credited the amount against *taxes and costs* for the years 1908, 1907 and 1906, respectively, and part of 1905. These proceedings left an apparent balance of taxes for the year 1905, of $678. The balance, if anything, was the total of interest and cost balances for 1905 to 1908, inclusive. A tax balance would bear interest; an interest balance would not.

The plaintiff ineffectually endeavored to have this balance cancelled. On July 5, 1915, however, defendant notified plaintiff to exercise within sixty (60) days her right to redeem her property from the lien of said balance, and that upon plain-

tiff's failure so to redeem, plaintiff's right to redeem at the end of said period would be forever barred, and plaintiff would forfeit her home, which on said date would become the property of defendants by operation of law. The amount required by defendant to redeem was $1,455.92. This sum, generally speaking, consisted of the alleged tax balance of $678, to which defendant had added interest at twelve per cent from the year 1905.

Plaintiff without avail protested to defendant against its action. On August 5, 1915, to avoid loss, in the event of unfavorable litigation, of her home and property worth many times the sum demanded, plaintiff under duress and compulsion, paid defendant said sum, notifying the defendant that she owed defendant nothing, that payment was made under protest, and that suit would be brought to recover the amount so paid.

Judgment is demanded for said amount.

Second Count: The allegations in the first count are substantially realleged.

In May, 1915, the differences between plaintiff and defendant were brought by plaintiff before defendant's commissioners of adjustment.

On June 1, 1915, said commissioners of adjustment recommended to defendant that the matter be disposed of by plaintiff paying the sum of $500. To avoid the expense of litigation plaintiff assented to this proposition and thereupon plaintiff duly deposited her check for such amount with defendant. Defendant's Town Council, however, on July 5, 1915, repudiated the settlement and required the plaintiff to pay the sum of $1,455.92 as aforesaid or be foreclosed. Plaintiff claims that upon the recommendation by said commissioners she became entitled either to have the same ac-

cepted or passed upon by the Circuit Court, and that the action of defendant in compelling her to make any payment while such proceedings were pending was wrongful, and that she has been damaged in the amount of such payment.

THIRD COUNT: The allegations in the first count are substantially realleged.

On May 5, 1914, the Town Council agreed to cancel said alleged tax balance for such sum as should be determined by the commissioners of adjustment. About May 19, 1914, said commissioners determined that the sum of $700 was a proper settlement. To avoid litigation plaintiff assented and duly deposited her check in said amount. The commissioners of adjustment were fraudulently induced to believe by one of their number, that plaintiff's check had not been so deposited, and on June 2d, on said ground, withdrew their approval of the settlement. Plaintiff demands the difference between the amount paid and $700.

FOURTH COUNT: The allegations in the first count are substantially realleged.

Plaintiff claims that if she owed defendant anything the amount was made up of various interest and cost balances for the years 1905 to 1908, inclusive, aggregating $678. That such balances are not subject to interest, and that she was wrongfully was obliged to pay interest at twelve per cent on an alleged tax balance for 1905, when said balance if anything was a non-interest bearing interest balance, made up of ~~items~~ Items of interest accruing during the years 1905-1908 inclusive.

FIFTH COUNT: The allegations in the first count are substantially realleged.

On December 17, 1914, after defendant had repudiated its agreement of July 13, 1909, and its

subsequent ratifications thereof, to cancel said alleged balance plaintiff obtained a reduction of $6,500 of the tax valuation of her property for the year 1914. Plaintiff could have obtained similar reductions for the years 1907 to 1913, inclusive but for her agreement with defendant to allow the excessive valuation of $50,000 to continue. Plaintiff claims the excess taxes so paid, *i. e.*, $1,048.45.

II

The Agreement of the Defendant to waive interest and costs on accrued taxes, entered into at the meeting of July 13, 1909, was intra vires and not ultra vires.

The defendant's motion to strike out the complaint is based principally upon two grounds, *i. e.*: (1) That the agreement upon which plaintiff stands was *ultra vires*; (2) That the meeting at which said agreement was made was invalid and void (see §§ 2 and 3, Notice of Motion, p. 5).

It is submitted that if the agreement be found to have been *intra vires* and not *ultra vires,* then the plaintiff having fully performed her part thereof in good faith, and having changed her position in a substantial particular, and defendant having received full benefit of such performance, defendant is estopped to set up that the meeting of July 13, 1909, was invalid and not binding on defendant. This question of estoppel will be treated more fully under a subsequent point.

Plaintiff in support of her claim that the agreement was *intra vires* first refers the Court to P. L. 1890, page 31 (Compiled Statutes, Vol. 4, page 5257) Sec. 434. Said Statute is as follows:

"Township Committee or Town Council May Adjust Past-Due Taxes, Etc.—Sec. 1. That it shall be lawful for the township committee of any township or the town council of any town in this state to make such abatement, revision, alteration, adjustment and settlement of past-due taxes and assessments, both of principal and any and all interest and penalties thereon, as such board shall deem equitable and just and to be for the best interest of such township or town; provided, that the provisions of this act shall not in any wise affect or impair the interest or any lien of any purchaser other than such township or town, acquired under any sale made for past-due taxes and assessments."

This statute has not been repealed directly or by implication.

In addition to the Act of 1890 above quoted, there are other statutes empowering defendant to arrange for the settlement and adjustment of taxes and to accept as such settlement sums less than the full amount thereof.

The laws of 1898, P. L., page 442 (Revised Statutes, page 5246) extend to municipalities other than cities the provisions of the so-called Martin Act which theretofore had been applicable only to cities. By virtue of said provisions the defendant was permitted to apply for the appointment of commissioners of adjustment. The general duties of such commissioners are set forth (subdivision 2) as follows:

"That the said commissioners of adjustment when appointed for any such town, township, borough or other municipality,

> shall have power and jurisdiction, and they are hereby directed and required, in all cases when any tax, assessment or water rate levied or imposed, or attempted to be levied or imposed on any land therein, prior to the appointment of said commissioners, remains unpaid and in arrears, to examine and fix, adjust and determine as to each parcel of land, how much of such arrearages and subsequent taxes, assessments or water rates. if any, ought, in the way of tax, assessment or water rate, in fairness, equity and justice to be laid, assessed and charged against and actually collected from said land for or on account of said taxes, assessments or water rates."

By the laws of 1913, P. L., page 417, the jurisdiction of the commissioners of adjustment is extended:

> "to include all cases where any tax, assessment, water rate or water rent shall have been levied or imposed, or attempted to be levied or imposed, on any land in any town, * * * subsequent to the passage of the act to which this act is a supplement, and where such tax, assessments, water rate of water rent shall remain unpaid and in arrears for the period of one year."

The Court is asked to observe that under Section I of the Act of 1898, above quoted, the town and only the town can be the moving factor in obtaining the appointment of commissioners of adjustment. When so appointed they become a part of the administrative machinery of the town and afford an expeditious means of settling tax dis-

putes which otherwise might result in delay and litigation. As against the taxpayers affected by the acts of the Commissioners the Circuit Court has jurisdiction (see P. L. 1898, page 442, Sec. 3).

In addition to the above statutes the attention of the Court is further referred to the P. L. of 1899, page 253 (Compiled Statutes, page 5254):

> Settlement of Arrears of Taxes or Assessments when Recommended by Commissioners of Adjustment. Sec. 1. It shall be lawful for the governing body of any town, township, borough or other municipality, for which commissioners of adjustment have been appointed by the Court under the provisions of the act to which this act is a supplement, upon the receipt of a recommendation from such commission, to adopt a resolution authorizing the collector of taxes of such town, township, borough of other municipality to receive in full settlement of the arrears of taxes or assessments remaining of record against any particular piece or parcel of land the sum of money recommended by the aforesaid commissioners of adjustment as the sum which, in their judgment, should in equity and justice be paid on account of the same."

It is entirely clear from a consideration of the statutes above set forth, that the town was vested with ample power and authority to compromise differences arising out of taxation and to accept in settlement of unpaid taxes a sum less than the face amount thereof. The defendant itself assumed to avail itself of these statutes for the settlement of the matter now at bar, in the years

1914 and 1915 (see counts 2 and 3). Having been vested with such powers the claim of the defendant that the agreement was *ultra vires,* must fail. The agreement was clearly *intra vires.*

III

Defendant is estopped to deny the validity of the agreement of July 13, 1909, even admitting for the purpose of the argument that the meeting of July 13, 1909, was not a valid meeting.

The plaintiff paid to defendant $4,657.60 by check, bearing the following statement:

> "In full of all demands for taxes and interest thereon for 1905, 1906, 1907 and 1908" (see p. 12).

Said sum represented the actual amount of taxes and did not include interest and costs. The said check was delivered upon the understanding that defendant would waive interest and costs for the years 1905, 1906, 1907 and 1908 in return for plaintiff's agreement not to review an unconscionable valuation of $50,000 levied against plaintiff's property by defendant, but to allow the same to continue (p 10).

Thereafter (p. 13) plaintiff took no steps to review or vacate the assessment of $50,000 but relying on the acts and representations of the defendant allowed said valuation to continue, and paid taxes thereon for the years 1907, 1908, 1909, 1910, 1911, 1912 and 1913, inclusive, and made no effort to have the excessive value modified or reduced, but allowed the statutory period of limitation to expire so as to prevent such review (see p. 13). That

by so doing the plaintiff conceded a vital right is at once apparent. In paragraphs 58, 59 and 60 of the complaint, pages 26 and 27, it appears that without any physical change in the property or the intervention of any circumstances to reduce the value of the same, the plaintiff on December 17, 1914, obtained a reduction in value of $6,500. That such reduction could have been in operation since 1907 but for plaintiff's performance of her agreement not to apply for the same. That the amount of excess taxes paid during the seven years, 1907—1913, on the excess valuation, was $1,048.45. It therefore appears that so far as the plaintiff is concerned the contract was fully executed and that relying on defendant's representations that the matter had been fully disposed of, and that the check had been received and credited according to the terms thereon noted (see paragraph 20 of the complaint, p. 13), plaintiff changed her position in a substantial particular. Defendant has never offered to return any part of the sum paid to plaintiff (paragraph 19, p. 20) but that on the contrary said defendant has used the sum ~~of~~ To its own benefit and advantage. Defendant therefore has ratified and affirmed the agreement of July 13, 1909 beyond all recall, and is estopped to deny the validity of the same.

The Court is respectfully referred to the following citations of authority:

The City of Millville vs. Empire State Surety Co., 54 Vroom, p. 293.

Defendant pleaded in defense that plaintiff had not prior to making of the contract sued on submitted plans and specifications to the State Board of Education as required by law. The following is from the opinion of Justice Gummere, at page 295:

> "The first of these pleas attempts to avoid liability, upon the ground that the plaintiff, by entering into the contract with Steelman for the erection of the school building without first submitting the plans and specifications to the State Board of Education, exceeded the power conferred upon it in that regard by the legislature. Conceding this to be the fact it constitutes no defense to the plaintiff's action. It is averred, in the declaration, and not denied in the plea, that the plaintiff has fully performed the contract on its part. It is settled in this State that a corporation cannot avail itself of the defense of *ultra vires* when the contract has been in good faith fully performed by the other party, and the corporation has had the full benefit of the performance." (*Camden and Atlantic Railroad Co. v. May's Landing and Egg Harbor City Railroad Co.,* 19 Vroom., 530).

The Court is further referred to the following portion of the opinion in *Aspinwall Delafield Co. vs. Aspinwall Borough,* 229 Penn. State 1, at p. 4:

> "The point is made that the resolution was a legislative, as distinguished from a ministerial act, and that therefore approval by the burgess was necessary to make it valid. That it was legislative in its character may be conceded; and were this an effort to enforce an executory contract resting on no other authority, the infirmity of the resolution would be a serious obstacle in the way. But that is not this case. Here we have a contract amply within the scope of the powers of the borough authori-

> ties fully executed * * * The contention on the part of the borough assumes that the contract was void. This is a mistake. A void contract is one which offends against public law or policy, or is without the scope of proper authority. Nothing of the kind can be affirmed with respect to this contract; it was amply within the scope of corporate authority, for the power to provide a sewer for the borough is a legitimate municipal function; the manner of providing it, whether by construction or purchase, is simply a matter of discretion. The defect in the resolution which authorized this contract was its want of regularity Had it been approved by the burgess, its entire sufficiency could not have been questioned. It follows that the contract made thereunder was not void, but simply voidable, and susceptible of ratification."

The following statement of the law appears at 28 Cyc., page 674:

> "Municipal corporations, like private corporations, and persons, may be estopped by conduct to deny the validity of their contracts. In actions on municipal contracts, it is generally held that as against the party which has performed its part of the contract, the other party having received the benefits, is thereby estopped to avoid just liability by asserting that the contract was invalid for irregularity or want of authority, unless it tenders a full *return of the consideration received.*"

The Court is also referred to the following adjudications:

Moon vs. Mayor of the City of New York, 73 N. Y., 238.

Hitchcock vs. City of Galveston, 96 U. S., 341-51.

Ill. Central Railroad Co. vs. Road District #1, 119 Ill. App. Court, 251, 254.

Drainage Commissioners vs. Lewis 101 Ill. App. Court, 150, 153.

IV

The Plaintiff is entitled to relief under the first count in any event.

The first count is, in any event, good to sustain a recovery for the difference between the sum of $1,455.92, paid for interest and costs on August 5, 1915, and the sum of $678.88 the amount which the defendant demanded as interest in full up to July 9th, 1909. Whether or not the agreement entered into between the parties on July 9th, 1909, whereby the defendant agreed to waive the $678.-88 which it then claimed to be due as interest, was or was not the *ultra vires,* and whether or not such arrangement did or did not create an agreement by estoppel, yet the complaint shows that both parties entered into the arrangement in apparent good faith and carried it out, and that the period between July 9th, 1909, and August, 1915, as far as the payment of the interest was concerned, elapsed because the plaintiff was relying upon the agreement.

In 1915, however, defendant required plaintiff to pay interest for this lapsed period of July 9th, 1909, to August, 1915, claiming the balance to be a tax balance, when as it is perfectly apparent

from the complaint, that she waived her right to dispose of the interest on July 9th, 1909, for $678.-88. Accordingly the act of the defendant has increased the amount from $678.88 to nearly $1,500 by reason of this period of time during which the plaintiff relying upon the defendant's promise, was willing to waive her rights and accept an excessive assessment.

It is respectfully submitted that the defendant cannot thus increase the amount of interest. If the defendant desires to repudiate the agreement the very least it can do is to put the plaintiff into the position she was in on July 9th, 1909, on which day she could have cancelled this interest and prevented it from further running by the payment of the $678.88.

The defendant would have been prevented in law from recovering from the plaintiff this increased amount of interest which had accrued by reason of the fact that the plaintiff relied upon the act of the defendant in agreeing to take no step to review the assessment, and when therefore the plaintiff paid this increased interest under protest and in face of threats of the defendant to sell her property therefor, the law implies a promise on the part of the defendant to return to her the money to which the defendant was not entitled.

Under the facts alleged in the first count, therefore, a cause of action is made out against the defendant for this excess interest amounting to the difference between $678.88 and $1,455.92. or the sum of $677.04. The plaintiff was at least entitled to a trial upon the question of recovering this part of her damage under the facts alleged, and the first cause of action alleged in the complaint should not therefore have been dismissed.

V

The decision of Whelahan vs. West Orange has no application to the case at bar.

This point is in reply to the second ground of dismissal set forth in the notice of motion page 5.

The Whelahan decision is not reported. So far as plaintiff has been able to ascertain the Court merely filed a memorandum setting aside a resolution passed at a special meeting on July 13, 1909, to purchase water works property. No other question was before the Court in said suit.

On this motion to dismiss the complaint all the allegations therein must be taken as admitted. With this in view the Court is referred to paragraph 11th of the complaint page 10 where the following appears:

> "Thereafter and at a meeting of the Town Council of the Town of West Orange, held on the 13th day of July, 1909, a resolution was *duly adopted* whereby, etc."

It therefore cannot be questioned on this motion or on this appeal that the "resolution was *duly adopted.*"

Plaintiff contends that the meeting and proceedings held thereat were valid as between the plaintiff and defendant, and for the Court on this motion to consider matters not appearing in the complaint would be to deny to plaintiff the right to establish the validity of the meeting by proper evidence.

There is no proof before the Court that the meeting declared illegal is identical with the meeting at which plaintiff's agreement was made.

Considering the *Whelahan* suit on the merits the following should be observed: The same was a taxpayer's suit and included a controversy where three parties were involved, *i. e.:* (1) the plaintiff, a taxpayer; (2) the town, and (3) a third party contracting with the town. The town in such case is in position analogous to that of the trustee, for the benefit of the taxpayer, and the taxpayer has a right to question any breach of duty.

In the case at bar the situation is entirely different. No intervening taxpayer is involved; on the contrary the taxpayers expressly approved the settlement made with the plaintiff and authorized the same at a taxpayers' meeting held prior to the meeting of the Town Council on July 13, 1909 (see paragraph 10 of the complaint, page 10).

The controversy at bar is directly between the contracting town and the contracting plaintiff. After having received all the benefits of a full performance of plaintiff's part of the agreement the defendant now takes the position that it may repudiate its own acts because of a simple irregularity in the calling of the meeting of July 13, 1909. That such procedure is not countenanced seems entirely clear from the adjudications cited under the previous point. As was said by Lord Mansfield,

> "It would be a monstrous proposition for a person to be a party to a contract for the purpose of suing and not for being sued."

VI

It is not necessary to allege lack of authority to levy the tax.

This point is in reply to the fourth alleged ground of dismissal set forth in defendant's notice of motion.

The rule requiring allegations as to lack of authority to levy the tax is not of universal application and there are numerous exceptions thereto.

Judge Cooley in his work on taxation (3d. Ed.), after setting forth on page 1487, that three entities must co-exist, one of which was that the tax must have been illegal and void, states further on page 1493 as follows:

> "Where a municipal corporation is sued for money collected and paid over to it as a tax, *the idea on which the suit is predicated is that the corporation has received that which in justice it ought not to retain.* A suit will not, therefore, ~~be~~ lie to recover back taxes paid when the only complaint that can be made of them is that the proceedings in their levy and collection have been irregular. *The fact of irregularity does not establish injustice; there must be something further in the case which either exempts the party from the tax altogether,* or which because of illegality or inequality deprived the officers of jurisdiction."

The doctrine is further stated in Cyc., Vol. 37, p. 1147, as follows:

> "An action at law may be maintained to recover taxes where they were wrongfully and illegally assessed and collected, *or* where the municipality had no authority to levy *or collect* the particular tax or to assess the particular property * * *."

The doctrine is well established in the case of *The Mayor of Jersey City v. Riker,* 9 Vroom, p. 225. The Court, through Beasley, C. J., on page 227 states as follows:

> "In this instance, the authority to levy the tax was not wholly wanting, and the payment, in the legal sense, was voluntary; and under either of these conditions the law refuses to raise an implied promise to refund the money paid. Had this suit been brought upon the payment of the tax, and before any change in the situation had occurred, the case would have been the ordinary one presented in the reports and ruled by the decisions. But that is not so; *there is a new element here, and that is, the tax which was paid has been set aside.* The consequence is the payment has nothing, either in theory or in fact, to rest upon."

In connection with the quotation just made, it should be observed that the tax therein mentioned was set aside by judicial determination after litigation. *In the case at bar the tax was set aside in part by consent of the defendant* without litigation. In both cases "the payment has nothing either in theory or fact to rest upon." There is no distinction in principle between the town collecting a tax which should not have appeared on the books, and a tax which subsequent to such ap-

pearance had been stricken off by agreement, which agreement plaintiff was induced to believe was in full force, and effect.

VII

The allegations of the complaint as to compulsion are sufficient.

This point is in answer to the fifth alleged ground of dismissal. The allegations as to compulsion appear in paragraphs 29 to 31 of the complaint inclusive (page 15), and the Court is respectfully referred to the same.

If plaintiff had refused to pay the sum demanded and it had subsequently transpired on litigation that such refusal was not proper, plaintiff would have forfeited her home valued according to assessment, at $43,500. The Court is referred to compiled statutes, Vol. 4, page 5137, Sec. 59, providing that upon failure to redeem within sixty days, all right to redeem should be barred.

Judge Cooley in his work on taxation, 3d Ed., p. 1506, has the following to say concerning compulsion and duress:

> "It is sufficient if the circumstances are such as fairly lead to the conclusion that waste and expense can be avoided only by payment. * * *
>
> "And it has been held in some cases that a payment is to be regarded as compulsory even though it is not shown that the collector has a warrant if it is actually made to avoid an expected levy on property which would have followed in due course of law."

Citing

Kansas R. Co. v. Wyandotte Co., 16 Kan., 587.

Peyser v. New York, 70 N. Y., 497.

Raleigh v. Salt Lake City, 17 Utah, 130.

Babcock v. Cranville, 44 Vt., 325.

See also the statement in 37 Cyc., p. 1181:

"Where payment of an illegal tax, or one for which the person is not liable is enforced by duress or compulsion, the payment is not voluntary, and the amount may be recovered back in a proper action. There is duress in this sense when the taxpayer has been placed under arrest or where there has been a distraint or seizure of his chattels for the purpose of compelling him to pay the tax, *or where the officer being armed with lawful process and having authority to enforce his demand has made a distinct threat to seize and sell the property,* or is searching for property on which to levy. And according to the great preponderance of the authorities *it is enough to constitute duress if the officer simply demands payment of the tax under color of a warrant or other process* which gives him legal power to enforce his demand by compulsory proceedings against the person or property, and which makes it his duty to do so although he makes no threats, and takes no steps to destrain or levy for in this case the process has the force of an execution, and the taxpayer is justified in believing that if he refuses to pay the tax a levy on his property will follow as the only alternative."

VIII

There is no merit to the sixth alleged ground for dismissal.

The same appears at the bottom of page five. That plaintiff's suit is not an attempt to obtain judicial decision as to the validity of tax after the time of review by certiorari has expired is at once obvious when it is considered that plaintiff at no time attacked the *validity* of the tax. What plaintiff is attacking is defendant's action in compelling plaintiff to pay a balance of interest and costs which the defendant by agreement, cancelled, and on which representations plaintiff changed her position in a substantial particular and to her substantial damage.

IX

There is no merit to the first alleged ground of dismissal.

Defendant would dismiss the complaint because certain sections therein embody more than one allegation. Naturally no authority would go to the extent of sustaining such a proposition.

In the complaint at bar it is conducive to clarity of thought and statement that several corellated allegations should appear grouped under one subdivision. No prejudice of any kind can result to defendant from the present form of the complaint.

X

The second count sets forth a valid cause of action.

Section 2 of the act creating the commissioners

of adjustment (P. L. 1898, p. 443. Consolidated Laws, p. 5247) is in part as follows:

> "All persons interested in said matters either as taxpayers, owners of assessed land, or otherwise, *shall be entitled* to appear before said commissioners and be heard, * * * and said commissioners shall proceed as speedily as may be, to fix and adjust said arrearages."

Section 3 of said act (Consolidated Laws, p. 5250) provides that the commissioners of adjustment shall file reports of their proceedings in the office of the county clerk, and on the coming in thereof the Court shall make an order to show cause why said reports should not be confirmed and

> "said report upon being so confirmed shall be final and conclusive upon said town, * * * and upon all persons owing or having any interest in or lien upon the said lands."

Under Section 2 above quoted, plaintiff was clearly entitled to have the matter in dispute passed upon by the commissioners of adjustment.

It is submitted that the defendant town could not deprive plaintiff of such right after she had availed herself of the same, by an arbitrary direction to pay the full amount of the alleged taxes with 12% interest or be foreclosed. The effect of such a course would be to nullify the statute in that defendant at any time the determinations of the commissioners of adjustment were not to its liking could pursue a course precisely similar to that adopted in the case at bar. Such proceeding would be stultifying not only as to the Legislature, but also as to the town.

XI

The third count sets forth a valid cause of action.

The following statute appears P. L., 1899, page 253 (Consolidated Laws, p. 5254, §420):

> "Settlement of Arrears of Taxes or Assessments When Recommended by Commissioners of Adjustment—Sec. 1. It shall be lawful for the governing body of any town, township, borough or other municipality, for which commissioners of adjustment have been appointed by the Court under the provisions of the act to which this act is a supplement, upon the receipt of a recommendation from such commission, to adopt a resolution authorizing the collector of taxes of such town, township, borough or other municipality to receive in full settlement of the arrears of taxes or assessments remaining of record against any particular piece or parcel of land the sum of money recommended by the aforesaid commissioners of adjustment as the sum which, in their judgment, should in equity and justice be paid on account of the same."

In May 1914, (see paragraphs 44 and 45 of complaint, p. 21) defendant agreed to liquidate the alleged outstanding tax balance for such sum "as should be determined upon by the commissioners of adjustment." (See paragraph 44.) Thereafter the commissioners and plaintiff agreed to settle the controversy by the payment of $700. (See paragraph 45). The fact that the commissioners were fraudulently induced thereafter to revoke

their approval of the agreement (see paragraph 47) could have no bearing on plaintiff's rights.

The defendant constituted the commissioners of adjustment its agents to effect the settlement, and an agreement between plaintiff and said agents was duly reached and plaintiff (see paragraph 46) duly performed the agreement. Said agreement once having been entered into and plaintiff having performed, was thereafter binding on defendant.

XII

The fourth count sets forth a valid cause of action.

Section 57 Consolidated Laws, p. 5136, provides that the owner of any land sold for taxes (it will be recalled that plaintiff's land had been sold for 1905 taxes before plaintiff took title thereto. See paragraph 3 of the complaint), may redeem the same by payment of the amount shown in the certificate of sale with 12% interest.

Section 52 Consolidated Laws, p. 5133, provides that the certificate of sale shall set forth "the amount of the tax with the items of interest and cost in detail."

Section 53 Consolidated Laws, p. 5134, provides that taxes subsequent to the sale shall be a paramount lien and shall be added to the purchase money.

In the case at bar the amount of plaintiff's payment to defendant was $4,657.60, *i. e.;* the face amount of the *tax balance* for 1905, 1906, 1907 and 1908. The collector was ordered by defendant to credit the same according to the terms of the check given "and as taxes for the years 1905,

1906, 1907 and 1908." (See fol. 10, p. 15). The collector, however, credited the amount in a reverse order, *i. e.;* beginning with the later years and crediting back to the earlier years, and credited against taxes, interest and costs for each year, the result being to leave an apparent *tax* balance of $678 for the year 1905, the year for which the sale for taxes was made. The effect of this conduct of the collector was to deprive plaintiff of the right to halt the running of 12% interest by liquidating that portion of the balance upon which 12% interest could accrue. Had the amount been credited by the collector as directed the only amount, if any, to which defendant would have been entitled would have been the interest balance of 1905 (with interest thereon at 12% because said balance was included in the certificate of sale), and the other interest balances for 1906, 1907 and 1908, neither of which bore interest, making a total sum, if any, payable in amount of approximately $700.

The act of the collector in applying the $4,657.-60 first to 1908 taxes instead of 1905 taxes, was to leave a balance on his books for 1905 taxes, represented by a tax lien which carried interest at 12% when if he had first credited the amount on 1905 taxes the balance would have been on account of 1908 taxes, which would carry interest at 7% only.

In other words, the collector in crediting the taxes in the way he did, made a profit of interest for the defendant to the detriment of the plaintiff.

This additional interest resulting from this method is recoverable as it was the duty of the collector to apply this payment in the way most to the advantage of the plaintiff.

The following statement of the law appears in Cyc. Vol. 37, p. 1169:

> "In making a payment on account of taxes, the owner has a right to direct its application to a particular tax, or to a particular piece or item of property, and the receiving officer is bound by such direction, and the effect of the payment will not be defeated by its misapplication by the officer."

The following remarks are by Judge Cooley, and appear in *Fuller v. City of Grand Rapids,* 40 Mich., 395, 397:

> "Complainants made payments from time to time without any specific application by either party, but the final payment which was made after the dispute arose between them and the officer, was expressly made to satisfy what they admitted was due. * * * It was entirely competent for the officer to refuse to receive the payment on those terms, but it was not competent for him to make any different application of the moneys if he retained them."

See also:

Henderson v. Robinson, 76 Ia., 603, 605;
Heckman v. Kempner, 35 Ark., 505;
Mason v. Chicago, 48 Ill., 420.

That defendant and its tax collector up to the time of the final coup in July, 1915, regarded the balance as something different from a tax balance for 1905, is manifest from the fact that they uniformly held out to plaintiff that the rate of interest thereon was 7% (see fol. 10, p. 24). Had the

balance been regarded as part of the purchase price paid by defendant for the land, the correct interest rate was 12%. Defendant uniformly held out to the plaintiff that the rate was 7%, plaintiff having relied thereon, the ordinary rules of estoppel prevail, and defendant is now precluded from maintaining either that the balance was a tax balance for 1905, or that it is entitled to interest, if any, in excess of 7%.

XIII

The fifth count sets forth a valid cause of action.

This count is predicated on the theory that the plaintiff is entitled to redress if the Court holds that the agreement of July 13, 1909, is not binding on defendant.

Plaintiff claims that she should be put in a position equivalent to that which she would have occupied had defendant not led her to believe during the four years, 1909 to 1913, that defendant recognized and was bound by the agreement.

The law on this point is well stated, and summarized in 10 Cyc., page 1156, as follows:

> "If the contract of a corporation is *ultra vires,* but not immoral or otherwise *malum in se,* and either party disaffirms it on the ground that it is *ultra vires,* and refuses further execution of it, then while the other party cannot sue to recover damages or compensation in respect of an unexecuted portion of the contract, yet the law will afford him remedies for procuring from the other party a restoration of what he has lost under it. The governing principle is

> that where money has been paid or property transferred to a corporation under a contract which is not *malum in se,* but which is merely *malum prohibitum* the party receiving may be made to refund to the party from whom it has received the value of that which it has actually received."

The question then arises as to what in the present case constitutes "a restoration of what plaintiff has lost." The amount so lost is the sum paid during the years 1907 to 1913, inclusive, as taxes on an excess valuation of $6,500 which plaintiff relying on her agreement with defendant, and in performance of her part of said agreement did not cause to be reduced.

XIV

The judgment should be reversed with costs.

Dated, June 1, 1916.

Respectfully submitted,

EDWIN T. MURDOCH,

Attorney for Plaintiff,
211 North Arlington Avenue,
East Orange, N. J.

Charles S. Yawger, Esq.,
Of Counsel.

Arthur W. Cross, Law Printer, 243 Market Street, Newark, N. J.

New Jersey Court of Errors and Appeals

JESSIE E. KOEWING,
Plaintiff-Appellant,

vs.

THE TOWN OF WEST ORANGE,
Defendant-Appellee.

Brief for Defendant-Appellee.

The complaint in this case is based upon a tax dispute.

First Count.

Plaintiff's first grievance, stripped of its verbiage, is that she and the town officers entered into an alleged agreement whereby she was to refrain from attacking the assessed valuation of her property and allow an excessive valuation to remain; in addition to this she was to pay certain accumulated back taxes amounting to $4,657.60. The town, on its part, was to cancel the accrued interest and costs on said back taxes, provided the agreement received the approval of a "taxpayers" meeting and also like approval of the Council. (Case, p. 9).

This agreement is alleged to have been made July 8, 1909. (Case, p. 10). It was approved by a "taxpayers" meeting prior to July 13, 1909, and by the Council July 13, 1909. (P. 10.)

Plaintiff says that she performed on her part, and delivered to the *Town Council* her check for $4,657.60. It appears on the face of the complaint

that this check was never paid; that payment thereof was stopped by plaintiff; that she gave a second check to the Mayor and acting Town Attorney for a like amount, which check was endorsed by the Mayor and paid into the treasury of the defendant, and that this was done September 22nd, 1909, or more than sixty days from the making of the reduction.

Plaintiff further says that while she lived up to the alleged agreement on her part, the town repudiated it, accepted her money, applied it on account and refused to make the promised reduction by cancelling the unpaid balance. This unpaid balance was allowed to accumulate, and finally, in 1915, it amounted to $1,455.92 (see plaintiff's brief, p. 4). The town then demanded its money and threatened to cut off plaintiff's right to redeem from tax sale unless she paid this sum. She paid it under protest and now seeks to recover it. (Plaintiff's brief, p. 1.)

Assuming, but not conceding, that the agreement in question was valid, it seems to have statutory sanction nowhere unless it be found in P. L., 1890, p. 31. (4 Comp. Stat., p. 5258-9.) Plaintiff quotes the first section of the act in her brief in full (Brief, p. 7).

The second and third sections are short and should have been printed in the brief with the first. They are as follows:

> "Sec. 2. That it shall be the duty of the township or town collector, upon receiving a certified statement of the amount which the township committee or town council shall have agreed to accept in full satisfaction of such unpaid taxes and assessments, or either, to accept such sum so agreed to be accepted, in full satisfaction of such taxes and assessments, and to give a receipt for the amount

paid in satisfaction thereof to the person paying the same; which receipt, accompanied by said statement, shall be sufficient evidence of the payment and satisfaction of such taxes and assessments, and upon presentation thereof, with the tax bill annexed, to the clerk of the county, he shall satisfy the tax or assessment record in the office relating to unpaid taxes and assessments, or either or both of them, as far as relates to the payment of the said tax or assessment."

"Sec. 3. That in case a reduction of any tax, taxes, assessment or assessments be made by the township committee or town council upon any application presented to it under this act, *such reduction shall be null and void unless the same be paid within sixty days thereafter.*"

In the case at bar the reduction was made not later than July 13, 1909. Payment was made not earlier than September 22nd following. It is true a previous check had been given, but this of course, was not payment.

Kuhl vs. *Mayor of Jersey City,* 8 C. E. Green, 84.

Freeholders of Middlesex vs. *Thomas and Martin,* 5 C. E. Green, 39.

The check which was ultimately presented and paid was not delivered until September 22nd, 1909. (Case, pp. 12 and 13.) The promised reduction therefore became null and void as more than sixty days had then elapsed.

Plaintiff then complains that from September 22nd, 1909, to January, 1913, (case, p. 14) the collector failed to credit her with the amount of the check; that on January 21st, 1913, the Council directed him to credit the amount of the check as payment of taxes for the years 1905, 1906, 1907

and 1908, and that instead of so doing he credited the amount against interest and costs as well as taxes, thus leaving a balance of unpaid taxes for the year 1905. Thereafter plaintiff endeavored in "many ways" to have the tax balance cancelled in accordance with said *agreement,* but without success, and finally in July, 1915, the town notified her that unless she redeemed the property from the tax sale of 1905, she would be barred.

A reading of section two of the act of 1890 (4 Comp. Stat. 5257) *supra,* indicates that the collector was entirely right in not making the credit asked for by plaintiff or directed by the Council. There is no allegation that the certified statement prescribed in section two was ever presented to or received by the collector. The fact is there was no such statement. If plaintiff had paid the amount of the reduced tax within the sixty day limit and had presented to the collector the requisite certified statement, she might have been entitled to a receipt which, accompanied by such statement, she could have presented to the county clerk and had the taxes satisfied of record. She failed to do either of these things and now endeavors to place the blame on the shoulders of the collector.

Plaintiff further urges that she was deceived and defrauded by the collector of taxes in his manner of handling the transaction. Assuming this to be so, it is settled law in New Jersey that a municipality is not responsible for the tort of an official committed in the performance of his public duties.

Condict vs. *Jersey City,* 17 Vr., 157.
Wild vs. *Paterson,* 18 Vr., 406.

Thus far the validity of an alleged argument for the breach of which plaintiff seeks to recover has been assumed. In passing, however, it may

be well to point out that a bargain whereby a property owner agrees with a town that she will "allow" an admittedly excessive valuation of property for the purpose of taxation "to remain" indefinitely would hardly be enforceable against her or in favor of the town without ignoring section 7, paragraph 12, of the State Constitution.

> "Property shall be assessed for taxes * * * according to its true value."

As for the provision concerning the so-called "taxpayers meeting," little need be said. It seems to have no legal sanction.

But plaintiff further suggests (brief, p. 9), as a justification of the alleged agreement, that it was a settlement of arrears of taxes under P. L. 1899, p. 255 (4 Comp. Stat., 5254). Here again she sets forth one section of the act and omits a very vital section which takes but little space to reprint. (Plaintiff's brief, p. 9.)

> "Sec. 2. The provisions of this act shall only apply in cases where the full amount of *money* determined upon as due by the commissioners of adjustment from the owner or owners of any particular piece or parcel of land on account of taxes and assessments has *first* been deposited with the collector of taxes of the muncipality in which such land is situated."

Section one makes it lawful for the Town Council upon the recommendation of the commissioners of adjustment to adopt a resolution authorizing the collector of taxes to receive in full settlement of tax arrears the sum of *money* recommended by the commissioners.

It appears on the face of the complaint that such sum of *money* was not *first* deposited with the collector of taxes. Moreover, the recommendations of commissioners of adjustment referred

to in the complaint have nothing whatever to do with the alleged agreement of July 8th, 1909. There is no allegation in the complaint that the commissioners of adjustment recommended such alleged settlement. Even if there were such allegation, it still appears from the complaint that the sum fixed, namely $4,657.60, was not *first* deposited with the collector. It was never deposited with the collector at all, and, moreover, a check, particularly a check upon which payment is subsequently refused, is not money. Obviously, the act last referred to has nothing to do with the settlement of July 8th, 1909.

Second Count.

There is an allegation in the second count to the effect that the Commissioners of Adjustment recommended a settlement on the basis of $500. Presumably, P. L., 1899, p. 253, above referred to, is here relied upon. This recommended settlement, however, and with it plaintiff's second count, must fall, and for two reasons: First, it appears on the face of the complaint that a mere check and not money was deposited; second, the recommendation was *rejected by the Council* (Case, p. 19).

Plaintiff further makes the point that she was denied an opportunity to present the recommended settlement of $500 to the Circuit Court for ratification or affirmation (Case, p. 20). Probably she has in mind the procedure provided in P. L., 1898, p. 442. (4 Comp. Stat. 5246.) If there is anything in the point at all it is answered by suggesting that her remedy lay in the Court of Chancery if she had any. Surely there is no actionable wrong which a court of law can remedy where a municipality is merely proceeding to enforce its tax lien in the manner prescribed by the legislature.

Third Count.

Plaintiff's third count attempts to set up another "adjustment" by commissioners, this time on the basis of a payment of $700. The only pertinent legislative authority is P. L., 1899, p. 253. (4 Comp. Stat. 5254) *supra.* The complaint shows, however, that the money was never deposited with the collector of taxes as required by section 2 of the act. Instead, a certified check was held in escrow by *plaintiff's* attorney, and, for reasons set forth in the complaint, he never delivered it to anybody (Case, p. 22). This, of course, was no compliance with a statute which prescribes in terms that the full amount of money shall first be deposited with the collector of taxes. The complaint itself shows that the $700 never reached the collector at all, either in the form of money or of a certified check.

Fourth Count.

In the fourth count plaintiff complains that she was charged interest at the rate of twelve per cent. instead of seven per cent. on the unpaid balance which she supposed was cancelled when she paid the $4,657.60. The answer to this charge is to be found in the complaint itself. A perusal thereof shows that the town had purchased the property in question at a tax sale made to secure unpaid taxes for the year 1905 (Case, p. 7). It shows that the property in question had never been redeemed from such sale in the manner provided by law. Just how much the certificate of sale called for is not stated. It is, therefore, impossible to give any meaning to the figures relief upon by plaintiff, except as to the matter of interest rate. Plaintiff's real grievance under this count appears to be (plaintiff's brief (p. 5) that the collector charged her twelve per cent.

instead of seven per cent. In this the collector was right.

P. L., 1912, p. 652.
P. L., 1911, p. 728.

Plaintiff may have believed this interest rate had ceased to run. The Council may have instructed the collector to cancel the 1905 tax and thus stop interest. But such considerations could not control the collector of taxes whose duties in the premises are fixed by law and who is under heavy bond to secure his performance of those duties. If, as the complaint shows, the property in question was sold for 1905 taxes, it could not be redeemed from such sale except by paying to the collector the purchase money with twelve per cent. interest thereon, together with costs.

Fifth Count.

The gist of this count is that plaintiff "verily believes" that she could have had her assessment reduced if she had made the attempt; that she refrained from proceeding to obtain a reduction because of her alleged agreement of July 8th, 1909.

It has already been shown that this alleged agreement ignores the constitutional mandate that property shall be assessed for taxation at its true value. It has also been shown that the agreement became null and void because of plaintiff's own default. Plaintiff must be presumed to know the law and to know that the agreement, if it ever was valid, had become void by her own failure to pay in time. She cannot complain if she ignorantly supposed it to be still in effect. She cannot require the municipality to answer if her ignorance was induced by the tort of officials in the performance of duties prescribed by law. If

her property was over-assessed it is familiar law that her remedy lay with the taxing authorities and, ultimately, with the Supreme Court on certiorari.

Respectfully submitted,

BORDEN D. WHITING,
Attorney for Defendant-Appellee.

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New Jersey
Court of Errors and Appeals

Notice of Appeal

(Filed, January 28, 1916)

SUPREME COURT OF NEW JERSEY

Jessie E. Koewing, Plaintiff, against The Town of West Orange, Defendant.	20

To Simeon H. Rollinson, and Borden D. Whiting, Esqs., attorneys for defendant:

Sirs:

You Will Please Take Notice that the plaintiff appeals to the Court of Errors and Appeals from the whole of the judgment entered in this action and filed in the office of the Clerk of this Court, on or about the 15th day of January, 1916, on the following grounds: 30

1. That the first count sets forth a legal cause of action, and that it was error to dismiss the same.

2. That if recovery on the first count were not sustained nevertheless it was error to dismiss the 40

entire complaint, and plaintiff should have been permitted to proceed to trial on the fifth count of the complaint, for judgment in amount $1048.45, and in addition thereto on the following counts, and for judgment for the following amounts thereon in the alternative:

(*a*) Judgment as prayed for in the second count in amount $1455.92, making in all a total of $2504.37.

(*b*) If recovery as prayed for in subdivision "(*a*)" were denied, then judgment for the sum of $777.04, such amount constituting the difference between the sum of $1455.92 paid the defendant, and the principal sum of $678.88 which, if anything, was a non-interest bearing interest balance, and not an interest bearing tax balance, and said item of $777.04 added to the sum prayed for in the fifth count, making a total of $1822.49.

(*c*) If recovery as prayed for in subdivision "(*b*)" were not sustained then judgment as prayed for in the third count, in amount $755.92, making a total of $1804.37.

(*d*) If recovery as prayed for in subdivision "(*c*)" were not sustained then judgment as prayed for in the fourth count, *i. e.*, making a total sum of $1537.72.

3. That if no form of recovery as hereinabove set forth were sustained, it nevertheless was error to dismiss the entire complaint, and plaintiff should have been permitted to proceed to trial on the following counts in the alternative:

a. Fifth count.

b. Second count.

c. Third count.

d. Fourth count.

4. That the notice of motion herein is insufficient to warrant a dismissal of the entire complaint, and obviously relates only to the first count, and that in any event it was improper to dismiss under said motion any count other than the first count, and that by virtue of said notice of motion defendant has waived objections to any count other than the first. That said notice of motion is defective in that it fails to specify severally the counts in the complaint to which it is directed.

Dated, January 21, 1916.

EDWIN T. MURDOCH,
Attorney for Appellant,
211 No. Arlington Avenue,
East Orange, N. J.

Order Dismssing Complaint

(Filed, January 15, 1916)

NEW JERSEY SUPREME COURT

JESSIE E. KOEWING, Plaintiff, vs. THE TOWN OF WEST ORANGE, Defendant.	Judgment for Defendant on motion to strike out for failure to state a cause of action.

Defendant moved to strike out the complaint on the ground, that it disclosed no cause of action; upon which motion arguments for plaintiff and defendant, by their respective counsel were duly

heard and the Court, being of opinion that the complaint disclosed no cause of action, ordered that the same be struck out.

Whereupon it is adjudged that the complaint of the plaintiff be struck out, and that the defendant recover from the plaintiff his costs to be taxed.

Dated, December 31st, 1915.

SAMUEL KALISCH,
J. S. C.

Entered, January 15, 1916.
On motion of
Simeon H. Rollinson,
Attorney for Defendant.

A true copy.
Wm. C. Gebhardt,
Clerk.

Notice of Motion to Strike out Complaint

(Served, November 15, 1915)

SUPREME COURT OF NEW JERSEY

JESSIE E. KOEWING,
Plaintiff,
against
THE TOWN OF WEST ORANGE,
Defendant.

To Edwin T. Murdoch, attorney for plaintiff:

Take notice that on the 20th day of November, inst. at 10 o'clock in the forenoon at the Court House in the City of Newark, before the Honor-

able Wm. S. Gummere, Chief Justice of the above stated Court, I shall move to strike out complaint filed in this cause upon the grounds that it discloses no cause of action.

1. That the complaint is so framed as to prejudice, embarrass and delay a fair trial of the action, in that certain sections of the plaintiff's complaint contain more than one allegation.

2. That the said complaint sets forth no cause of action, in that the same is based upon an alleged contract between the plaintiff and the Town of West Orange, made at an alleged meeting of the Town Council of said town, held on July 13th, 1909, said meeting having been declared by the Supreme Court of the State of New Jersey to have been illegal and void. Whelahan vs. Town of West Orange, November 17, 1910.

3. That the alleged contract between the plaintiff and the Town of West Orange made at the alleged meeting of the Town Council of said town held on July 13th, 1909, was *ultra vires* and wholly void in that the Town Council of West Orange had no authority to make such a contract.

4. That the complaint does not allege lack of authority or authorization on the part of the defendant to levy the tax complained of.

5. That the complaint shows taxes to have been paid voluntarily, and does not show compulsion.

6. That the complaint is an endeavor to obtain relief through an action at law when the same should properly have been sought under the prerogative writ of certiorari. It is an attempt in

substance to obtain judicial decision as to the validity of a tax after the time has expired during which a writ of certiorari could have been applied for.

Dated, Orange, N. J., November 11, 1915.

SIMEON H. ROLLINSON,
Attorney for Defendant.

Complaint

(*Filed October 20, 1915*)

SUPREME COURT OF NEW JERSEY

COUNTY OF ESSEX

JESSIE E. KOEWING,
Plaintiff,
against
THE TOWN OF WEST ORANGE,
Defendant.

The plaintiff for her complaint respectfully shows:

FIRST COUNT

1. The Plaintiff now resides, and at all times herein mentioned resided, and at said times was and now is the owner of certain real property situate on Northfield Road, in the Town of West

Orange, State of New Jersey, and designated on the block map of the said Town of West Orange as Lot #1, Block #57, the same consisting of a mansion house and eighteen and 59/100 acres of land, more or less, together with appurtenances, and being commonly designated by the name of "Beaumont."

2. The defendant is and at all times herein mentioned was a municipal corporation, created by an act of the Legislature of the State of New Jersey, approved February 28, 1900, and governed by the general laws of the State of New Jersey relating to towns.

3. The plaintiff acquired title to said real property about or during the year 1907, upon a sale in an action instituted by the plaintiff to foreclose a mortgage on said real property, held by the plaintiff, and at said time the said property was encumbered by a tax lien then held by the defendant and acquired by the defendant at a sale by the defendant of the said real property, made to secure payment of unpaid taxes, for the year 1905, at which said tax sale the said property was purchased by the defendant.

4. After the time when the plaintiff acquired her interest in the said real property as aforesaid, taxes for the year 1907 were assessed against the same, based upon a valuation of $68,500 assessed against the same by the defendant. The said valuation represented an increase of $33,500 over the assessed valuation of three years prior thereto, during which said period no improvements of any kind had been made on the property, and no

circumstances had intervened warranting such increase in valuation, and the same was unconscionable and grossly excessive.

5. The plaintiff thereupon in due manner appealed to the Essex County Board of Taxation to obtain a reduction of said assessment, and thereafter and on or about the 19th day of November, 1907, said Board by its order duly made, reduced the said assessed valuation from $68,500, to $50,000 which said order on or about the 24th day of April, 1908, was duly affirmed by the State Board of Taxation. The said valuation of $50,000 was also unjust and discriminatory, and in excess proportionately of the valuations placed upon similar adjoining or neighboring properties.

6. Thereafter taxes were levied by defendant against plaintiff's said property for the year 1908, again based upon an assessed valuation of $50,000, and thereupon plaintiff in the endeavor to convince the Town authorities and various Boards for a review of assessments of the unconscionable nature of the said assessment, and to avoid the expense of certiorari proceedings, proceeded to review the said last named assessment by further appeals respectively to the Essex County Board of Taxation and from the decision of said Board to the State Board of Taxation. Upon such appeals and on or about the 14th day of January, 1909, and the 22nd day of March, 1909, respectively, said Boards affirmed the said assessment.

7. The plaintiff thereupon made preparations to have said assessments reviewed by writ of certiorari.

8. Pending the institution of said proceedings plaintiff, by her attorney in fact, Frank Koewing, her husband, held several conferences with the various officers and agents of the defendant in which plaintiff's determination to review said assessments was made known and in which it was represented to the plaintiff's said attorney by the said officers and agents of the defendant, that the defendant was greatly in need of funds and that the taxes assessed against the plaintiff's said property and unpaid, i. e., taxes for the years 1905, 1906, 1907 and 1908, amounting, exclusive of interest and costs, to the comparatively large sum of $4,657.60, would be of substantial assistance to the defendant if payment of the same were made at once instead of being deferred until the time (one year or more) when the plaintiff's proposed appeal had been heard and determined. The said officers and agents then advised the plaintiff that if she would at once pay the same and would agree to take no steps to review the excessive valuation of $50,000, but would allow the same to continue notwithstanding the fact that the same was excessive, the defendant would cancel the accrued interest and costs charged against the plaintiff's property then amounting to the sum of approximately $678, provided, however, that such an agreement received the approval of a taxpayers' meeting which had been called to consider means to relieve the Town of West Orange of its pressing financial needs, and also like approval of the Town Council of the Town of West Orange.

9. The plaintiff thereupon agreed with said officers and agents, to pay the taxes in full for the

years 1905, 1906, 1907 and 1908, i. e., $4,657.60, and to allow the said excessive valuation of $50,000 to continue, provided the defendant would accept the said sum of $4,657.60 in full settlement of said taxes for said years, and would not exact from the plaintiff interest and costs thereon, which at said time i. e., July 8, 1909, amounted to approximately $678.

10. The said agreement, prior to July 13, 1909, was duly submitted to the said taxpayers' meeting and was approved at said meeting by the taxpayers of the Town of West Orange.

11. Thereafter and at a meeting of the Town Council of the Town of West Orange, held on the 13th day of July, 1909, a resolution was duly adopted whereby in substance and effect the said Town Council agreed to accept in full payment of plaintiff's taxes, and the interest and costs thereon, for the years 1905, 1906, 1907 and 1908, the sum of $4,657.60, which said sum was the face amount of said taxes and did not include interest and costs, and expressly waived any and all claims to interest and costs; in consideration whereof the plaintiff agreed not to carry on or to institute further proceedings to review the assessment of $50,000 as aforesaid, but to allow said valuation to continue notwithstanding the fact that the same was excessive, discriminatory and unfair.

12. Plaintiff duly performed all terms and conditions of said agreement by her to be performed and at said meeting of the said Town Council duly delivered to and the Town Council in due manner received and accepted from the plaintiff, her check in writing, payable to the order of Frank A. O'-

Connor, who was the collector of taxes of the defendant, in amount $4,657.60, and across the face of which said check there appeared in words and figures a statement as follows: "In full for taxes and interest thereon for 1905, 1906, 1907 and 1908."

13. The said Town Council at the said meeting of July 13, 1909, directed that plaintiff's said check be delivered forthwith to the said collector of taxes and directed that said collector of taxes accept and credit the same in accordance with the terms of said resolution, and of the agreement entered into between plaintiff and defendant, and the conditions set forth on the face thereof.

14. Upon receipt of said check and said directions, the said collector of taxes wrongfully neglected and refused to obey the directions of said Town Council and to carry into effect the said agreement, but contrary to said orders and directions wrongfully and unlawfully retained the said check in his possession, and did not credit the same on his books or remit the proceeds thereof to the treasury of the defendant.

15. Thereafter and while the said collector of taxes continued to retain the said check in his possession as aforesaid, various officers of the defendant, including the acting Town Attorney, represented to the plaintiff the great need of the defendant of funds, and importuned the plaintiff to deliver to the defendant a second check similar to and bearing the same terms and conditions as the first check and thereupon advised the plaintiff that upon payment of such a check all claims of the defendant against the plaintiff for taxes, inter-

est and costs, for the years 1905, 1906, 1907 and 1908 would be liquidated and that the said lien on the plaintiff's property would be discharged, in accordance with the agreement between the plaintiff and the defendant, and the resolution adopted at the meeting of the Town Council held on July 13, 1909.

16. Thereupon and pursuant to such request and on the 22nd day of September, 1909, plaintiff duly executed and delivered to the Mayor and to the acting Town Attorney of the Town of West Orange, her second check in writing in amount $4,657.60, payable to the order of the Town of West Orange, New Jersey, and bearing upon the face thereof a statement in words and figures as follows: "In full of all demands, for taxes and interest thereon, for 1905, 1906, 1907 and 1908."

17. The said check was received by the Mayor of the Town of West Orange, endorsed forthwith by him, and the same was duly paid and the proceeds paid into the treasury of the defendant.

18. Upon the delivery of the said second check plaintiff caused payment on the first named check to be stopped notwithstanding which fact the said Frank A. O'Connor, collector, well knowing that the said second check had been paid and attempting thereby to defraud the plaintiff, presented the said first named check for payment at the bank on which it was drawn, whereupon payment was duly refused by said bank. Said first check was subsequently returned by the said Frank A. O'Connor to the plaintiff after the plaintiff had demanded the same.

19. The said sum of $4,657.60 has been at the disposal of the defendant since the 8th day of July, 1909, and has actually been in the possession of the defendant since the 22nd day of September, 1909, and has been used by the defendant, and the defendant has not in any manner returned or offered to return the same to the plaintiff.

20. When said second check had been delivered as aforesaid, the plaintiff relied upon the assurances of the officers and agents of the defendant, given at the time of such delivery and as a condition thereof to the effect, that all incumbrances against plaintiff's said property for taxes, interest and costs for the years 1905, 1906, 1907 and 1908 had been cancelled and discharged. Plaintiff subsequently took no steps to review or vacate said assessments of $50,000 but on the contrary and relying on the acts and representations of the defendant, its officers and agents as aforesaid, allowed the said valuation to continue and paid taxes based on such valuation for the years 1907, 1908, 1909, 1910, 1911, 1912 and 1913, and during said years plaintiff made no effort to have the said excessive assessment modified.

21. On and after the 22nd day of September, 1909, the defendant, the Town Council of the Town of West Orange, together with its officers and agents, who were entrusted with such duty in the premises had full and due knowledge that the said sum of $4,657.60 had been paid by plaintiff to defendant, and had been received by the defendant and that such payment had been tendered and accepted on the condition that the same was "in full of all demands for taxes and interest for the

years 1905, 1906, 1907, and 1908," as aforesaid, and the said Town Council, said officers and agents also knew that the plaintiff had abandoned and would abandon her proceedings to review the said assessments, as aforesaid, all in reliance on the representations as aforesaid that the property of the plaintiff had been discharged from the lien claimed by the defendant. Said Town Council and said officers and agents possessing such knowledge willfully led the plaintiff to believe that said check had been received and credited according to the terms and conditions set forth on the face thereof and the said agreement, and did not return the same or offer to return the same, or the amount thereof, to the plaintiff, but on the contrary willfully led the plaintiff to believe that the transaction had received the assent and approval of the Town Council and those to whom authority in such matters belonged, and that the defendant had adopted and assented to the acts of its said officers and agents.

22. Between the 22nd day of September, 1909, and the month of January, 1913, plaintiff understood and believed that defendant had cancelled and discharged the said alleged liens in accordance with the agreement and the conditions of said check. About or during the month of January, 1913, the plaintiff first became aware, through a certificate issued under the hand and seal of the Collector of Taxes of the defendant, that said Collector had not up to said time credited the plaintiff on his books with any amount whatsoever, and that according to the said records of the Collector taxes for the years 1905, 1906, 1907 and 1908 remained unpaid and were a lien against plaintiff's said property, Thereafter

plaintiff brought the matter to the attention of defendant and on the 21st day of January, 1913, the Town Council of the Town of West Orange duly adopted a resolution whereby it was directed that the Tax Collector of the Town of West Orange credit the plaintiff on the books of said Collector with the amount of plaintiff's check paid as aforesaid, and according to the terms thereof, and as payment of taxes for the years 1905, 1906, 1907 and 1908.

23. Thereafter and contrary to the said instructions of the said Town Council the said Collector of taxes wrongfully credited the amount of said check so as to apply the same against the amount alleged to be due as interest and costs for the years 1908, 1907, 1906 and 1905, respectively, namely: $744.62 and applying only the remainder, viz: $3,912.98 as taxes for the years 1908, 1907, 1906 and part of 1905, respectively, leaving according to the manner of such credit, a balance of unpaid taxes for the year 1905, in amount $744.62 and bearing interest from the 25th day of September, 1909, when as a matter of fact the amount in dispute was $678.88, dating from July 9, 1909.

24. The said Tax Collector thereafter wrongfully carried the said sum of $744.62 on his books as a tax balance bearing interest at 7% per annum from September 25th, 1909.

25. Plaintiff thereafter in many ways endeavored to have said alleged tax balance cancelled in accordance with said agreement but on the 6th day of July, 1915, the Town Council of the Town of West Orange, repudiated the said agreement, and by resolution directed the Town Clerk to give notice

to the plaintiff that defendant would take possession of said premises within sixty days from date unless the sum outstanding, as defendant claimed, for taxes for the year 1905, be paid within that period, and that the plaintiff's right of redemption would be forever barred unless plaintiff complied with said demands.

26. Thereafter and on or about the 12th day of July, 1915, defendant caused to be served on plaintiff a notice to the effect that unless said lands were redeemed by the plaintiff as in manner provided by law, plaintiff's rights to redeem said lands would terminate and all her rights therein would be barred and title to the said lands would become vested absolutely in the defendant.

27. Plaintiff thereafter inquired of the defendant the sum necessary to satisfy the lien claimed by defendant, and was informed that said sum was $1,455.92, consisting of an alleged tax balance as aforesaid, viz: $744.62 from the year 1905, with interest thereon, at the rate of 12% per annum, from September 25, 1909.

28. Thereupon plaintiff consulted counsel as to her legal rights and the advisability of contesting any endeavor made on the part of the defendant to bar plaintiff's right or redemption. Plaintiff was unable to ascertain that any precedent existed for her guidance in the premises and that it was a matter upon which Courts and lawyers might disagree.

29. Plaintiff did not feel warranted in assuming the uncertainties of litigation, and withholding payment of the amount claimed by the defendant and thereby and in the event that her contention that she owed the defendant nothing did not

find favor with the court, forever lose her rights in said property which were of value many times greater than the sum sought to be exacted by the defendant. Plaintiff from her course of past dealings with the defendant and certain of its officers, well knew that in the event of litigation they would use all means in their power to deprive the plaintiff of her property, and that their statements were not at all times reliable and entitled to credence.

30. On or about the 3d day of August, 1915, plaintiff duly served on the Mayor and the Town Council of the Town of West Orange, a notice of protest against the action taken by said Town Council at its said meeting on July 6th, 1915, and notified defendant that plaintiff owed defendant nothing, and that if steps were taken to compel the payment of said amount of $1,455.92, plaintiff would pay the same under compulsion and duress, and immediately begin suit for the recovery thereof. Said notice also contained an offer on the part of the plaintiff to the effect that plaintiff for the purpose of adjusting the difficulties in an amicable manner would pay to the defendant the amount of $744.62, i. e., the amount of interest and costs assessed by said collector against plaintiff's property on September 25, 1909, the date of the payment to the defendant of the principal sum of $4,657.60 as aforesaid. Said offer upon the receipt thereof by the said Mayor and Town Council was rejected. Thereupon and on or about the 5th day of August, 1915, under compulsion and duress, the plaintiff delivered to the tax collector of the Town of West Orange, a check in writing in amount $1,455.92 with which to cancel the alleged liens on the tax books of the said collector, and

thereby to prevent the threatened seizure of her property and expressly stated at the time and on said check that the money was paid under protest and under duress, and in consequence of the notice served as aforesaid, and at the same time plaintiff in due manner gave notice in writing to defendant that plaintiff owed to the defendant nothing, that the said money was paid under protest and duress and that plaintiff would begin suit at once to recover back the said money then paid, together with other sums illegally collected.

31. That said notice was duly served on the defendant and the terms and conditions of said payment were known to the defendant at the time thereof, notwithstanding which said facts the defendant cashed the said check, and received the proceeds thereof and still holds the same, or has applied the same to its own use.

32. Said sum of money has been wrongfully, illegally and fraudulently collected from the plaintiff by the defendant and under wrongful threats and compulsion, and the defendant has been unjustly enriched thereby and it is not in equity and good conscience that defendant retain the same.

33. That by reason of the foregoing plaintiff has been damaged in the sum of $1,455.92, together with interest thereon from the 5th day of August, 1915.

SECOND COUNT

34. The plaintiff reiterates and realleges each and every allegation set forth in paragraphs designated 1 to 24 respectively, of the first count.

35. For the purpose of adjusting without the expense of litigation the alleged lien of the said alleged unpaid taxes, plaintiff about or during the month of May, 1915, duly instituted proceedings before the Commissioners of Adjustment of Taxes for the Town of West Orange, and although owing the defendant nothing offered to the said Commissioners of Adjustment to pay the sum of $500 in full settlement of all said alleged liens.

36. Thereafter said Commissioners of Adjustment duly reviewed the said offer of the plaintiff, and on or about the 1st day of June, 1915, duly issued their certificate, signed by all the members of said Commission, and presented the same to the Town Council of the Town of West Orange, which said certificate in effect recommended to the said Town Council that the said alleged liens be cancelled and discharged upon payment by plaintiff to defendant of the sum of $500. Said certificate was duly received by the said Town Council and at the time of such receipt the plaintiff had duly deposited in manner required by law, her check for $500 and obtained a receipt therefor, setting forth that said check was to be held pending the action of the Town Council in cancellation of the taxes for the years 1905, 1906, 1907 and 1908, as recommended by the Commissioners of Adjustment.

37. Thereafter and on the 6th day of July, 1915, the report and recommendation of the said Commissioners of Adjustment was rejected and repudiated by the Town Council of the Town of West Orange, and on said date the said Town

Council by resolution directed the Town Clerk to give notice to the plaintiff that defendant would take possession of said premises within sixty days from date unless the sum outstanding, as defendant claimed, for taxes for the year 1905, be paid within that period, and that the plaintiff's right of redemption would be forever barred unless plaintiff complied with said demands.

38. Plaintiff reiterates and realleges each and every allegation set forth in paragraphs of the First Count designated respectively 26 to 32 inclusive.

39. Said notice was so served on the plaintiff without affording the plaintiff an opportunity to present said recommendation of the said Commissioners of Adjustment for ratification or for affirmation to the Circuit Court as in manner provided, and plaintiff was thereby denied the opportunity to obtain such ratification or affirmation.

40. That by reason of the said acts of the defendant, plaintiff has been damaged in the sum of $1,455.92, together with interest thereon from August 5, 1915.

THIRD COUNT

41. Plaintiff reiterates and realleges each and every allegation set forth in paragraphs designated 1 to 24 respectively of the First Count.

42. For the purpose of cancelling the alleged liens against the plaintiff's property, plaintiff instituted a suit in the Court of Chancery of the State of New Jersey, and such suit, during the

month of May, 1914, was pending and undetermined, notwithstanding the fact that it had been in litigation for a long period of time.

43. For the purpose of settling and adjusting the said suit and curtailing the further expense which the same involved, plaintiff's attorney-in-fact, Frank Koewing, her husband, and the town attorney for the Town of West Orange, held several conferences wherein said town attorney suggested to plaintiff that the defendant might assent to a settlement of the said litigation if the plaintiff agreed to pay the amount claimed by the defendant as interest and costs, figured up to the day that the plaintiff paid the sum of $4,657.60 as aforesaid.

44. The plaintiff assented to a compromise along the general lines laid down by the said Town Attorney and thereafter and on or about the 5th day of May, 1914, the Town Council of the Town of West Orange duly passed a resolution which in substance and effect agreed to cancel the lien upon the plaintiff's said property for such sum as should be determined upon by the Commissioners of Adjustment of the Town of West Orange, and the said Commissioners were thereupon requested to adjust the matter of the said alleged lien and report.

45. Thereafter the said Commissioners duly took the matter under advisement and agreed with the plaintiff that the sum of $700 was a fitting and proper compromise of the controversy, and promised and agreed to submit a report to that effect to the Town Council at the meeting to be held on May 19, 1914, provided a certified check to the order of the Town had meanwhile been given.

46. Plaintiff, on May 19, 1914, caused to be certified her check for $700 payable to the order of the Town of West Orange, and the defendant by its attorney duly waived the deposit of the said check in manner provided by law, and agreed that the same might be held in escrow by the plaintiff's attorney, and in accordance with the instructions of the Town Attorney of the Town of West Orange the same was duly held in escrow by plaintiff's attorney on behalf of the Town, and the Chairman of said Commissioners of Adjustment was so informed by the Town Attorney, notwithstanding which fact the Commissioners of Adjustment did not present their report, as promised, at the Council meeting of May 19th, and the plaintiff's attorney, attending said meeting, was, therefore, unable to deliver said check to said Council. On the 2nd day of June, 1914, the Commissioners of Adjustment, without notice to plaintiff or her attorney, presented to the Town Council of the Town of West Orange their report to the effect that the said settlement of $700 was determined upon by the said Commissioners at their meeting on May 15, 1914, but that up to the said June 2nd, no funds had been deposited to indicate the acceptance of said proposition, and said Commissioners therefore withdrew their approval of the settlement.

47. At the time of said notice of withdrawal one of the said Commissioners of Adjustment knew that the said check was held in escrow as aforesaid and wilfully kept the other Commissioner in ignorance thereof.

48. Upon the recommendation of the Commis-

sioners of Adjustment as aforesaid that said alleged liens be cancelled by the payment of $700 as aforesaid, and upon the delivery of the said check in said amount by plaintiff as aforesaid, plaintiff became entitled to the discharge of the said alleged liens, but the Town Council of the Town of West Orange thereafter wrongfully declined and refused to discharge the said alleged liens or to accept the sum of $700 as aforesaid, in settlement thereof. On the 6th day of July, 1915, the Town Council of the Town of West Orange, by resolution, directed the Town Clerk to give notice to the plaitniff that defendant would take possession of the said premises within sixty days from date unless the sum outstanding as defendant claimed, for taxes for the year 1905, be paid within that period, and that plaintiff's right of redemption would be forever barred unless plaintiff complied with said demands.

49. Plaintiff reiterates and realleges each and every allegation set forth in paragraphs designated 26 to 32 respectively of the First Count, inclusive.

50. By reason of said acts of defendant plaintiff has been damaged in the sum of $755.92, together with interest thereon from August 5, 1915.

FOURTH COUNT

51. Plaintiff reiterates and realleges each and every allegation set forth in paragraphs designated 1 to 32 respectively of the First Count.

52. About or during the month of January, 1913, and upon being informed that the said Tax

Collector had declined to give credit on his books to the plaintiff for the amount of said check according to the tenor thereof, and in manner directed by the Town Council of the Town of West Orange, plaintiff by her attorney in fact, Frank Koewing, had many conferences with the said Tax Collector and other officers and agents of the defendant and endeavored to obtain such credit and the cancellation of said alleged liens, and during all of said negotiations it was uniformly held out by the said officers and agents that the defendant had no claim against plaintiff except as follows: The defendant, through its said Tax Collector, claimed as due up to the 21st day of January, 1913, the sum of $678.88, interest and costs, this being the amount claimed to be due as interest and costs on the 9th day of July, 1909, on which said date plaintiff placed her check, in amount $4,657.60, as aforesaid, at the disposal of the defendant. On the 21st day of January, 1913, defendant, through its said Tax Collector, wrongfully changed the said balance of $678.88 which, if anything, was a non-interest bearing interest balance into an interest bearing tax balance, and on the said 21st day of January, 1913, wrongfully added to the said sum of $678.88 interest thereon at the rate of 7% per annum, and said Tax Collector wrongfully claimed to be due on said date a tax balance of $744.62, with interest accruing thereon at 7% per annum from the 25th day of September, 1909, *i. e.*, the date of the receipt by the defendant of the said sum of $4,657.60. Plaintiff and her said attorney were at all times given to understand that the rate of interest had been definitely fixed by the defendant at 7% per annum and that can-

cellation of the said alleged lien could be effected at any time, upon payment of the face amount thereof, plus interest at the rate of 7% per annum. That the sum of $1,455.92 wrongfully exacted from the plaintiff as aforesaid was made up of the following items: A principal sum of $744.62, plus interest thereon from the 25th day of September, 1909, at 12% per annum, said interest amounting to $523.22, and also interest at the rate of 5% amounting to $184.41, (the difference between 7% and 12%) from October 10, 1906, to September 26, 1909, on the lien for taxes for the year 1905, said lien being in amount $1,246.20, upon the sale to recover which said lien the defendant had purchased the said property as alleged in subdivision three of the complaint, and a further item of $3.67 for costs, said items aggregating the total sum of $1,455.92.

53. Had plaintiff in any manner received notice that defendant intended or would exact interest at the rate of 12% at the time of the cancellation of said lien and as a condition thereof, plaintiff would not have for so long a time endeavored to effect such cancellation by friendly negotiations, but would have taken other and different steps to protect and establish her rights.

54. If defendant was entitled to any interest whatsoever said interest should have been calculated upon the sum of $678.88 at the rate of 7% per annum from the 9th day of July, 1909, to the 5th day of August, 1915, and amounting to the sum of $287.77, making, when added to the principal sum, a total sum of $966.65 instead of $1,455.92.

55. By reason of the said acts of the defendant,

its officers and agents, and the reliance placed on their representations that the rate of interest on the amount claimed to be due by defendant was, if anything, 7%, and the subsequent wrongful exaction by defendant at the rate of 12%, plaintiff has been damaged in the sum equivalent to the difference between the amount actually paid, *i. e.*, $1,455.92 and the sum of $966.55, or $489.27 with interest thereon from the 5th day of August, 1915.

FIFTH COUNT

56. Plaintiff reiterates and realleges each and every one of the allegations designated 1 to 32 respectively of the First Count.

57. Plaintiff paid taxes based on said erroneous and unconscionable assessment of $50,000 and allowed the same to remain against her said real property, including the year 1913. An assessment for the year 1914 on an alleged valuation of $50,000 was levied by the defendant against the property of the plaintiff.

58. Thereupon, defendant having repudiated its agreement, plaintiff appealed to the Essex Board of Taxation to have such assessment reduced and on or about the 17th day of December, 1914, said Board, by its order, directed that the said assessment be reduced from $50,000 to $43,500 and plaintiff thereafter paid taxes based upon such assessment, and the said valuation was accepted by the defendant and not appealed from by defendant.

59. Plaintiff verily believes that by presenting similar facts and data to said Board within the

proper time, or to the Court, she would have found it possible to obtain similar reductions of said valuation for years 1907, 1908, 1909, 1910, 1911, 1912, and 1913, but for the fact that she agreed not to proceed to obtain such reduction in reliance on defendant's promises and agreement as aforesaid.

60. The amount of excess taxes paid during said years on said excess valuation of $6,500 is $1,048.45 and in which said amount the plaintiff has been damaged together with interest on the several items constituting said sum from the date of the payment of the amount thereof to the defendant.

WHEREFORE, plaintiff demands judgment as follows:

1. For the sum of $1,455.92, as demanded in the First Count.

2. If plaintiff's claim to judgment on the First Count be not sustained then for judgment as prayed for in the Fifth Count, in amount $1,048.45, and in addition to such amount the following:

(*a*) Judgment as prayed for in the Second Count, in amount $1,455.92, making in all the sum of $2,504.37.

(*b*) If recovery as prayed for in subdivision (*a*) be denied then judgment for the sum of $777.04, such amount constituting the difference between the sum of $1,455.92 paid the defendant, and the principal sum of $678.88 which, if anything, is a non-interest bearing interest balance and not an interest bearing tax balance, and said item of $777.04 added to the sum prayed for in the Fifth Count, making a total sum of $1,822.49.

(*c*) If recovery as prayed for in subdivision (*b*) be denied then judgment for the sum demanded in the Third Count, *i. e.* $755.92, making a total sum of $1,804.37.

(*d*) If recovery as prayed for in subdivision (*c*) be denied then judgment for the sum demanded in the Fourth Count, *i. e.*, $489.27, making a total sum of $1,537.72.

3. That it be decreed that defendant have no other or further lien of any kind against the property of the plaintiff arising out of the matters herein alleged, and that the plaintiff may have against the defendant such other and further relief with respect to the above causes of action and the demands herein set forth as may seem fitting to the Court in the premises, together with the costs of this action.

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