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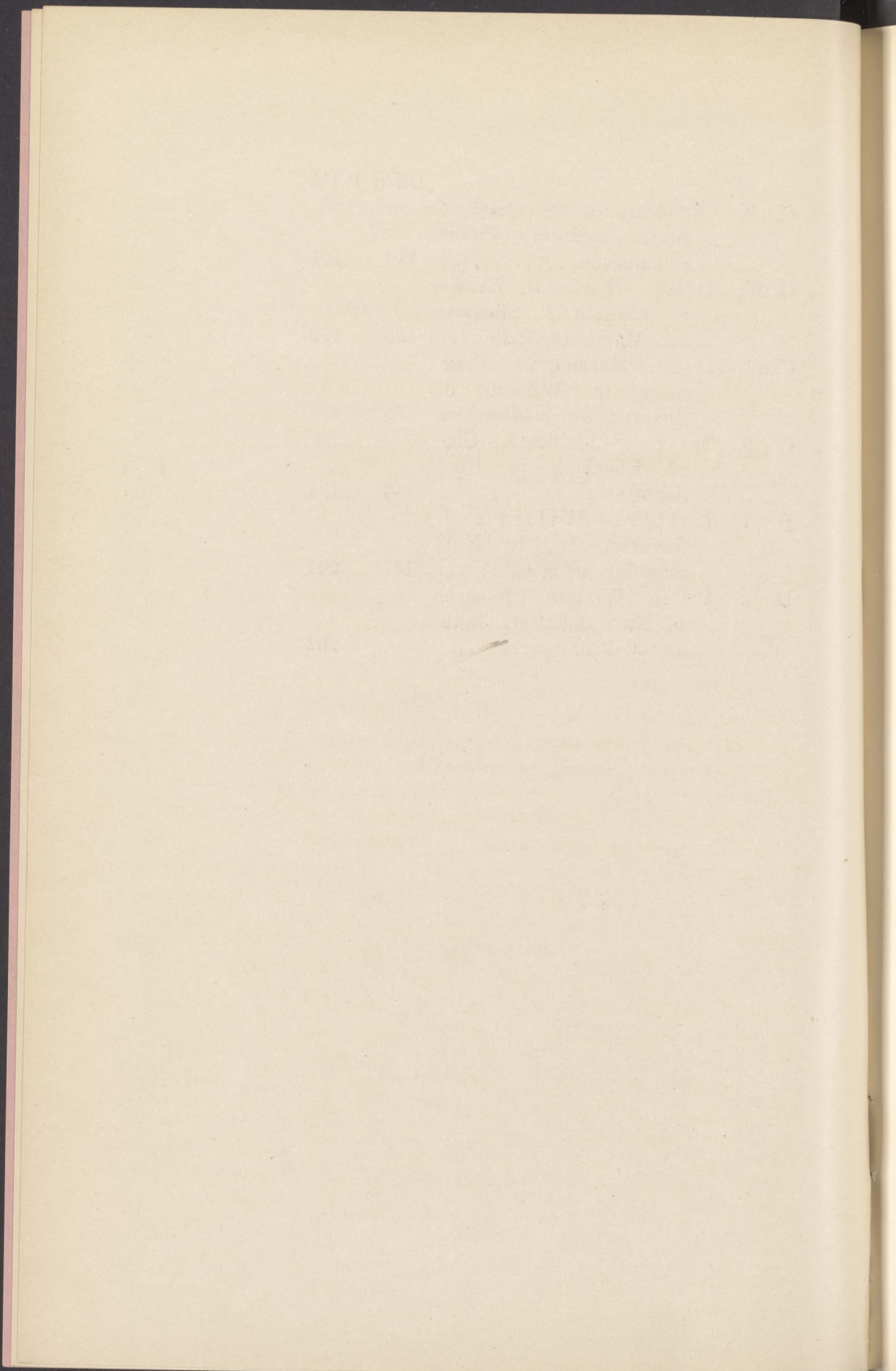
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*Second Amended Bill of Complaint.*

Original Bill Filed October 19, 1926, which was amended before Answer, to which amended bill the following answer and replication were filed:

**SECOND AMENDED BILL OF COMPLAINT.**

10

## **In Chancery of New Jersey**

*To the Honorable Edwin Robert Walker, Chancellor of the State of New Jersey:*

The complainant, William J. Shearer, Junior, of the City of Elizabeth, County of Union and State of New Jersey, by his seconded amended bill of complaint respectfully shows:

1. On April 2, 1917, by its instrument of conveyance, duly executed and sealed, the Elizabeth Heights Realty Company, a corporation organized and existing under the laws of the State of New Jersey, granted and conveyed to the complainant, among other lands and premises, the lands and premises which may be described as follows: 20

ALL that certain tract or parcel of land and premises, situate, lying and being in the City of Elizabeth, in the County of Union and State of New Jersey and which on a certain map entitled "Map of Bellevue property, Elizabeth, New Jersey, belonging to Isaac Holbrook, Meyer and Wonneberg, surveyors, Elizabeth, N. J. 1868," are known and designated as Lots 1, 2 and 4 in Block 4 and Lot 32 in Block 3, which deed having been duly proven according to law, was, on July 23, 1917, duly recorded in the office of the Register of the County of Union in Book 707 of Deeds for said County, at pages 500 &c.; that 30 40

*Second Amended Bill of Complaint.*

said lots are also known as, and by the City of Elizabeth assessed for the purposes of taxation, as Lots 900 and 902 West Grand street, and 901, 903, 905 and 907 Pennington street, and 861 and 863 Pennington street, Elizabeth, New Jersey;

10       2. That although the said deed of conveyance to complainant, made by the said Elizabeth Heights Realty Company, contained a covenant that the lands and premises thereby conveyed were free from encumbrances, the complainant has learned that prior to the execution of the said deed to the complainant, Dennis F. Collins, Comptroller of the City of Elizabeth, on November 9, 1916, in order to collect and enforce the payment of taxes assessed against said lands and premises for the year 1915, together with accrued interest and costs, on the day last aforesaid, for the sum of \$9.81 pretended to sell Lot 1  
20       in Block 4 on the Map aforesaid, a part of the said lands and premises, to one Karl Schaffer, and in pursuance thereof did, on November 20, 1916, execute under his hand and seal a certificate of said tax sale to the said Karl Schaffer.

30       3. That on the day of the said sale and of the giving of said certificate of tax sale, the Elizabeth Heights Realty Company, was the owner in fee simple of the said lands and premises and continued such to the time of the conveyance thereof to this complainant;

40       4. That the said Karl Schaffer did not, as he was by law entitled to do, record his said tax sale certificate, as a mortgage, but on April 13, 1925, recorded in the said Register's office of Union County, the said tax sale certificate and certain papers annexed thereto, purporting to be notices to redeem and affidavits which purported

*Second Amended Bill of Complaint.*

to prove the service of said notices to redeem, which tax sale certificate, pretended notices and affidavits were recorded in the said Register's office in Book 988 of Deeds for said County, on pages 230 &c.

5. That when complainant learned, after the receipt of his said deed as aforesaid, that Karl Schaffer claimed to have some rights in the said lands by reason of a pretended tax sale, he made a personal visit to the said Karl Schaffer, in the month of October, 1919, for the purpose of learning what, if any, interest the said Karl Schaffer had, and being informed by the said Schaffer he claimed to have a tax sale certificate, this complainant then and there tendered himself ready and willing to pay all sums of money accrued and accruing upon said tax sale certificate to the said Karl Schaffer and inquired of the said Karl Schaffer the amount necessary to redeem the said lands and premises from the said tax sale, but the said Karl Schaffer instead of informing complainant of the amount necessary to redeem, became infuriated at complainant and told him that his, complainant's interest, in the land was sold and gone and that complainant had no further right therein and that it was not a question of what money would redeem the land, but how much money complainant would take for a quit-claim deed to the said Karl Schaffer. When complainant insisted upon his right to redeem, the menaces and threats of the said Karl Schaffer so intimidated complainant that he was forced to and did withdraw from the presence of the said Karl Schaffer, fearing a physical encounter.

6. On July 26, 1920, the Collector of Taxes of the City of Elizabeth, in order to collect and en-

*Second Amended Bill of Complaint.*

force the payment of taxes assessed against Lot 32 in Block 3 and Lots 2 and 4 in Block 4 on the Map aforesaid, for the years 1917 and 1918, or some other year or years prior thereto, together with accrued interest and costs, sold the said lands and premises as Nos. 861 and 863 and Nos. 10 901 to 907 inclusive, Pennington street, to one Charles H. Wiltsie, and in pursuance thereof, did, on August 3, 1920, execute under his hand and seal, a certificate of said tax sale to the said Charles H. Wiltsie; that on October 27, 1920, the said Charles H. Wiltsie recorded the said certificate of tax sale in Book 504 of Mortgages for Union County, at pages 378 &c.

7. On April 4, 1921, the said Collector of Taxes of the said City of Elizabeth, in order to 20 collect and enforce the payment of taxes assessed against the lands and premises in the preceding paragraph described, for the year 1919, or some other year or years prior thereto, together with accrued interest and costs, sold the said lands and premises by the same description as set forth in the preceding paragraph, to the said Charles H. Wiltsie, and in pursuance thereof, did, on April 12, 1921, execute under his hand and seal a certificate of tax sale to the said 30 Charles H. Wiltsie; that on July 5, 1921, the said Charles H. Wiltsie recorded the said certificate of tax sale in Book 528 of Mortgages for Union County, at page 11.

8. On June 26, 1922, the said Collector of Taxes of the said City of Elizabeth, in order to collect and enforce the payment of taxes assessed against the lands and premises in paragraph 6 described, for the year 1920, or some 40 other year or years prior thereto, together with

*Second Amended Bill of Complaint.*

accrued interest and costs, sold the lands and premises by the same description as set forth in said paragraph 6, to the said Charles H. Wiltsie, and in pursuance thereof, the said Collector did, on July 5, 1922, execute under his hand and seal, a certificate of said tax sale to the said Charles H. Wiltsie; that on September 26, 1922, the said Charles H. Wiltsie recorded the said certificate of tax sale in Book 569 of Mortgages for Union County, at pages 349 &c. 10

9. On January 31, 1923, the said Charles H. Wiltsie, by three several instruments of Assignment, duly executed and acknowledged by him, assigned, transferred and set over to one Karl Schaffer, each of the before mentioned certificates of tax sale so as aforesaid made to the said Wiltsie, by the said Collector of Taxes, which said instruments of Assignment, were respectively recorded on February 21, 1923 in Book 75 of Assignments of Mortgage for Union County, at pages 572, 573 and 575; 20

10. On March 12, 1923, the Collector of Taxes of the City of Elizabeth, in order to collect and enforce the payment of taxes assessed against the lands and premises described in paragraph 6, for the year 1921, or some other year or years prior thereto, together with accrued interest and costs, sold the said lands and premises to Karl Schaffer, and in pursuance thereof, did, at a time thereafter, execute under his hand and seal, a certificate of said tax sale, to the said Karl Schaffer; that on March 30, 1926, the said Karl Schaffer caused the said certificate of tax sale, together with what purports to be an assignment thereof, made by the said Karl Schaffer on March 29, 1926, to one Sylvia Tova, to be re- 30 40

*Second Amended Bill of Complaint.*

corded in the Union County Register's office in Book 769 of Mortgages for said County, on pages 543 &c.

10 11. On March 10, 1924 the Collector of Taxes of the City of Elizabeth, in order to collect and enforce the payment of taxes assessed against the lands and premises in paragraph 6 described, for the year 1922, or some other year or years prior thereto, together with accrued interest and costs, sold the said lands and premises to Karl Schaffer, and in pursuance thereof, did, at a time thereafter, execute under his hand and seal, a certificate of said tax sale, to the said Karl Schaffer; that said certificate has not been recorded;

20 12. That subsequently complainant has made numerous efforts, personally and through his father, attorneys and counselors of this Court, to redeem the said lands and premises from said several tax sales, and did, on March 20, 1926, tender in legal tender moneys, sufficient to redeem said lands and premises, to the Collector of Taxes of the City of Elizabeth, in the City Hall in said City, but the said Collector of Taxes informed complainant that he, the said Collector, had no authority to accept said tender and issue 30 any certificate or certificates of redemption, all of which complainant charges to be contrary to the law in such cases made and provided.

40 13. The said Karl Schaffer although frequently applied to by the said complainant and others in his behalf, refused to accept any sum of money tendered to him by the complainant and refused to surrender to the complainant the said tax sale certificates so that complainant might cancel and efface the same from the

*Second Amended Bill of Complaint.*

records in the Register's office of the County of Union, to the irreparable damage of the complainant in that the cloud of said tax sale certificates and the proceedings appended thereto and recorded therewith, encumber the fee simple title of complainant.

14. That the said Karl Schaffer gives out and says that he has no interest in any of the hereinbefore described certificates of tax sale of lands and premises known as Nos. 861, 863, 901, 903, 905 and 907 Pennington street, being lots 2 and 4 in Block 4 and Lot 32 in Block 3 on a Map of Bellevue, as hereinbefore described, and further gives out and says that he has assigned, transferred and set over to the said Sylvia Tova, any and all interest the said Schaffer had therein. That this complainant had no notice, actual or constructive, of such transfer or transfers, assignment or assignments made or purported to have been made by the said Karl Schaffer to the said Sylvia Tova of the said tax sale certificates, except the assignment of the certificate last above alleged. That, if the said Sylvia Tova is possessed of any or all of the certificates of tax sale aforesaid, all her right, title or interest therein is and was terminated by the tender of redemption made by complainant to the Collector of Taxes of the City of Elizabeth, on March 20, 1926, as hereinbefore alleged.

15. Complainant is and has at all times since said day of October, 1919, been ready and hereby tenders himself ready and willing to pay all sums of money remaining due and unpaid on said tax sale certificates, together with all legal interest thereon, at and after the rate permitted by statute in such cases made and provided, to-

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*Second Amended Bill of Complaint.*

gether with the costs and expenses to which, by law, the said Karl Schaffer and Sylvia Tova may be entitled, or whatever sum or sums this Court may adjudge to be the amount which he should pay into this Court in order to satisfy and discharge the said tax sale certificates.

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Complainant is without adequate remedy in the Courts of law and therefore prays:

(a) That Karl Schaffer and Sylvia Tova, who are the defendants to this suit, may answer this Bill of Complaint and each statement therein made;

(b) That complainant may be decreed to be entitled to redeem the said lands and premises from the said tax sales and the tax sale certificates thereof;

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(c) That the said defendant Karl Schaffer, and the said defendant, Sylvia Tova, whoever of them shall be found to have possession and title to the certificates of tax sale aforesaid, either or both of them, may be decreed, upon payment or tender by the complainant to him or her, or both of them, as the facts may be found to be, of whatever amount is decreed to be equitable due to said defendants, or either of them on his or her or both of their several tax sale certificates, to deliver up and surrender to the complainant the said several tax sale certificates after having first duly endorsed the same for cancellation;

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(d) That it may be decreed that the said pretended proceedings of tax sale, consisting of the certificate of tax sale, notice to redeem and affidavits of service, recorded in the Union County Register's office, be cancelled and that

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*Second Amended Bill of Complaint.*

the record of said proceedings, including the said tax sale certificate, notice to redeem and affidavits of service, be cancelled and effaced from the records, and decreed to be of no force or effect upon the lands and premises hereinabove described;

(e) That a writ of subpoena may issue, commanding said defendants Karl Schaffer and Sylvia Tova to answer this Bill of Complaint and to abide by such decree as this Court may make in the premises.

ADOLF L. ENGELKE,  
Solicitor for and of Counsel  
with Complainant.

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ORDER ALLOWING SECOND AMENDED  
BILL OF COMPLAINT.

Filed September 6, 1927.

IN CHANCERY OF NEW JERSEY.

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*Between*

WILLIAM J. SHEARER, JR.,  
*Complainant,*

*and*

KARL SCHAFFER,  
*Defendant.*

20 This matter coming on to be heard on notice  
of the complainant to file a seconded amended  
bill of complaint, and in the presence of Adolf  
L. Engelke, of counsel with the complainant, and  
Charles Wagner, of counsel with the defendant,  
Karl Schaffer, and it appearing to the Court  
that from the statements made by counsel for  
the defendant, Karl Schaffer, that Sylvia Tova  
or Tove has an interest in some of the tax  
sale certificates mentioned in the original bill  
of complaint, and ought to be made a party,  
30 and it further appearing that from the proofs  
taken in this cause, the certificates of tax sale  
relate to other years than those alleged in the  
bill of complaint and that the complainant ought  
to have leave to file a second amended bill of  
complaint setting up the facts as they now ap-  
pear, and it further appearing that a copy of  
the amended bill of complaint the complainant  
desires to file was duly served upon the solicitor  
of the defendant, Karl Schaffer;  
40 It is, on this sixth day of September, A. D.  
1927, ORDERED that the complainant have leave

*Order Allowing Second Amended Bill of Complaint.*

to file a second amended bill of complaint, containing the allegations and prayers set forth in the copy served and as the said complainant may be advised.

E. R. WALKER,

C.

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Respectfully advised,

JNO. J. FALLON,

V.-C.

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**ANSWER.**

Filed November 16, 1926.

## IN CHANCERY OF NEW JERSEY.

10 *Between*WILLIAM J. SHEARER, JR.,  
*Complainant,**and*

KARL SCHAFFER,

*Defendant.*

The answer of the defendant, Karl Schaffer,  
of the Borough of Roselle, County of Union and  
20 State of New Jersey.

This defendant answering the bill of complaint  
says that:

1. Paragraph 1 is admitted, subject to the  
defense hereinafter set forth.

2. Paragraph 2 is admitted.

3. Paragraph 3 is admitted, subject to de-  
fense hereinafter set forth.

30 4. The defendant admits that the tax sale  
certificate and notices and affidavits thereto an-  
nexed, mentioned in paragraph 4, were recorded  
among deeds for Union County, as therein men-  
tioned, and the defendant says that the said  
certificate with the papers thereto annexed as  
so recorded constituted a good and valid deed  
for the said premises to the defendant.

5. Paragraph 5 is denied.

40 6. Paragraph 6 is admitted.

*Answer.*

7. Paragraph 7 is admitted.

8. Paragraph 8 is admitted.

9. Paragraph 9 is admitted.

10. Paragraph 10 is admitted, and the defendant further answering says that the certificate mentioned in said paragraph was assigned by the defendant to Sylvia Tove, of Baltimore, Maryland, by assignment dated March 29, 1926, and recorded with said certificate on March 30, 1926 in Book 769 of Mortgages for Union County on pages 453, etc., and that the said Sylvia Tove is the owner of the said certificate, and of all rights accruing thereon. 10

11. Paragraph 11 is admitted.

12. The defendant denies all of paragraph 12 which may have or purport to have any connection with this defendant, and as to the allegation in the said paragraph having reference to the Collector of Taxes of the City of Elizabeth, this defendant has no knowledge. 20

13. Paragraph 13 is denied.

14. Paragraph 14 is denied.

This defendant further answering complainant's bill of complaint says: 30

(a) That defendant has good and valid title to the premises described in the bill of complaint, with the exception of the interest of Sylvia Tove in and to the certificate aforementioned, that any equity which complainant may have had in said premises is effectually debarred and cut off by statutory proceedings of this defendant, pursuant to the laws relating to the tax sale certificates mentioned in the bill of complaint, and that com- 40

*Answer.*

plainant has no right or equity of redemption in and to said premises.

(b) The defendant says that the deed to the complainant for the premises mentioned in paragraph 1 of the complaint is based on two prior deeds, one of William J. Shearer and Carrie M. his wife to the Elizabeth Heights Realty Company, dated April 20, 1911, and recorded August 2, 1911 in Book 579 of Deeds for Union County on page 506, etc., and that the said deed was not effectual to convey the fee to the said Elizabeth Heights Realty Company, and its successors, and that a later deed was made by the said William J. Shearer and wife to the said Elizabeth Heights Realty Company, which later deed was purported to be dated April 20, 1911, but was not recorded until April 5, 1917, which was subsequent to the date of the deed of the Elizabeth Heights Realty Company mentioned in paragraph 1 of the complaint, and was subsequent to the recording of numerous judgments unpaid and unsatisfied against the said William J. Shearer; that at the time of the purported conveyance from the Elizabeth Heights Realty Company to the complainant, the said complainant was the Secretary of said company and was the person who made proof of such conveyance, and was the same person who joined in the execution of the deed on the part of the purported grantor, as attesting witness, which said purported deed was signed by the said William J. Shearer as President, and that the said deed to complainant was given without consideration, and in bad faith, and that the complainant is not entitled to the equitable aid or intervention of this Court.

CHARLES WAGNER,  
Solicitor of Defendant.

**REPLICATION.**

Filed November 25, 1926.

## IN CHANCERY OF NEW JERSEY.

WILLIAM J. SHEARER, JR., <i>Complainant,</i> <i>and</i> KARL SCHAFFER, <i>Defendant.</i>	}	10  <i>On Bill, &amp;c.</i>  <i>Replication.</i>
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In reply to the defenses stated in the answer of the defendant, and not anticipated in the bill of complaint, complainant, by leave of Court says that: 20

1. In reply to paragraph 4 of the answer, complainant says that the certificate of tax sale with the papers annexed thereto, pretended to be recorded, do not constitute a good and valid deed for the premises, to the defendant;

2. Answering paragraph 10, complainant says that it had no notice of said assignment of said certificate to the said Sylvia Tove and that if said assignment has been made as in said answer alleged, the said Sylvia Tove is bound by the tenders made as alleged in the bill of complaint and that whatever rights the said Sylvia Tove has in the said certificate are subject to the rights of the complainant; 30

3. Answering the separate defenses of the said defendant, this complainant says:

(a) Paragraph (a) is denied;

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*Replication.*

(b) This complainant hereby gives notice that on the hearing of this cause, he will object to and move to strike out paragraph (b) of the said separate defense, on the ground that no fact or facts therein stated constitute any defense or defenses to the complainant's cause of action, set out in his bill of complaint.

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Complainant joins issue upon the remainder of the answer.

ADOLF L. ENGELKE,  
Solicitor of Complainant.

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## STIPULATION.

IN CHANCERY OF NEW JERSEY.

*Between*WILLIAM J. SHEARER, JR.,  
*Complainant,**and*KARL SCHAFFER,  
*Defendant.*

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Whereas on the hearing of the above-entitled cause before Vice-Chancellor Fallon, to whom the same had been referred, the defendant Karl Schaffer expressed his intention to **no further** contest the right of the complainant to redeem the parcels of land situate and known as Numbers 861-3 and 901-7 Pennington street, Elizabeth, N. J., part of the subject matter of the above-entitled suit, including among those to be redeemed, one originally held by the said defendant Karl Schaffer and by him assigned to Sylvia Tove, if redemption be made in this suit by complainant,

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It is hereby stipulated by counsel for the respective parties that the said complainant may and shall redeem the said lands from the certificates of tax sale, upon the payment of the sum of \$331.80 before December 7, 1927, and upon such payment, if made before December 7, 1927, the said defendant will deliver up to the said complainant, duly endorsed with an authorization for the cancellation thereof, directing the City Collector of Elizabeth and the Register of Deeds of Union County, or other proper

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*Stipulation.*

municipal and county officials as the case may require, to discharge of record all the certificates of tax sales held by the said Karl Schaffer or his assigns covering the said lots known as Numbers 861-3 and 901-7 Pennington street; and it is further stipulated that the payment of said  
 10 moneys within said time and the redemption of said certificates shall in no way be considered by either party as a waiver of any tender alleged to have been made by the said complainant with respect to any other parcel of land the subject of the above-entitled suit.

ADOLF L. ENGELKE,  
 Solicitor of Complainant.

20 CHARLES WAGNER,  
 Solicitor of Defendant, Karl Schaffer.

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**ORDER OF REFERENCE.**

IN CHANCERY OF NEW JERSEY.

*Between*

WILLIAM J. SHEARER, JR.,  
*Complainant,*

62-172.

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*and*

KARL SCHAFFER,  
*Defendant.*

This matter being opened to the Court by Adolf L. Engelke, solicitor of the complainant, and it appearing that Charles Wagner, solicitor for the defendant has consented hereto:

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It is, on this 4th day of January, nineteen hundred and twenty-seven, on motion of Adolf L. Engelke, solicitor of the complainant, ORDERED that the above-entitled cause be referred to Hon. John Griffin one of the Vice-Chancellors of this court, to hear the same for the Chancellor, and to report thereon to him and to advise what order or decree should be made therein.

E. R. WALKER,

C. 30

I hereby consent to the making of the foregoing Order.

CHARLES WAGNER,  
Solicitor of Defendant.

NOTE: Upon the death of Hon. John Griffin, the above matter was referred by the Chancellor to the Hon. John J. Fallon, Vice-Chancellor.

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## CONCLUSIONS.

Filed October 21, 1929.

IN CHANCERY OF NEW JERSEY.

10	<i>Between</i> WILLIAM J. SHEARER, JR., <i>Complainant,</i> <i>and</i> KARL SCHAFFER, <i>Defendant.</i>	} 62-172.
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FALLON, V.-C.

20 This is a suit to redeem certificates of tax sales under the authority of the tax act of 1903. P. L. 1903, p. 394. Notwithstanding the allegations of the bill of complaint, and proofs thereunder, the solicitor of the defendant after the hearing made known to the Court that he controverted only the complainant's right to redeem certificate of tax sale relating to the premises Numbers 900 and 902 West Grand street. He conceded complainant's right to redeem certificates of tax sales relating to other properties

30 mentioned in the complainant's bill. The only controversy as to certificates of tax sales relating to the Pennington street lands is whether the defendant is indebted to the complainant for payment made by the latter on redemption of tax sales certificates Nos. 260 and 719. The complainant urges that the defendant is not entitled to payment of any interest thereon. It appears that the defendant exacted from the complainant payment of approximately \$40.51. The

40 determination as to whether the complainant is

*Conclusions of Vice-Chancellor.*

entitled to redeem the certificates of tax sales relating to the aforesaid West Grand street premises depends principally upon the facts as evidenced by the testimony of the several witnesses. The testimony of complainant's witnesses, in my judgment, is more credible than the testimony of defendant's witnesses. The trier of facts is the judge of the credibility of witnesses and does not have to believe a particular witness or witnesses. *Riehl v. Riehl*, 101 N. J. Eq. 15, at pp. 22, 23. I am convinced that the complainant's activities toward effecting a redemption of the tax sale certificates in question, as evidenced by the proofs herein, suffice to evidence compliance with the requisites of the law cast upon him in such respect. A court of equity will seize upon the slightest flaw of substance in tax sales to restore property to the owner. *Welles v. Schaffer*, 98 N. J. Eq. 31, p. 35; *McCandless v. Schaffer*, 142 Atl. Rep. 566. In *Harrington v. Horster*, 89 N. J. Eq. 271, this court held— "The sale of land for non-payment of taxes is such an extreme interference with private property that the law guards the rights of the owner with the utmost care \* \* \*." The affidavits relating to service of notices to redeem appear to have been taken before one Mabel Seibert, who, by such name, was commissioned a Notary Public of New Jersey. She was married on August 16, 1919. The jurat to the affidavits purporting to be proofs of service and non-redemption were signed by her as Mabel Seibert Graff, Notary Public. In the absence of statutory authority the person commissioned as notary public under the name of Mabel Seibert was unauthorized to sign her name to jurats to affidavits as "Mabel Seibert-Graff, Notary Public," and consequently the

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*Conclusions of Vice-Chancellor.*

purported affidavits must be regarded as a nullity. Women may be appointed and commissioned as notaries public (3 Comp. Stat. p. 3761, Sec. 211) but they can only act as such in their name as appointed and commissioned. I am constrained to consider that if the legislature contemplated the continuance of authority of a *feme sole* appointed notary public, after her marriage, legislation would have been enacted such as relates to women appointed and commissioned as masters in chancery and/or attorneys or counsellors at law. P. L. 1923, pp. 265 and 266. The complainant is entitled to redeem the certificates of tax sales in question and I will advise a decree to effectuate such redemption. If the parties cannot agree upon the amount required to be paid by the complainant to the defendant for the redemption of the premises numbers 900 and 902 West Grand street, and the amount to be repaid by the defendant to the complainant, if any, with respect to the certificates of tax sales Nos. 260 and 719, I will refer the matter to a Master for computation and with direction to report to the Court as promptly as possible.

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**ORDER.**

Filed November 20, 1929.

## IN CHANCERY OF NEW JERSEY.

*Between*WILLIAM J. SHEARER, JR.,  
*Complainant,**and*KARL SCHAFFER,  
*Defendant.*

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The Court being of opinion that the prayer of the above named complainant should be granted, and that the complainant should have and exercise the right to redeem the lands and premises particularly described in the Bill of Complaint, but before making Final Decree in this matter, the same should be referred to a Master to ascertain what sum or sums should be paid by the complainant to the defendant in redemption of said lands and premises and after hearing and considering the arguments of the respective counsel herein;

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It is, on this 20th day of November, A. D. 1929, ORDERED, that the above entitled matter be referred to Aloysius McMahon, one of the Masters of this Court, to ascertain and report to this Court the amount required to be paid by the complainant to the defendant for the redemption of lands and premises known as Nos. 900-902 West Grand street, Elizabeth, New Jersey, on the certain certificates of tax sales held by the defendant upon said lands and premises, and further to ascertain and report what if any

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*Order.*

amount the complainant is entitled to deduct from the amount found necessary to redeem said lands and premises, by reason of the overpayment by the complainant to the defendant of moneys paid in redemption of other lands and premises described in the Bill of Complaint in  
 10 this cause, and to make report in this cause with all convenient speed;

And it is further ORDERED, that all further equities be reserved until the coming in of said Master's Report.

E. R. WALKER,  
 C.

Respectfully advised,

20 JNO. J. FALLON,  
 V.-C.

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**FINAL DECREE.**

Filed June 16, 1930.

IN CHANCERY OF NEW JERSEY.

<p><i>Between</i></p> <p>WILLIAM J. SHEARER, JR.,  <i>Complainant,</i></p> <p style="text-align: center;"><i>and</i></p> <p>KARL SCHAFFER,  <i>Defendant.</i></p>	}	<p>10</p> <p>62-172.</p>
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This cause coming on to be heard in the presence of Adolf L. Engelke, solicitor of the complainant, William J. Shearer, Jr., and Charles Wagner, solicitor of the defendant, Karl Schaffer, and the Court having examined the pleadings and having taken proofs orally and in open court and heard and considered the arguments of counsel thereon, and it appearing to the satisfaction of the Court that the complainant is entitled to the relief prayed for by him in his Bill of Complaint, and the parties being in dispute as to the amount payable, the Court referred the matter to Aloysius McMahan, one of the Masters of this Court, to ascertain and compute the sum or sums of money to be paid by the complainant to the defendant in redemption of the lands hereinafter described, and the said Master having heretofore filed his Report that since the filing of the Bill of Complaint in this cause the complainant has redeemed from the defendant Lots 861, 863, 901 and 907 Pennington street, in the City of Elizabeth, in the County of Union, this State, being part of the

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*Final Decree.*

lands and premises described in the Bill of Complaint, leaving unredeemed, of all the lots mentioned in the said Bill of Complaint, only lots 900 and 902 West Grand street, in the City of Elizabeth, aforesaid, and reports that there is due to the defendant to redeem said lots 900 and 902 West Grand street, the sum of \$20.07 and further finds and reports that the complainant has overpaid to the defendant for the redemption of the said Lots 861, 863, 901 and 907 Pennington street, aforesaid, the sum of \$40.51 which with interest thereon from the date of said overpayment, amounts to the sum of \$45.37 which the said complainant is entitled to deduct from any moneys which should be paid to the defendant in redemption of the said Lots 900 and 902 West Grand street, aforesaid, and further finds and reports that the tax sale to the defendant held on November 12, 1917, whereat the said lots 900 and 902 West Grand street were sold to the defendant for a period of two years, had expired by its own limitation;

It is, on this 16th day of June, A. D. 1930, ORDERED, ADJUDGED and DECREED by Edwin Robert Walker, Chancellor of the State of New Jersey, that the said complainant, William J. Shearer, Jr., is entitled to redeem the said lots 900 and 902 West Grand street, in the City of Elizabeth, in the County of Union, this State, from the tax sales thereof made by the Comptroller of the City of Elizabeth to the defendant, Karl Schaffer, and the certificates thereof issued thereon to him, which said certificates bear date November 20, 1916 and November 12, 1917, upon the payment of the sum of \$20.07;

And it is further Ordered, Adjudged and Decreed that the proceedings recorded as a deed

*Final Decree.*

in the Union County Register's office in Book 988 of Deeds for Union County, at page 230, are invalid and ineffectual and the Register of Union County be and is hereby required and directed on the filing with him of a duly certified copy of this Decree, to record the same in the record of Deeds for said County and to note in the margin of the record of said proceedings in the book and at the page aforesaid, the place of record of this Decree; 10

And it is further Ordered, Adjudged and Decreed that the defendant pay to the complainant the sum of \$45.37, the amount overpaid by complainant to defendant on the redemption of some of the lots in the Bill of Complaint mentioned;

And it is further Ordered, Adjudged and Decreed that the complainant recover of the defendant the costs of this suit to be taxed and the Clerk of this Court is directed to and shall tax in said costs, moneys paid by the complainant for a transcript of the testimony for the use of the Court as well as a counsel fee of two hundred and fifty dollars; 20

And it is further Ordered, Adjudged and Decreed that a true copy of this decree and of the complainant's costs, be served upon the defendant within ten days from the date hereof and that in lieu of the payment of the aforesaid sum of \$20.07 in redemption as hereinbefore provided, the complainant shall credit said sum upon the sums by this decree required to be paid by the defendant; 30

And it is further Ordered, Adjudged and Decreed that if payment by the defendant to the complainant, of the several sums, reduced by the credits as hereinbefore provided, be not made within 30 days after the service upon him 40

*Final Decree.*

of a true copy of this decree and complainant's taxed costs, a writ of *feri facias de bonis et terris* shall issue out of this Court to make the sums of money aforesaid, in accordance with the rules and practice of this Court.

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E. R. WALKER,  
C.

Respectfully advised,

JNO. J. FALLON,  
V.-C.

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**NOTICE OF APPEAL.**

Filed June 27, 1930.

IN CHANCERY OF NEW JERSEY.

*Between*

WILLIAM J. SHEARER, JR.,  
*Complainant,*

*and*

KARL SCHAFFER,  
*Defendant.*

*On Bill, &c.*

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The defendant, Karl Schaffer, hereby appeals from the Final Decree made in the above-entitled cause on the sixteenth day of June, 1930, by the Chancellor, on the advice of Vice-Chancellor John J. Fallon, wherein the Court adjudges that the complainant is entitled to the redemption of the premises described as 900-902 West Grand street, in the City of Elizabeth, County of Union and State of New Jersey, from the tax sales thereof by the Comptroller of the City of Elizabeth to the defendant, Karl Schaffer, upon payment of twenty dollars and seven cents (\$20.07), and wherein the Court adjudges that upon the filing of said Decree with the Register of Union County, the said Register shall note in the margin of the record of the books wherein said tax sales are recorded as deeds, the place of record of this Decree, and wherein the Court adjudges that the defendant pay the complainant the sum of forty-five dollars and thirty-seven cents (\$45.37), and wherein the Court adjudges that the complainant recover of the defendant taxed costs and monies for a transcript of the testi-

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*Notice of Appeal*

mony and counsel fee, and that the complainant have a writ of *feri facias de bonis et terris* to make up said sums, and the defendant appeals from the whole and every part of said Decree to the Court of Errors and Appeals in the Last Resort in All Causes.

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CHARLES WAGNER,  
Solicitor and of Counsel with the Defendant.

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

CHARLES WAGNER,  
Of Counsel with the Defendant.

A true copy.

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CHARLES WAGNER,  
Solicitor and of Counsel  
with the Defendant.

Service of a true copy of the within Notice of Appeal is acknowledged this 26th day of June, 1930.

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ADOLF L. ENGELKE,  
Solicitor of Complainant.

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**PETITION OF APPEAL.**

Filed June 27, 1930.

**NEW JERSEY COURT OF ERRORS  
AND APPEALS.**

*Between*

WILLIAM J. SHEARER, JR.,  
*Complainant-Appellee,*

*and*

KARL SCHAFFER,  
*Defendant-Appellant.*

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To the Honorable the Court of Errors and  
Appeals in the Last Resort in All Causes:

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The petition of Karl Schaffer, appellant in  
the above-entitled cause, respectfully shows that:

1. Your petitioner finds himself aggrieved by  
a Final Decree made in the Court of Chancery  
by his Honor, Edwin Robert Walker, Chancellor  
of the State of New Jersey, on the advice of  
his Honor, John J. Fallon, Vice-Chancellor,  
which Decree bears date the sixteenth day of  
June, 1930, in a certain cause in the said Court  
of Chancery wherein William J. Shearer, Jr.  
was complainant and Karl Schaffer, the peti-  
tioner, was defendant, and your petitioner finds  
himself aggrieved in these respects, to wit, that:

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The said Decree adjudges that the complain-  
ant is entitled to redeem the several lots known  
as 900 and 902 West Grand street, in the City  
of Elizabeth, County of Union and State of  
New Jersey, from the tax sales thereof made by  
the Comptroller of the City of Elizabeth to the

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*Petition of Appeal.*

defendant, and the certificates issued to him, upon payment of the sum of twenty dollars and seven cents (\$20.07), and does further adjudge that the proceedings recorded as deeds in the Union County Register's Office in Book 988 of Deeds for said County at page 230 are invalid  
 10 and ineffectual, and that upon filing with the Register of a duly certified copy of said Decree that the Register note in the margin of the record of said proceedings in the book and at the page aforesaid, the place of record of this decree, and said Decree does further adjudge that the defendant pay to the complainant the sum of forty-five dollars and thirty-seven cents (\$45.37), and does further adjudge that the complainant recover of the defendant the taxed costs of this  
 20 **suit, together with monies paid for a transcript of the testimony, and a counsel fee of two hundred and fifty (\$250) dollars, and does further adjudge that if payment by the defendant to complainant of said sums, less credits as provided in said Decree, be not made within thirty (30) days after service of a true copy of the Decree and taxed costs, a writ of *feri facias de bonis et terris* shall issue to make up the sum of money aforesaid.**

30. And your petitioner humbly appeals from the portions of the Decree of the Chancellor which adjudge adversely to the defendant as aforesaid, upon the ground that the same are erroneous in that:

1. The evidence does not justify the Decree that the complainant is entitled to redemption of the lots described as 900 and 902 West Grand street, Elizabeth, New Jersey, and does not justify the award of costs to the complainant.  
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*Petition of Appeal.*

2. The proof submitted by complainant was not so clear and convincing as to justify a Decree that the complainant was entitled to redemption.

3. The proof submitted by the defendant was sufficient to justify a dismissal of complainant's Bill. 10

4. The proof submitted by the defendant was sufficient to justify a finding that due and legal service of a Notice to redeem the said premises was made by defendant upon the complainant, and that the complainant failed to redeem the said premises from the lien of the respective tax certificates of the defendant within the statutory time, and that all right, title and interest of the complainant in said premises was thereby cut off. 20

5. The Decree is contrary to the weight of evidence.

6. The Decree is contrary to the principles of equity and law applicable to said cause.

7. The Decree is based upon evidence and findings of fact which occurred after the time for redemption had expired, and after all right, title and interest of the complainant in said premises was cut off. 30

8. The Decree adjudging that the defendant pay to the complainant the sum of forty-five dollars and thirty-seven cents (\$45.37) relates to certificates of tax sale not owned by the defendant, and relates to transactions between the complainant and a third person to which the defendant was not a party.

9. The Court should have ordered, adjudged and decreed that the complainant did not meet 40

*Petition of Appeal.*

the burden of proof necessary for the complainant to prevail, and that the defendant's proofs justified a finding that the complainant's right, title and interest in said premises had been duly and legally cut off, and the said Bill of Complainant should have been dismissed, with costs to the defendant to be taxed.

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Your petitioner further prays that the said Decree may be reversed, set aside and for nothing holden, and that your petitioner may have such other relief in the premises as to this Honorable Court may seem proper.

CHARLES WAGNER,  
Solicitor and of Counsel with  
Defendant-Appellant.

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Service of a true copy of the within Petition of Appeal is hereby acknowledged this 26th day of June, 1930.

ADOLF L. ENGELKE,  
Solicitor of Complainant-Appellee.

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## STIPULATION.

IN CHANCERY OF NEW JERSEY.

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*Between*WILLIAM J. SHEARER, JR.,  
*Complainant,**and*KARL SCHAFFER,  
*Defendant.*

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The complainant and defendant stipulate by their respective counsel as follows:

1. The Appeal now filed by the defendant in the Court of Errors and Appeals in the Last Resort in All Causes, from the Final Decree in said cause, shall be considered to be inclusive of the Appeal heretofore filed from the Order of the Chancellor, on the advice of Vice-Chancellor John J. Fallon, dated November 20, 1929, and shall be considered in substitution of said former Appeal, so as to embrace all the issues in said cause on Appeal.

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2. The deposit of one hundred (\$100) dollars heretofore made in the Court of Chancery in connection with the Appeal from said Order, and deposited in accordance with the rules, shall be considered as the requisite deposit in the Appeal from the Final Decree in said cause, and it is hereby stipulated that the deposit of one hundred (\$100) dollars requisite upon the filing

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*Stipulation.*

of the Appeal from the Final Decree is hereby considered to have been made.

ADOLF L. ENGELKE,  
Solicitor of Complainant.

CHARLES WAGNER,  
Solicitor of Defendant.

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Dated June 26, 1930.

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**ANSWER TO PETITION OF APPEAL.**

Filed July 1, 1930.

**NEW JERSEY COURT OF ERRORS  
AND APPEALS.***Between*WILLIAM J. SHEARER, JR.,  
*Complainant-Appellee,**and*KARL SCHAFFER,  
*Defendant-Appellant.*

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The Answer of William J. Shearer, Jr., the above-named appellee, to the petition of appeal of Karl Schaffer, the above-named appellant. 20

This appellee, not admitting the truth of all or any of the matters in the said petition of appeal contained, for answer thereto, nevertheless, admits that a Decree was, on June 16, 1930, made and entered in the Court of Chancery of New Jersey in the above-entitled cause, for the purposes in said petition mentioned, and as therein set forth; but as to the substance and form of said Decree, this appellee begs leave to refer thereto when the same shall be produced. 30

This appellee is advised and believes that the said Decree is agreeable to equity and he prays that the same may be affirmed, with costs to be taxed in favor of this appellee.

ADOLF L. ENGELKE,  
Solicitor for and of Counsel with Appellee.

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*Discussion.*

**TESTIMONY.**

IN CHANCERY OF NEW JERSEY.

*Between*

10 WILLIAM J. SHEARER, JR.,  
*Complainant,*  
*and*  
 KARL SCHAFFER,  
*Defendant.*

Appearances:

Adolf L. Engelke, Esq., for complainant.

Charles Wagner, Esq., for defendant.

20 Before Hon. Jno. J. Fallon, Vice-Chancellor.

Chancery Chambers, Jersey City, N. J.

June 22, 1927.

The Vice-Chancellor: I have glanced through the pleadings in this one case of Shearer *v.* Schaffer—the other one I just glanced at hastily—it seems to be a similar case, but I don't know whether it relates to the same property.

30 Mr. Engelke: The two cases are very similar in fact, but relate to various plots in the City of Elizabeth. There are two different properties, that is all.

The Vice-Chancellor: Can they be tried together?

Mr. Engelke: I think they can.

Mr. Wagner: I do not think so, your Honor; the matter is quite complicated, as it is, and if we mix the two of them together it will simply add to  
 40 the complication.

*Discussion.*

The Vice-Chancellor: I notice you say that on the hearing you are going to move to strike out a portion of the answer which it seems to you has no right in there—what have you to say about that? There is a portion of the answer there in which you indicate about some fraud between some parties whereby they acquired title to the property—how are you concerned about that? In other words, what difference does it make to you how they acquired title to the property? Their contest is that you have claimed to have a fee of the property, and obtained it by conveyance; and the complainant says that while they acquired the title (I think the pleading says) in 1917, they later found out there was a sale of the property and a certificate of sale granted to your client, and that certificate of sale was not recorded for some years thereafter, however.

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Mr. Wagner: Yes.

The Vice-Chancellor: Now, was there any title in your client, or did you ever have a certificate of sale all the way through?

Mr. Wagner: The deed is on record.

The Vice-Chancellor: Is it a certificate of sale, or a deed?

Mr. Wagner: We call it a deed—a “statutory deed.”

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The Vice-Chancellor: No, it is not a statutory deed. If the parties do not come in for three years thereafter, then you get a deed. Now, what objection can you have to their redeeming the property, if you have no deed? There is a case of, I think it is Nugent *vs.* somebody, that indicates that where a matter of this kind comes into a court, the Court is going to throw a very strong arm out to protect the property owner as

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*Discussion.*

against the purchaser at a tax sale, and will take advantage of any technicality that might exist there to protect the property owner.

Mr. Wagner: Yes, that is the Wells case.

The Vice-Chancellor: I am just wondering now how far we are going with the proofs.

10 Mr. Wagner: On this particular subject-matter that Mr. Engelke urges, I have this to say: In the first place, it has been my experience, in the practice of the Court, that, on a motion to strike out, unless that motion is pressed in the regular way on the notice on the day set, it is waived.

20 The Vice-Chancellor: No, I do not think so, because he gives you notice in his answer that, on the hearing of the cause, he is going to move it. Anyhow, the Court will take judicial notice of that.

Mr. Wagner: Well, conceding that that is a proper subject of argument, it is a very salient element in this case.

The Vice-Chancellor: Well, I will give you an opportunity of showing that it is.

30 Mr. Wagner: Well, they make the affirmative allegation in their case that we did not record our certificate as a mortgage, but that we recorded the certificate plus the notice to redeem plus the affidavits of non-redemption, as a deed, and therefore they give notice to us in their bill that they claim some benefit from that portion of the section of the statute which indicates that the purchaser at a tax sale may record his certificate as a mortgage and claim certain benefits therefrom, if he is a *bona fide* purchaser, but now we are going to show that he is not a *bona fide* purchaser—that his deed is tainted, from beginning to end, with fraud.

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*Discussion.*

The Vice-Chancellor: How can you do that collaterally? In other words, the only contest here (as the statute you are referring to here says) is that the purchaser at a tax sale must give notice to the owner of record and other parties in interest—now, if there is a deed of record in the name of John Jones, how can you question John Jones' right to the property which he claims to own? 10

Mr. Wagner: He took that record as it stands. They say, "We are *bona fide* purchasers—

The Vice-Chancellor: I do not care about that. If they show the Court that they are owners of a parcel of property, and are owners of record, they do not have to go any farther; I do not care whether they got that property for a dollar or a million dollars, they are owners; and if you are going to undertake to show that they acquired that property through some fraudulent pretense I do not see how you can do it, under the statute; but if you think you can, I am going to afford you the fullest opportunity. 20

Mr. Wagner: No, I am very happy to have the issue confined in the way you state; I conceive that the issue is only one issue, and the only thing we can argue in a case like that is did we cut them out in the manner defined by the statute, that is all. They, however, bring in another issue, and if they do, then I would not be prepared to meet it. 30

The Vice-Chancellor: Well, if you think that you cut them out, why did you assign one of your certificates to a party in Baltimore—is that man a party to the proceeding?

Mr. Wagner: They did not make him a party.

The Vice-Chancellor: Well, they did not know about that until your answer came in. 40

*Discussion.*

Mr. Wagner: No, sir, that certificate was on record a long time before their bill was filed.

The Vice-Chancellor: Well, in view of that certificate, would you still claim that you held rights under that certificate?

10 Mr. Wagner: As to that, we are out.

The Vice-Chancellor: Well, that forecloses everything preceding it, don't it? That would shut out your certificate of 1916, would it not—in other words, the latest sale cuts out the preceding matters, does it not?

Mr. Wagner: No, sir, it does not.

The Vice-Chancellor: If the proceedings are properly followed up?

20 Mr. Wagner: The very last case on the subject, decided by the Court of Errors and Appeals, holds that the owner of the prior certificate is deemed as the owner of the property.

30 The Vice-Chancellor: If he follows up the procedure prescribed by law, but apparently you did not—for instance, you did not record this paper, as I understand it, until some time in 1926, and you got it in 1916; how could you expect that to be much notice to a party who examined the records, excepting the city records, or municipal records? However, I think we are losing time in this matter: I will let you proceed with your proofs.

Mr. Engelke: And your Honor will hold decision on the motion?

The Vice-Chancellor: You will have to make your motion formally, and state any formal reasons you have for it.

40 Mr. Engelke: Your Honor has so cogently stated them that I do not think I could more ably reiterate them—that, being the owners, and,

*Discussion.*

under the statute being the owners, I do not think it can be attacked collaterally; if these persons who have the right to attack our ownership of title, have attacked it to set it aside, we still remained owners, however fraudulently our deed may be acquired, and therefore we have the right to proceed.

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Mr. Wagner: I said, your Honor, at the outset, that we can narrow this issue.

The Vice-Chancellor: I hope you do.

Mr. Wagner: There are four properties with which we are concerned, one is 900 and 902 West Grand street—

The Vice-Chancellor: As to those, can you give me the lot and block numbers, so that when I come to examine it I will know what I am dealing with, for the municipal authorities do not describe them by street numbers.

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Mr. Wagner: That is Lot 1 and 2 in Block 4 of the Holbrook tract.

Mr. Engelke: I have them all analyzed here, your Honor.

The Vice-Chancellor: Well, if you can state it better than the other counsel; maybe he can state it just as well; (to Mr. Wagner): go ahead and finish it, if you can.

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Mr. Wagner: It is Lot 1 and 2 in Block 4 of the Holbrook Map.

The Vice-Chancellor (to Mr. Engelke): Do you agree with that?

Mr. Engelke: No, I do not; it is only Lot 1 in Block 4 in the Map of Bellvue, which is known on the tax books as Lots 900 and 902 West Grand street.

40

*Discussion.*

The Vice-Chancellor: Let us get this thing straight—you have stated one thing and he has stated another—which is right?

Mr. Wagner: Will your Honor permit me to proceed?

10 The Vice-Chancellor: I would rather have the complainant proceed first, unless I can short-cut this thing; but I understood you to say that you were going to give me some analysis of this matter to make the issue short.

Mr. Wagner: Well, to begin with, there were four lots on a street known as Williams avenue; as to one of those lots we cannot find our papers—

The Vice-Chancellor: What lot is that?

20 Mr. Wagner: That is Lot 190 and 192 (Mr. Engelke may use the block number), and as to that we will not give testimony under oath; we know that we cut them out, but if we have not got the records before us we are not going to swear to it; so, as to that, we acknowledge the right to redeem, because of our inability to lay our hands on those papers. That leaves out 190 and 192.

The Vice-Chancellor: Will you state to me, Mr. Engelke, what block that is?

30 Mr. Engelke: Lots 190 and 192 Williams avenue are known as Lots 37 and 38 in Block of ElMora Manor property of Elizabeth Heights Realty Co.

Mr. Wagner: I think that is correct; that is out.

The Vice-Chancellor: That is to be considered out?

Mr. Wagner: Yes, sir.

40 The Vice-Chancellor: In other words, you concede their right to that property?

*Discussion.*

Mr. Wagner: If they pay us what is due to us, we will surrender as to that. With regard to all of the Pennington street lots, we say that we are not the proper parties at this time; that before this suit was started we assigned the certificate which is the subject-matter of the controversy to this Mrs. Tove; that that assignment is on record; that it was his duty, if Mr. Engelke wished to bring in the parties, to search the properties and see who had the interest in them. We had the right to assign it. 10

The Vice-Chancellor: Well, you disown an interest in that property, and therefore you are not concerned with it?

Mr. Wagner: We are not concerned with the determination of that—merely pointing out to your Honor that Mrs. Tove, if it is the desire to cut out that interest, should have been made a party. 20

The Vice-Chancellor: I will take notice of that.

Mr. Wagner: Which leaves three other properties, and in those three instances, we took our certificates, with a notice to the owner, with an affidavit of service, and of an affidavit of non-redemption; and in all of those instances we filed the deeds, and we have them here; and I consider that the controversy is narrowed down to whether or not, in those instances, we properly cut them out. 30

The Vice-Chancellor: All right; will you state what properties those are?

Mr. Wagner: Yes; the West Grand street lot, 900 and 902, and—

The Vice-Chancellor: Are those street or lot numbers you are giving? 40

*Discussion.*

Mr. Wagner: This is 900 and 902 West Grant street.

The Vice-Chancellor: Street numbers, or lot numbers?

10 Mr. Wagner: My recollection is that it is Lot No. 1 of Block No. 4 on the Holbrook Map—is that correct, Mr. Engelke?

Mr. Engelke: No—Map of Bellevue.

Mr. Wagner: Well, we call it the “Holbrook Map” and that is in one case, your Honor—the case of *Shearer v. Schaffer*. And then we have, in the other case of *Elizabeth Heights Realty Co. v. Schaffer*, three different lots, each of two numbers; one of them is 181, 183 Williams avenue; one of them is 203, 205 Williams avenue; 20 one of them is 217 and 219 Williams avenue.

The Vice-Chancellor: Those are all Elizabeth Heights?

Mr. Wagner: Yes, sir.

Mr. Engelke: Do you want the lot numbers?

The Vice-Chancellor: Yes.

Mr. Engelke: They are known as, first group, 23 and 24; second group, 34 and 35; third group, 41 and 42, in Block 2, Map of Elmora Manor property, at Elizabeth Heights. 30

Mr. Wagner: Now, that is the issue, your Honor—did we cut them out, or did we not?

Mr. Engelke: I would prefer to try these two cases together, for this reason: Your Honor has heard enough—

The Vice-Chancellor: I cannot make counsel try them together.

Mr. Engelke: But I want to ask Mr. Wagner to re-consider that. We have under subpoena 40 the Register of Union County and the papers

*William J. Shearer, Jr., for complainant, direct.*

relating to both cases; we have under subpoena the City Comptroller and Treasurer, with the books that relate to both cases; and I think it will be a matter of great convenience to these people as well as to the Court and counsel to try the two cases together, because the facts relating to each are the same.

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The Vice-Chancellor: That is up to counsel.

Mr. Wagner: I would like very much to do it, and if it were an accommodation to the Court I would gladly do it—

The Vice-Chancellor: No, it is no accommodation to me; I do not care how long you take.

Mr. Wagner: I think it is not an accommodation to the Court; I think it will add to the burden of the Court if we do that.

Mr. Engelke: I cannot see it. Are we going to get Mr. Shearer and have him repeat the same story again, and then have Mr. Bauer produce his certificate and then come back and testify again?

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The Vice-Chancellor: Well, counsel thinks they had better be tried separately, and I concede his right to it, so you had better take up first the case of *Shearer v. Schaffer*.

Mr. Engelke: All right.

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The Vice-Chancellor: Proceed.

WILLIAM J. SHEARER, JR., sworn.

*Direct examination* by Mr. Engelke.

Q Mr. Shearer, where do you live? A 1100 Anna street, Elizabeth.

Q And you are the complainant? A I am.

Q Do you know Mr. Schaffer? A I do.

40

*William J. Shearer, Jr., for complainant, direct.*

Q Is he the defendant in this suit? A He is.

Q And are you the owner of Lots 1, 4 and 27 in Block 4 on the Map of Bellevue?

Mr. Wagner: I object to the question.

10 The Vice-Chancellor: I will sustain the objection, because that is the very question I have to determine.

Mr. Engelke: I offer in evidence Deed, Elizabeth Heights Realty Company to William J. Shearer, Jr., dated April 2, 1917, and recorded in Book 707 of Deeds for Union County, on pages 500, etc.

The Vice-Chancellor: State on the record what property that deed relates to.

20 Mr. Engelke: Conveying from the Elizabeth Heights Realty Company to William J. Shearer, Jr., Lot 1 in Block 6; Lot 32 in Block 3, and Lots 1, 2 and 4 in Block 4, on the Map of Bellevue Property in the City of Elizabeth, belonging to Isaac Holbrook.

The Vice-Chancellor: Show that to counsel first.

30 (The paper was thereupon handed to Mr. Wagner for his inspection.)

Mr. Wagner: No objection.

(The paper is admitted and marked Exhibit C. 1.)

Mr. Engelke: Will my statement to your Honor be sufficient, or will I have the witness identify the locations on the map?

The Vice-Chancellor: By street numbers, do you mean?

40 Mr. Engelke: Yes.

*William J. Shearer, Jr., for complainant, direct.*

The Vice-Chancellor: You had better have the witness state it, because the deed don't state it.

Mr. Wagner: Merely for the purpose of the record, your Honor, I would say that Lot 1 in Block 4 of the Bellevue Map is 900 and 902 West Grant street, of which we have already spoken. 10

The Vice-Chancellor: All right; you go ahead with the rest of them, Mr. Engelke, if you can. If counsel have any corrections to make—

Mr. Wagner: The rest of them do not concern this matter.

Mr. Engelke: I beg your pardon, they do.

The Vice-Chancellor: In what respect? 20

Mr. Engelke: Well, we do not concede all that Brother Wagner insists upon; we say there was no notice given us, from the certificates on record, that Mrs. Tove owned this property—that is, as to the other three lots.

The Vice-Chancellor: He disowns interest in them.

Mr. Engelke: We say he has interest in them. 30

The Vice-Chancellor: You have a right to offer evidence as to that, because I have to decide what interest Mrs. Tove had. It cannot hurt you, Mr. Wagner. State on the record what you wish, Mr. Engelke, as to those lots.

Mr. Engelke: Lot 4 in Block 4 is known as 905 and 907 Pennington street; and Lot 27 in Block 4 is known as No. 901-903 Pen- 40

*William J. Shearer, Jr., for complainant, direct.*

nington street; and Lot 32 in Block 3 is known as 861 and 863 Pennington street.

The Vice-Chancellor: Are those the properties that it is said that this woman Tove had some interest in?

10 Mr. Engelke: Yes. I think your Honor should see the maps.

The Vice-Chancellor: I think all I would be concerned with is numerals, rather than maps; I do not want to be confused too much.

Mr. Wagner: If there is any discrepancy between the lot and block numbers, your Honor will give us an opportunity to show it?

20 The Vice-Chancellor: I will, because I am seeking the truth in the matter; if you find any mistake in the testimony or the records, I will give you an opportunity to straighten it out.

Q Mr. Shearer, after you acquired this property, did you learn that they had been sold for taxes—any or all of those lots? A I did.

Q When did you learn that? A In October of 1919.

30 Q And after you learned about it, what did you do? A Why, within the next two weeks I made repeated calls at the office of Mr. Schaffer in Broad street in an effort to locate him.

Q Broad street in what city? A In Elizabeth.

Q Did you see Mr. Schaffer on any of those visits? A In the second week I succeeded in catching him, yes, at his office.

40 Q And did you have a conversation with him? A I had.

*William J. Shearer, Jr., for complainant, direct.*

Q What did you say to him, and what did he say to you? A I said, "Are you Mr. Schaffer?" and he said, "Yes." I said, "I am Shearer; I have come to redeem the lots on which Charlie Bauer served me the other evening." He immediately became excited, and said that I had no more interest in the property, that I had lost all interest, and the only question at this time was the amount of money I would accept to give him a quit-claim deed to save him for expenses. I said I could not understand that, as the notice I had gotten, I think, included a sixty-day statement; and he said, "Well, that is all there is to it"; he says, "Now, there is the situation—it is a case that you, having lost your property, it is only a matter now of what you will take from me to give me a quit-claim deed; and that is all there is to it; and there is not anything else I can say in the matter." 10 20

Q Was there anything else said by him or you on that occasion? A Well, of course, he got quite excited when he started in conversing, and he then said, "Well, that is all there is to it; there is nothing more to it; if it doesn't suit you, get out."

Q Did you get out? A I did.

Q Did you make any subsequent efforts, personally or through counsel, to redeem the property that has been mentioned from Mr. Schaffer? 30

A I did.

Q Tell us what you did do?

The Vice-Chancellor: Well, personally, or through counsel?

A Well, I was through myself, and I took it up with my father, who said that he would— 40

*William J. Shearer, Jr., for complainant, direct.*

Mr. Wagner: I object.

The Vice-Chancellor: You cannot tell us what he said.

Q Do you know what he did? A I know that he tried to see Mr. Schaffer—

10

*By the Vice-Chancellor.*

Q How do you know that? He told you that, didn't he? A Yes.

Mr. Wagner: Objected to.

The Vice-Chancellor: You cannot tell that; I will strike that out. Let the father tell his own story.

20

Mr. Wagner: He is dead, your Honor.

The Vice-Chancellor: Well, even at that, I cannot let this witness tell it.

*By Mr. Engelke.*

Q What did your father do—don't you know what your father did?

The Vice-Chancellor: This witness cannot state conclusions, or hearsay.

30

Mr. Engelke: No question about that.

Q Cannot you tell us what your father did?

Mr. Wagner: Oh, he answered your Honor, and just replied that the only information he had on that subject was what his father told him, and therefore he is precluded.

40

*William J. Shearer, Jr., for complainant, direct.*

*By the Vice-Chancellor.*

Q Is that correct—that the only information you have on that subject is what your father told you? A No, sir.

Q Did you accompany your father at any time when he undertook to do anything in your behalf? A No, sir; I did not; but what I wanted to bring in was the fact that I had letters. 10

The Vice-Chancellor: Well, I have got to pass on questions as they come along; thus far, I will have to sustain the objection.

*By Mr. Engelke.*

Q Did you do anything with respect to hiring counsel to seek to restore your interests in this property? A I did. 20

Q Tell us what you did in reference to that?

The Vice-Chancellor: How am I concerned in that—did he do anything with counsel—is that what you are asking?

Mr. Engelke: Yes—did he do anything toward employing counsel?

The Vice-Chancellor: Suppose he did—what am I concerned in, excepting that he did employ counsel? 30

Mr. Engelke: All right; we have here the counsel to show that.

The Vice-Chancellor: (To the witness.) Did you employ counsel?

The Witness: Yes.

Q Who was your counsel? A Mr. Henry Wolfskiel was number one. 40

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Q And who was the other? A Mr. Frederick Simon.

Q When did you first confer with Mr. Wolfskiel about it? A In February of 1925.

Q And continued with him until when? A Until, I believe, March, when he said he did not  
10 care for that kind of a case. In March, 1925.

The Vice-Chancellor: I will strike out what he said.

Mr. Engelke: May I not, your Honor, obtain from the witness a statement of what the results were, if I can?

The Vice-Chancellor: You cannot obtain from this witness what counsel said to him; you can get that from counsel himself, if you  
20 want to.

Q Mr. Shearer, what was the result of the employment of Mr. Wolfskiel, as far as covering your interest was concerned? A Nothing.

Q And when did you go to Mr. Simon? A In, I believe, March of 1925.

Q And continued with Mr. Simon until when? A April of nineteen hundred and twenty—I wish to correct that—I think it was April of  
30 1925 I went from Mr. Wolfskiel to Mr. Simon, and Mr. Simon had the matter from April of 1925 until March of 1926.

Q What was the result of Mr. Simon's work in your behalf—did you, or did you not, recover your interest in this property? A I did not.

The Vice-Chancellor: It is quite manifest he did not, because you are here in court today trying to seek it.

*William J. Shearer, Jr., for complainant, direct.*

Mr. Engelke: I am trying to prove what the result was, as far as the attorneys were concerned.

Q And what effort did you subsequently make with reference to recovering your interest in the property that has just been mentioned by me? 10

A Why, I then took it up with Mr. Seligman of Newark, who was in the Comptroller's Department of the City of Newark, and he acquainted himself with the situation; and then—

The Vice-Chancellor: I will have to strike that out, about "having acquainted himself with the situation." How could he know that by stating it in the way he did? I will strike that out, anyhow, because it is clearly a conclusion of his. 20

A (Resuming.) And he secured information from the City of Elizabeth.

The Vice-Chancellor: I will have to strike that out, as a conclusion.

Mr. Engelke: Well, if your Honor please, I can show it.

The Vice-Chancellor: Well, show it. I am going to strike this out, but you must show it in the legal way; he cannot state that the other man did thus and so. Let the other man state it. 30

Q State what you did with Mr. Seligman, if anything? A Mr. Seligman met me at the City Hall in Elizabeth, in the Comptroller's department, and we proceeded to pay all taxes and assessments, and then make a tender for those 40

*William J. Shearer, Jr., for complainant, direct.*

certificates, which, I believe, had been sold to Mr. Schaffer.

Q Now, when was that? A March 20, 1926.

Q Were you present during the visit at the Comptroller's office in Elizabeth during all the time that Mr. Seligman was there? A I was.

10 Q Now, with whom did you speak when you first went in there? A Do you mean in the office?

Q Yes. A The gentleman is in court. I cannot recollect his name.

Q Was it Mr. MacGrath? A The gentleman next to Mr. Seligman, I believe. (The gentleman designated by the witness stated that he was Mr. Lenox.)

20 Q Did you speak to any other people? A Well, there were several other gentlemen in the department who came up, and to whom we just passed a word or two.

30 Q To whom did you speak, or did Mr. Seligman in your presence speak, regarding the redemption of the properties that were held by Mr. Schaffer under tax sale? A Mr. Seligman asked their procedure in Elizabeth on such matters, and there was a discussion there as to what the different cities did; and when we learned what the City of Elizabeth did, why, we conformed to their interpretation.

Mr. Wagner: I object to that.

Q Do not say you "conformed"—tell us what you did.

The Vice-Chancellor: It doesn't mean anything thus far.

40 A They said they didn't make out bills—

*William J. Shearer, Jr., for complainant, direct.*

Mr. Wagner: I object to that.

Q Never mind that; tell us what you did, not what they said; did you do any business; did you come to any conclusion; what did you do?

Mr. Wagner: I object to that. 10

The Vice-Chancellor: I do not think it hurts you; it cannot influence me, anyhow.

A They supplied us with the amounts that were due.

*By the Vice-Chancellor.*

Q When you say "they," do you mean Mr. Lenox? A Mr. Lenox.

20

*By Mr. Engelke.*

Q And when the amounts were arrived at, what did you, or Mr. Seligman, in your presence, do? A I took the amount, and took the item off the sheet, and then, with Mr. Seligman, went to the window to Mr. MacGrath, who is the City Treasurer, and said, "Mr. MacGrath, I am here to make a tender on this property which is in the name of Karl Schaffer, who has the tax liens."

30

Q What did Mr. MacGrath say? A He said, "Mr. Shearer, I am sorry; I would like to take it, but I cannot—"

Mr. Wagner: I object.

The Vice-Chancellor: He has a right to say that, because he has a right to say what the official said in refusing the tender. It is a little different from the ordinary hearsay—in other words, the city official is giv-

40

*William J. Shearer, Jr., for complainant, direct.*

ing some reason, apparently, for refusing to accept the money. I do not know why he refused it; I have got to find out why, because the statute shows the very procedure—that is, a tender of the money to the officials.

10 Mr. Wagner: We are misled, of course; he says, in the bill of complaint, that he had a conversation with the "Collector of Taxes."

The Vice-Chancellor: That may mean the Collector, individually, or any of his deputies.

Mr. Wagner: We have no "Collector," your Honor.

20 The Vice-Chancellor: The testimony, thus far, is that it was the Comptroller; previously he said he was in the Comptroller's office; he now says "the City Treasurer's office."

The Witness: That is right—the City Treasurer, Mr. MacGrath.

Q Now, tell us what he said to you? A He said, "Mr. Shearer, I am very sorry I cannot do this; I would certainly like to." I said, "Well, do you refuse, then?" and he said, "Yes."

Q Did he say why he refused? A He said—well, the matter had been discussed—

Q Never mind, tell us just exactly what the Treasurer said to you? A He said, "I cannot do it."

Q Did he say why he could not do it? A He did not have any bill.

Q Was that the only reason he said he could not do it? A Because he said he could not do

*William J. Shearer, Jr., for complainant, direct.*

it; he said he could not do it; that is all that I remember.

Q Was Mr. Schaffer there at that time? A No, sir.

Q Was Mr. Schaffer's name mentioned by anyone at that time? A I believe I mentioned it. 10

Q To whom? A To Mr. MacGrath.

Q What did you say? A I said, "I want to pay the tax sales that were bought by Mr. Karl Schaffer on this property."

*By the Vice-Chancellor.*

Q Which property—when you say "this property" that don't mean anything to me. A On 900 and 902 West Grand street, together with the property in ElMora Manor. 20

*By Mr. Engelke.*

Q Did you, or did you not, in that conversation, mention the property? A Oh, yes, I mentioned the exact lot numbers, and about the lots in ElMora, exactly, as well as the West Grand street, as "900 and 902 West Grand,"

Q Well, was there any other on the map of Bellevue, you spoke of? A Yes, there was 861 to 907 on Pennington street—that included 901 and 903. 30

Q In other words, all the property that you owned on the Map of Bellevue, so designated on this deed—was that not mentioned?

Mr. Wagner: I object.

The Vice-Chancellor: I will sustain the objection; it is very leading, and you are stating the fact, instead of the witness. 40

*William J. Shearer, Jr., for complainant, direct.*

Q Can you enumerate the lot numbers that you suggested to Mr. MacGrath that you were ready to redeem? A I can.

Q Mention those you mentioned to him at that time. A 861 to 907 Pennington street, and 900 to 902 West Grand street.

10 Q You are positive about that? A Yes.

The Vice-Chancellor: Is that all?

Mr. Engelke: No; that is all that he owns; but here is the Elizabeth Heights property, at the same time.

The Vice-Chancellor: He is asked to state what he said; then you asked him about the particular property.

20 Mr. Engelke: There is where the difficulty comes in; the rest would be immaterial to this case.

Q Did you make a tender for any other lot?  
A Yes—

Mr. Wagner: I object.

30 The Vice-Chancellor: He has a right to tell all the talk he had with the official there as to the redemption of that property at that time; now, it cannot hurt you if he is going to mention the other property.

Mr. Engelke: Now I am at sea, because I purposely did not ask the question in relation to the other property when he had the first and second talk with Mr. Schaffer at his office.

The Vice-Chancellor: All right, then, we will eliminate the Elizabeth Heights property—that conversation; we will eliminate that; it is out now, for the time being. After

*William J. Shearer, Jr., for complainant, direct.*

you had spoke to Mr. MacGrath, or, rather, before you spoke to Mr. MacGrath, did you have any money with you?

A Yes, sir.

Q What did you do with it? A I had it.

10

The Vice-Chancellor: He wants to know whether you made a tender.

A I did; I took out the money and showed it to Mr. MacGrath, and then I told him that I was there to make a tender for the lots 861 to 907 Pennington street and 900 to 902 West Grand street.

Q And what did he say?

The Vice-Chancellor: Well, that is what he said—what the witness said, wasn't it?

20

Mr. Engelke: No, what did Mr. MacGrath state?

The Vice-Chancellor: He said that before—he said that Mr. MacGrath said he was sorry, he would like to take it, but he could not take it. What more do you want?

Q Now, after this conversation with Mr. MacGrath, what did you and Mr. Seligman, or any other official in that office do, with Mr. Seligman? A Why, Mr. Seligman said, "I am going to see that a notation is made of that tender on the ledgers, on the books."

30

*By the Vice-Chancellor.*

Q You mean he said that to Mr. MacGrath?

A He said that to me.

Mr. Wagner: I object to that.

40

*William J. Shearer, Jr., for complainant, direct.*

The Vice-Chancellor: I will sustain the objection.

*By Mr. Engelke.*

Q Did he say it in the presence of one of the officials? A Yes, he got one of the gentlemen to make that notation, on the ledgers.

Q To whom did he say that? A I believe it was to Mr. Pfirman.

Q What did Mr. Seligman at that time do, or did he go with someone else to do something?

A Mr. Seligman went with the gentleman into the vault where the ledgers are kept.

Q Did you go with him? A No, sir.

The Vice-Chancellor: Is there any dispute about his having made a tender to the officials, or are you informed of it at all?

Mr. Wagner: I don't know the first thing about it, your Honor; it is all news to us.

Q Did you, at any time, up to the filing of the bill in this cause, obtain a redemption, either from Mr. Schaffer, or from the Collector, or Comptroller, or Treasurer's office of the City of Elizabeth, of the premises you have a number of times mentioned? A No.

*By the Vice-Chancellor.*

Q When was it you said you went to the Treasurer's office? A 3/20/26—March 20, 1926.

Q I know the bill of complaint does say that you went to the Collector of Taxes—you still say it was the City Treasurer you went to? A The City Comptroller's office.

Q First you went to the Comptroller's office, and from the Comptroller's office you went to the City Treasurer? A That is right.

*William J. Shearer, Jr., for complainant, cross.*

The Vice-Chancellor: Counsel says there is no City Comptroller in Elizabeth.

Mr. Wagner: There is a Comptroller.

The Vice-Chancellor: I mean a city Tax Collector.

Mr. Wagner: No, sir; there is not. 10

*Cross examination by Mr. Wagner.*

Q Did the Elizabeth Heights Realty Company have its charter at the time it made this deed?

Mr. Engelke: I object to that.

The Vice-Chancellor: You say we should not inquire into this Elizabeth Heights case.

Mr. Wagner: The Elizabeth Heights Realty Company made the deed to him, your Honor. 20

The Vice-Chancellor: I know, but if you ask him that question it is calling for a conclusion from him. If they have a charter there is a better way of proving it. He may have thought they had a charter. Many lawyers file certificates for corporations and go no further—I mean they do not organize the corporation, and until it is organized it don't amount to much, does it? 30

Mr. Wagner? No.

Q Were you a member of this Elizabeth Heights Realty Company, Mr. Shearer?

Mr. Engelke: I object.

The Vice-Chancellor: I will sustain the objection. 40

*William J. Shearer, Jr., for complainant, cross.*

10 Mr. Wagner: If your Honor please, I would like to state at the outset that I think you will agree with me that the issue is very narrowly confined now as to whether Mr. Shearer is telling the truth in the matter of his allegation of an offer to redeem, or whether he is not.

The Vice-Chancellor: But that question you are asking does not in anywise help me in that aspect.

Mr. Wagner: And I would like to show the relations of the man with this company, and the relations of him and his father.

20 The Vice-Chancellor: The only relationship I am trying at the present time is the relation between Mr. Shearer and Mr. Schaffer.

Mr. Wagner: I know it is not pertinent to the issues directly involved, but it is pertinent to the question of whether this man is telling the truth, or not.

The Vice-Chancellor: Well, if it is not pertinent to the issues involved, it is an immaterial matter, is it not—it is a collateral matter that I have no right to listen to.

30 Mr. Wagner: I agree with your Honor that no matter how much fraud we can show (presuming that we can show it)—no matter how much lack of consideration and devious turnings there were in efforts to escape from the Sheriff, etc.—

The Vice-Chancellor: Why do you say that—why do you put that on the record?

40 Mr. Wagner: Well, I ought to grant that it has no influence in this case, but if we were permitted to show it, we could show a dozen efforts of that kind.

*William J. Shearer, Jr., for complainant, cross.*

The Vice-Chancellor: Well, it does not influence me a bit; and I do not know why you do that unless you do it to influence me; it cannot influence me, Mr. Wagner; when you say that you are trying to indicate that perhaps something was done wrong.

Mr. Wagner: With perfect justification, your Honor, because this man comes before you and says—"I made an offer to Mr. Schaffer to redeem"—we deny that absolutely; we say this man was not telling the truth; and we want to show by his dealings, his father's dealing and his attorney's dealings, that he is not the type of man that will tell the truth. 10

The Vice-Chancellor: You are not going to show it by the question you just asked. 20

Mr. Wagner: Well, if your Honor thinks I cannot test his veracity, I will abandon it.

The Vice-Chancellor: I only pass upon questions as they are put, and I overrule that question.

Mr. Wagner: Your Honor holds that I can show all this in—

The Vice-Chancellor: I am not holding anything; I am passing upon the question as you put it; thus far, I do not think it is at all material. 30

Q Did you pay any consideration for this deed?

Mr. Engelke: I object.

The Vice-Chancellor: I sustain the objection.

Q Are you a *bona fide* purchaser of the premises that are indicated in this deed? 40

*William J. Shearer, Jr., for complainant, cross.*

Mr. Engelke: I object.

10 The Vice-Chancellor: I will sustain the objection; but I want to caution counsel that an objection made without ground stated amounts to nothing in law; I am just cautioning you now, so that you had better state the grounds of your objections. I am sustaining this objection.

Q Were you the Secretary of this company at the same time that the deed was made by the company to you, and did you sign the deed, as Secretary, to yourself?

20 Mr. Engelke: I object to the question, on the ground that it calls for evidence from this witness for which there is better evidence than this witness can give, and the witness is incompetent to testify to it.

30 The Vice-Chancellor: I will sustain the objection; also on the ground that it is immaterial. I do not care how the deed was made; you cannot attack the *bona fides* of this deed, in my humble opinion; so I am going to rule against you; I am going to regard it, for all purposes, that, by virtue of that deed, these parties are the owners of that property; now, the issue between you is whether you cut out that interest.

Mr. Wagner: I desire to point out to your Honor, at this time, that, in the bill of complaint, in one of the paragraphs of the bill, the complainant alleges that we did not record our certificate as a mortgage—

40 The Vice-Chancellor: Yes—it says “until 1925”; it says that you did not record your certificate until 1925, as I remember it; it

*William J. Shearer, Jr., for complainant, cross.*

is paragraph 4—that, on April 14, 1925, you recorded it in the Register's Office; that is what it says.

Mr. Wagner: As a deed.

The Vice-Chancellor: It does not say it was "as a deed," but it says that it was recorded in the record of deeds, so I presume that is what it means. 10

Q What is your occupation? A I am with the National City Bank of New York.

*By the Vice-Chancellor.*

Q That does not tell us what your occupation is? A I am the outside representative of the National City Bank of New York. 20

*By Mr. Wagner.*

Q What do you mean by an "outside representative"? A I am what they term a "credit representative" for the City Bank.

Q You are an investigator for them? A Yes.

Q To ascertain the standing of people that solicit credit from the bank? A For miscellaneous purposes—to check up and determine the standing of concerns, as well as individuals. 30

Q What is your age? A I am thirty-five.

Q The William J. Shearer who is mentioned as the President of the Elizabeth Heights Realty Corporation, grantor of this deed, was your father, was he not?

Mr. Engelke: I object to that.

The Vice-Chancellor: That cannot hurt you; I will admit it.

A He was. 40

*William J. Shearer, Jr., for complainant, cross.*

Q Were you in any way identified with this corporation that made a deed to you?

Mr. Engelke: I object to that question.

The Vice-Chancellor: I will permit the question; I do not see what harm it will have.

10

A I was.

Q In what way were you identified? A Secretary and Treasurer.

Q Are you the William J. Shearer whose name is indicated here as Secretary, on this deed—the deed being to yourself as an individual? A I am.

Q How much stock did you hold in this company?

20

Mr. Engelke: I object.

The Vice-Chancellor: I will sustain the objection.

Q Who was present at the time that you called at Mr. Schaffer's office in October of 1919?

A At the time I met him, you refer to, Mr. Wagner?

Q You stated that you called at his office in October, 1919?

30

The Vice-Chancellor: He said he called several times, but he saw him once.

A On numerous occasions, and the stenographer was there on a number of occasions; I don't know whether she happened to be there at the time I was able to catch him, or not.

Q I am referring to the time that you had the conversation with him? A I really could not say as to that.

40

*William J. Shearer, Jr., for complainant, cross.*

Q You don't know whether anyone else was present, or not? A I am quite sure that there was nobody present; my idea of the matter is that it was during rather the noon-hour, and there was nobody in the office except Mr. Schaffer.

Q Do you recall what day it was? A No, 10  
I do not know; I think it was the latter part of the week, between Wednesday and Saturday.

Q Do you recall what part of the month it was? A Well, I was served, I believe, on the 19th, and it was the latter part of October.

Q You were served on the 19th of when? A I believe it was the 19th of October, 1919.

Q Why is that date clear in your mind? A Simply from association with the case—that is, I could not pick it out, unless my memory had been refreshed. 20

Q But there was something which associated the service of this notice upon you with October 19th, and for that reason you remember that you were served on October 19th? A Yes, through that association.

Q Now, what was it that associated your mind with the date October 19th? A Why—

Mr. Engelke: In the first place, what year was it? 30

The Vice-Chancellor: Well, you may object, if you want to, Mr. Engelke, but do not interrupt.

Q (Last question repeated.) A Only from the re-association of the matter, of the case, that I had, and the contact with it in the past year.

Q Well, you know that it was not October 1st—you are certain of that? A I am not sure it was not. 40

*William J. Shearer, Jr., for complainant, cross.*

Q You know that it was not October 31st?

Mr. Engelke: I object to that question, because he is not asked to state the year.

The Vice-Chancellor: He said "1919." We are all directing our attention now to 1919. The witness said so, there is no mistake about that. (To the witness.) The year is 1919 you are talking about?

The Witness: 1919 is correct; I am sure of the year and the month of October.

Q Now, you have been saying that there was something which occurred which made you remember that it was October 19th—now, what was it that occurred that made you remember it was October 19th?

The Vice-Chancellor: I don't know that he said that. My recollection is that it was because of matters associated with this affair, that his attention was called to it. He used the word "associated."

Q Now, what was there in the association—what peculiar feature was there—so that, after eight years you can recall the exact day when you were served?

The Vice-Chancellor: He does not pretend to recall the exact day.

Mr. Wagner: He says "October 19th."

The Vice-Chancellor: No, he says, "I believe it was October 19th."

Q It might have been some other day, Mr. Shearer? A That is right; I could not swear.

*William J. Shearer, Jr., for complainant, cross.*

Q If the papers indicate that it was October 15th, you would be more inclined to believe it was that day? A Not from recollection; simply I would believe that the figures were correct; I only could roughly approximate it.

Q How soon after you were served by Mr. Bauer did you go to see Mr. Schaffer? A The following day. 10

Q The very next day? A Right.

Q I call your attention to your testimony on the direct case, that you went to see Mr. Schaffer about two weeks after you got the notice? A I only succeeded in finding him then.

Q Is that statement correct?

The Vice-Chancellor: I do not think you are stating the testimony fairly, Mr. Wagner; he said he went there numerous times, but finally was able to find him about two weeks afterward; that is my recollection. 20

Mr. Wagner: Then I will take that, your Honor.

Q How much money did you have with you when you went to see Mr. Schaffer on the day that you offered to redeem from him, or that you say you offered to redeem? A Fifty dollars. 30

Q And did you specify any particular amount that you were willing to pay him? A No, sir; there wasn't a chance to do that.

Q Did you take out any of the money and offer it to him? A I had it all out in my hand.

Q Why didn't you mention that on your direct examination, when you were asked to tell all that occurred? A I don't know that—I don't know why I failed to mention that; it is a 40

*William J. Shearer, Jr., for complainant, cross.*

case of where I simply recollected on second thought.

Q And you came to redeem all the property then, didn't you? A That is right.

Q You had been served with relation to all of the properties? A No, sir.

10

The Vice-Chancellor: (To Mr. Wagner.) When you say "all the properties" you are speaking of the properties in controversy?

Mr. Wagner: Also the Elizabeth Heights property.

The Vice-Chancellor: We are not trying that case.

20

Mr. Wagner: I know we are not trying it, but I want to bring out the fact that fifty dollars was not at all commensurable to the—

30

The Vice-Chancellor: (Interrupting.) As I understand it, you confined Mr. Engelke to the trial of the Shearer-Schaffer case, so that when you ask him as to his going there to see Mr. Schaffer I am taking it for granted that he went there at that time to see him in connection with the Shearer-Schaffer matter, not the Elizabeth Heights matter.

Q What did you want to redeem at that time, Mr. Shearer?

Mr. Engelke: I object to that question. I think he ought to be permitted to testify to what transpired there, and that is all it alludes to.

40

A I wanted to redeem the lot on which I had been served at that particular time.

*William J. Shearer, Jr., for complainant, cross.*

Q Which lot? A 900 and 902 West Grant street.

Q And that is the only lot that you had in mind? A I brought in the other element because Mr. Bauer had mentioned other lots, but had not left the papers for those. There was only one paper left, and that applied to 900 to 902 West Grant street. 10

Q Did you offer to redeem anything else? A There was not any chance for a discussion, at all; Mr. Schaffer became excited, and he did the talking after my opening remarks; and it was simply a case of where I was dismissed, and I turned around and left the office.

Q Did you know how much was due? A I did not.

Q Therefore, you did not know just exactly what to tender? A Except that I knew that the taxes were small, they were only four or five dollars, and I knew that the amount that I had in hand would certainly cover it. 20

Q Well, did you know the amount that was due? A I did not.

Q Did you make any effort, aside from inquiry of Mr. Schaffer, to ascertain the exact amount that was due?

Mr. Engelke: I object, because it is immaterial whether he did or did not. He went to the holder of the property and asked him for it. 30

The Vice-Chancellor: Well, is there any dispute that fifty dollars would cover all the money that would have been due on these Grant street lots?

Mr. Wagner: There is a very wide dispute as to whether fifty dollars would cover the entire matter. 40

*William J. Shearer, Jr., for complainant, cross.*

The Vice-Chancellor: But he says his offer covered the Grant street property, and that he did not get a chance to discuss the others with Mr. Schaffer.

Mr. Wagner: Well, we are prepared to deny that, absolutely.

10

The Vice-Chancellor: Well, it seems to me it is time to do that when you get into that controversy; if fifty dollars was ample to cover the Grant street lots, why lose time on that?

Q You knew, then, that Mr. Schaffer refused to let you redeem, and you knew then that any effort that you made toward getting those lots for yourself would be very bitterly opposed by Schaffer, did you not? A I did not.

20

Q You did not know that? A I did not.

Q Did you give the information to counsel on which the bill of complaint in this cause was founded? A I did.

30

Q Did you give him the information which led to a declaration in Paragraph 5 that at the time you called upon Schaffer Mr. Schaffer became so infuriated, and that you were so intimidated, that you had to withdraw from his presence in order to avoid a physical encounter with him? A I did.

Q You were very roughly received, weren't you? A I certainly was.

Q Didn't you know that any effort or desire on your part to redeem from Mr. Schaffer would be very sternly and strongly refused? A I never thought of it.

40

Q I mean, from the time that you had that interview with Schaffer? A I did not; I consulted different people, and some people said—

*William J. Shearer, Jr., for complainant, cross.*

Q (Interrupting.) But you said, on your direct examination, that, after that interview, you were through? A I was through, personally.

Q And that you, yourself, never went near Schaffer again? A I never tried it again.

Q Now, when you said you were "through," that was a conclusion on your part that any effort on your part would be useless? A Only so far as my individual self was concerned; I would not confront the man, where such an experience as that was given. 10

Q And, therefore, knowing that you, yourself, could do nothing, you determined to employ counsel—that is correct? A That is right.

Q And you knew, in October of 1919, that you could do nothing yourself with Mr. Schaffer—that is correct, is it not? A That is right. 20

Q And decided to employ counsel? A Not immediately.

Q You knew that you, yourself, could not do anything with Schaffer? A I knew, personally, I would not confront the man again.

Q And you were desirous of getting the property? A Right.

Q And the very next thing that you did, however, was not until February of 1925—almost five and a half years later—when you went to see your counsel, Mr. Wolfskiel? A That is not really the full facts. 30

Q That is what you stated on direct examination? A Except this—that my father endeavored, for months and months, to do the same as I did.

Q I am asking you if you saw any other lawyer beside Mr. Wolfskiel? A I did not.

Q And I ask you if you saw any other lawyer between October of 1919 and February of 1925?

A That is correct. 40

*William J. Shearer, Jr., for complainant, cross.*

The Vice-Chancellor: What is "correct?"  
He asks you if you saw any other lawyer?

The Witness: I did not see any other lawyer.

Q Did you ever have any information concerning this tax sale, except from the service of the notice by Mr. Bauer upon you? A That was the only notice.

Q You never knew otherwise? A That is right.

Q You received your deed in 1917, did you not? A Right.

Q And service was made upon you in October of 1919? A I believe it was.

Q About two years later? A That is right.

Q Why did you give information to counsel, when Paragraph 5 of the complaint was framed that "complainant learned, after receipt of his deed as aforesaid, that Karl Schaffer claimed to have some rights in the premises"? A I do not understand the question.

Q You say, in response to both direct and cross questionings, that you got the first notice of the sale after Bauer called upon you? A At that time, yes.

Q And you were, at that time, the owner of the property, and had received your deed about two years before? A Right.

Q In your bill of complaint you say you learned that Schaffer had an interest in it after you received your deed—why do those two statements conflict?

Mr. Engelke: I object.

The Vice-Chancellor: I do not know what the pertinence of it is; if there is any real

*William J. Shearer, Jr., for complainant, cross.*

pertinency in the question, I will permit it; but did you read the case of *Riehl v. Riehl*, which came out this last week, which indicates clearly that statements in bills of complaint are generally statements of counsel and not of the client, and, inasmuch as the complaint is not sworn to, the client is not chargeable with notice of it? I only say that because, unless you have some good reason in repeating that question and insisting upon an answer to it, I think we are losing a lot of time; because there may be things stated in your answer that you might not want to be bound by, if they are wrong. I do not think it can do any particular hurt to Mr. Engelke; if there is any variance between the matter contained in Paragraph 5 of the complaint and that which the witness has testified to, it cannot hurt the other side.

Mr. Engelke: The bill of complaint says (Paragraph 5), "that when the complainant learned, after the receipt of his deed aforesaid—

The Vice-Chancellor: That was in 1917.

Mr. Engelke: Yes, but he learned of it *afterwards*; 1919 is *afterwards*, is it not? So I do not see the point of it.

The Vice-Chancellor: I don't know; I don't know what the pertinency of it is. Counsel may think it is pertinent, and if he really thinks so I am not going to shut it out; but I only state in passing, that, of course, within the purview of the law, as I understand it to be (and it is fortified very strongly by the Chancellor's deliverance a few days ago) that it is plainly to be seen that clients ought not to be chargeable with

*William J. Shearer, Jr., for complainant, cross.*

all the knowledge contained in the bill, unless it is sworn to.

10 Mr. Wagner: Except that he says that it was based on information that he gave; and if there is a discrepancy I want to give him a chance to correct it. I do not think it matters very much, anyway, your Honor; I will pass that.

Q Mr. Shearer, when you appeared in the City Hall on March 20, 1926, that was the first time that you ever made any effort to pay what you thought was due upon this property, at the City Hall—is not that correct? A At the City Hall proper, yes.

20 Q Between October of 1919 and March 20 of 1926, six and a half years, you never made any effort to go to the City Hall and pay what was due and make an attempt to redeem, did you? A Not outside of seeing Mr. Schaffer.

Q And, in the meantime, you had had the advice of two lawyers? A In the meantime—no, sir.

Q Well, didn't you engage Mr. Wolfskiel in 1925? A That is true, I did.

30 Q Didn't you have Mr. Simon as your attorney directly afterwards? A That is right.

Q And had you consulted with any other lawyers? A I cannot say that I did, no; I asked several real estate people on the matter, but not a lawyer.

40 Q Between the time when you, or the company, permitted this property to be sold for non-payment of taxes, and then, finally, in March of 1926, when you say you went to the City Hall to make the effort to redeem, there was a very considerable appreciation in the value of the property, wasn't there?

*William J. Shearer, Jr., for complainant, cross.*

The Vice-Chancellor: How is that material?

Mr. Engelke: I object to it.

The Vice-Chancellor: I will sustain the objection.

Q Did you know the amount that was due on the properties that you attempted to redeem, on March 20, 1926? A I did. 10

Q You did know the amount so due? A I did.

Q Tell me how much was due at that time with respect to Mr. Schaffer's certificate covering 900 and 902? A I cannot segregate out the amounts with any totals.

Q Did you know the separate amount that was allocated to that, on March 20, 1926, when you called at the City Hall? A I did at the time, after it had been figured out. 20

Q Who had done the figuring? A The gentleman from the Comptroller's Office.

Q Did you know his name? A I believe it is Mr. Lenox.

Q And after you had been told the exact amount that was due on that, did you make any segregation of the amounts when you talked to the City Treasurer? 30

The Vice-Chancellor: What does that mean? Why should he segregate the amounts on the Grand street property? He was concerned only with that. Now, he was told the amount, and he says he tendered it—now, what should he segregate it from?

Mr. Wagner: As I gather it, your Honor, he made the omnibus statement that, at the time, he desired to redeem this, along with 40

*William J. Shearer, Jr., for complainant, cross.*

various other properties; and he said he had money with him; and that is as far as his direct examination goes.

10 The Vice-Chancellor (To the witness): When you went to see Mr. Lenox, were you trying to redeem a number of properties, or merely the Grandstreet property?

The Witness: The Elizabeth Heights, also.

The Vice-Chancellor: Then I will permit the question.

20 Mr. Engelke: If your Honor allows it, I want to state my objection, and give my reason for it: My objection to the question is that it would make no difference whether he did, or did not; it is immaterial whether he segregated it and tendered it separately for each parcel, or for the whole, because the testimony, thus far, is that the Collector refused to accept anything.

The Vice-Chancellor: Well, I do not think it can hurt you, and it may be offered on the question of the witness' credibility, and perhaps that is what counsel is alluding to. I will permit it.

30 (Question repeated.)

A I did not.

Q You did not? A I did not.

40 Q The separate amount, therefore, that was due as against 900 and 902 West Grandstreet was not the subject of any conversation between you and the City Treasurer at the time you talked to him? A Except as I testified before, it applied to the various lots; I did not take out and specify that "fifty dollars was to apply to this, and so much to the other properties"—no, I did not.

*William J. Shearer, Jr., for complainant, cross.*

*By the Vice-Chancellor.*

Q You told that man you wanted to redeem 900 and 902 West Grand street and 867 to 911 Pennington street? A That is right.

*By Mr. Wagner.*

10

Q And he told you that he could not take redemption, that he was sorry, but he could not do what you wanted him to do—is that correct? A That is correct.

Q And then you went away? A I did.

Q And your statement that you wished to redeem these properties, and his reply that he was sorry he could not do it for you, constituted, in essence, the sum of your conversation, and the sum of what you did, so far as the City Treasurer is concerned? A That is right.

20

Q That is correct, is it? A That is correct.

Q And then you went to another part of the building and had further conversations with other people—you and Mr. Seligman? A That is right.

Q Now, I want to be exactly right on this, so far as the City Treasurer is concerned, where you went to make your tender: The salient part and the sum of your conversation was that you offered to redeem, or told him you desired to redeem 900 and 902 West Grand street and other properties, and he said he was sorry he could not do it, and then you went away? A "Had to refuse."

30

Q There was nothing else said, and nothing else done? A That is right.

Q It was a fact, Mr. Shearer, that you never saw Mr. Schaffer at all on any of these subjects until after you had consulted counsel in 1925, and after these lands began to have some value?

40

*William J. Shearer, Jr., for complainant, cross.*

Mr. Engelke: I object.

The Vice-Chancellor: That is a proper question; he is just trying again to attack his credibility, and directing his attention now as to whether he did not see him again until 1925; and the witness says he saw him in 1919.

10

A I saw him in 1919.

Q Is it not a fact that you directed your counsel's attention to the fact that only recently—that is recently, prior to your conversations with your counsel—you had seen Mr. Schaffer, and that Mr. Schaffer did not want to let you have the property back, stating that he had served you and cut you out, and that you desired counsel to do what he could to have Schaffer change his mind—is not that the fact? A I have never talked with Mr. Schaffer since the time in 1919, until the present date.

20

Q Didn't you tell your counsel that your efforts with Schaffer were confined to conversations almost directly preceding your consultation with this counsel?

Mr. Engelke: I object to the question. How is that material, or even cross examination—what he told me, or other counsel? How can that be material?

30

The Vice-Chancellor (To cross examining counsel): Why do you say it is material? In other words, how can you have him state conversations he had with his counsel? Aren't they privileged?

Mr. Wagner: Even if he desires that they shall not be privileged, your Honor?

The Vice-Chancellor: All right; if he don't claim his privilege, very well, I will

40

*William J. Shearer, Jr., for complainant, cross.*

permit it. I think I will permit it; I think I ought to permit the fullest inquiry; I think I ought to allow the fullest latitude here. (Question allowed.)

A Never.

Q Is it not a fact that your consultations with counsel were directed only to the subject-matter of Pennington street, and did not concern West Grant street, and did not concern the Elizabeth Heights Realty Company? 10

Mr. Engelke: I object to the question now, unless Mr. Wagner specifies which counsel is referred to. There were three counsel in this matter.

Mr. Wagner: I am excluding you, Mr. Engelke; I am referring to Mr. Wolfskiel and Mr. Simon. 20

The Vice-Chancellor: Assuming that that is so, what difference would it make? I think I will permit the question, and put an end to this bickering.

A I cannot explain whether I took it up in its entirety with Mr. Wolfskiel or Mr. Simon; I believe that I did with all of them, as I remember it. 30

Q You say that you took up the subject-matter of all of Schaffer's certificates? A All of Schaffer's certificates as it applied to my property—that is, 900, 902 West Grant and the Pennington Street lots.

*By the Vice-Chancellor.*

Q 861 to 917? A That is right—861—917. 40

*William J. Shearer, Jr., for complainant, cross.*

*By the Vice-Chancellor.*

Q Is it not a fact that your conversations with Schaffer never touched West Grand street, never touched Williams avenue, but was only limited to a discussion of the ~~Washington~~ <sup>Pennington</sup> street lots? A No, sir; absolutely not.

10 Q Is it not a fact that your consultations with counsel, and the subject of your interviews with counsel, did not touch West Grand street, and did not touch the Williams Avenue property, but only concerned Pennington street? A No, sir.

Mr. Wagner: That is all.

Mr. Engelke: I call on Mr. Schaffer to produce a letter dated December 22, 1919, directed to Mr. Morris Steinberg, care of Judge Abe David, Elizabeth, N. J.; have you that letter?

20 Mr. Wagner: We were served with a notice to produce. I don't know, but does your Honor know of any provision of the statute which recognizes the service of notice to produce, in Chancery?

The Vice-Chancellor: Do you think there is any doubt about the right of counsel to serve a notice to produce upon you?

30 Mr. Wagner: Well, I know we have all done it, but I have searched high and low for the statute.

The Vice-Chancellor: Aside from that, if notice was served on you, and you have the letter, and withhold it, it would not make a very good impression on me.

40 Mr. Wagner: I am simply having this in mind—we got a notice from Mr. Engelke, I believe on Monday evening, about five

*William J. Shearer, Jr., for complainant, cross.*

o'clock, asking us to produce this, and asking us to produce other things. I acknowledge service of the letter—I wrote Mr. Engelke that I did not wish to embarrass him, or withhold anything; that we should have had our usual chancery notice to give us opportunity to respond; that I would not let that stand in the way; that I would telephone Mr. Schaffer to get every paper and letter he could get on the subject. 10

The Vice-Chancellor: Did you think you ought to have a form of subpoena duces tecum?

Mr. Wagner: Oh, no; I say, in that time, we did the best we could to get everything, but we cannot locate any such letter.

The Vice-Chancellor: All right; as long as the notice was given, and you cannot locate the letter and produce it, if counsel has secondary evidence he may offer it. 20

Mr. Wagner: Well, if we see the letter, we may recognize it.

Mr. Engelke: Here is a carbon copy (handing Mr. Wagner a paper).

Mr. Wagner: A letter from whom to whom? 30

Mr. Engelke: From Shearer to Mr. Morris Steinberg.

The Vice-Chancellor: Who is "Morris Steinberg"?

Mr. Engelke: Mr. Karl Schaffer.

The Vice-Chancellor: Is he known by both names, do you mean?

Mr. Engelke: (To the defendant.) Is not that your name?

The Defendant: No. 40

*William J. Shearer, Jr., for complainant, re-direct.*

Mr. Engelke: It was your name, wasn't it?

The Vice-Chancellor: Well, if you can prove that it was his name, then I will let you prove it.

10 Mr. Wagner: I understand we were asked for a letter written to Mr. Steinberg, and I think counsel had this in mind—there was a judgment of Steinberg, and we thought that Steinberg had an interest in the property, but we found out it was a different Steinberg entirely, therefore we did not serve this Steinberg.

Mr. Engelke: I am surprised, but I will ask Mr. Shearer some questions.

20 *Re-direct examination by Mr. Engelke.*

Q Mr. Shearer, do you know of a letter written to Mr. Morris Steinberg on December 22, 1919? A I do.

Q Do you know how it came to be written? A Yes, my father wrote it.

Q Do you know who Morris Steinberg is? A I believe it to be—

30 Mr. Wagner: I object to what he believes.  
The Vice-Chancellor: We do not want any guesses at this.

Q Do you know?

The Vice-Chancellor: (To the witness.) You are asked to state facts, and are sworn to state facts.

40 A No, I don't know.

*William J. Shearer, Jr., for complainant, re-direct.*

Q Well, do you know how the letter came to be written to Morris Steinberg?

The Vice-Chancellor: How is that material, if Morris Steinberg and Schaffer are not one and the same person?

Mr. Wagner: Well, I will do this (I want whatever is in the case to come in): If Mr. Shearer says that letter was written with reference to this particular property, and under a misapprehension of names, I would not have any objection to its use. 10

The Vice-Chancellor: You mean, if the letter came to the attention of Mr. Schaffer?

Mr. Wagner: Yes—if that letter came to us, or was intended for us.

Mr. Engelke: Just look at the letter; you will see what it refers to (handing the letter to the Court). 20

The Vice-Chancellor: Did Judge Abe David represent Mr. Schaffer at any time?

Mr. Wagner: Judge David and Mr. Schaffer were close friends.

The Vice-Chancellor: I am asking whether he represented him in law?

Mr. Wagner: They have offices together. 30

The Vice-Chancellor: Did he represent him?

Mr. Wagner: In this particular case?

The Vice-Chancellor: In any case?

Mr. Wagner: In many cases, your Honor.

The Vice-Chancellor: Well, this letter, Mr. Wagner, seems to mention the particular properties that we are making inquiry about. If you can connect it up with Mr. 40

*William J. Shearer, Jr., for complainant, re-direct.*

Schaffer, Mr. Engelke, all right; and if you cannot, I do not think I ought to admit it.

(The letter was then again handed to Mr. Wagner for his inspection.)

10 Mr. Wagner: Well, that appears to concern the property; I have no objection to its use.

The Vice-Chancellor: Well, will you concede that that letter came to the attention of your client? That is the only purpose of the letter, I suppose.

Mr. Wagner: I will concede that it was sent—if Mr. Shearer says it was sent, I will concede that it was sent.

20 The Vice-Chancellor: It may have been sent to a man named Steinberg, and yet never have come to the attention of Mr. Schaffer.

Mr. Engelke: I am perfectly willing to have it come in for that very purpose—only to show that it was sent.

The Vice-Chancellor: Sent to whom?

30 Mr. Engelke: Sent to the address here—if Mr. Wagner will consent to that, I am perfectly willing to do it, because there is a purpose I did not see until this moment, and your Honor will see it later.

The Vice-Chancellor: All right; what is your concession, Mr. Wagner?

Mr. Wagner: If Mr. Shearer has personal knowledge of that being sent, in connection with this property, I have no objection to its going into evidence.

40 The Vice-Chancellor: Well, if it was sent, it seems to be addressed to somebody named "Steinberg"—now, what I am concerned

*William J. Shearer, Jr., for complainant, re-cross.*

about is, do you concede that this letter came to the attention of Mr. Schaffer? If it did not, why should I bother my head about it?

Mr. Wagner: That I don't know.

The Vice-Chancellor: Well, I won't receive it now, because I cannot conceive that it is relevant. The letter seems to refer to this particular property, but it is addressed to somebody named Steinberg 10

Mr. Engelke: It may become relevant later.

The Vice-Chancellor: You can show by Judge David whether or not that letter was brought to the attention of Mr. Schaffer; you may not be able to do it today, but I will give you another opportunity to show it. 20

*By Mr. Wagner.*

Q Mr. Shearer, you say that your father sent the letter? A He sent a number of letters.

Q I show you a letter, with the name "William J. Shearer, Jr.," on it, and ask you if you wrote that letter? A I did.

Q Do you recall when you wrote that letter? A I do. 30

Q What date did you send it on? A In February of 1925.

Mr. Wagner: I ask that this be marked for identification, your Honor.

Mr. Engelke: Let me see it; I might admit it, if it is cogent. (The letter was handed to Mr. Engelke for his inspection.) What is this paper at the bottom, Mr. Wagner? 40

*William J. Shearer, Jr., for complainant, re-cross.*

Mr. Wagner: I will ask him.

Q This was attached to the letter, was it not, Mr. Shearer (referring to a paper attached to the bottom of the letter)? A Yes, sir; that was correct.

10 Q That was pinned onto the letter? A I believe that is correct.

Mr. Engelke: I have no objection to it going into evidence.

The Vice-Chancellor: Well, if it is going into evidence, it is going into evidence in your behalf, in your case.

Mr. Engelke: Well, it can be marked for identification.

20 (The paper was thereupon marked P. A. 1 for identification.)

Mr. Wagner: Will your Honor permit me to ask him any questions about this Steinberg letter?

The Vice-Chancellor: No, it is not in; if you want to manifest your generosity, you can agree to have it go in, and then you can ask as much as you please.

30 Q You know your father's signature? A Right.

Q You do know it? A Yes, sir.

Q And you say that you and your father were associated together in efforts to redeem this property? A Right.

Q Your father exhibited, before his death, as much interest as you in it? A That is right.

40 Q And whatever your father did was done in your behalf, in the effort to redeem? A Right.

*William J. Shearer, Jr., for complainant, re-cross.*

Q I show you a paper which bears the signature "William J. Shearer, 1100 Anna street," and ask you if that is your father's signature?

A Yes.

The Vice-Chancellor: What is the date of that letter?

10

Mr. Wagner: That is dated January 3, 1920.

(The letter was thereupon marked for identification, P. A. 2.)

Mr. Wagner: Now, I ask for a copy of the Steinberg letter; I want to use it on my case.

The Vice-Chancellor: I will let you mark it for identification, if the other side want to give it to you.

20

Mr. Engelke: I have no objection (handing the same to Mr. Wagner.)

Q I show you a carbon copy of what purports to be a letter dated from Elizabeth, N. J., December 22, 1919, addressed to "Mr. Morris Steinberg, care of Judge Abe J. David," and referring, among other things, to Lots 900 and 902 West Grant street, which is the subject of this present controversy, and ask you if you know who wrote the original of that letter? A I do.

30

Q Who was it? A My father.

Q Do you know whether it was written at the time dated? A Well, I only can say that I certainly believe that it was.

Q Did you see it written? A No, sir.

Q But you know it was written by your father? A I believe that it was.

40

*W. J. Shearer, Jr., for complainant, further re-direct.*

Q And that it was signed by him? A I believe that it was.

Q This is a copy that was retained in your files? A I believe it was.

10 Mr. Wagner: I ask that it be marked for identification.

The Vice-Chancellor: (To Mr. Engelke.) I will permit you to offer it in evidence now, as long as he has examined upon it.

Mr. Engelke: I will offer it now.

The Vice-Chancellor: I will admit it in evidence, then.

(The paper was marked Exhibit C. 2.)

*Further re-direct examination by Mr. Engelke.*

20

Q Mr. Shearer, I show you a paper, bearing the letterhead "Karl F. Schaffer, Real Estate, 215 Broad St., Elizabeth, N. J.," and dated January 5, 1920, addressed "William J. Shearer, 1100 Anna St., City," and signed "Karl Schaffer, J."—do you recall receiving that letter? A I recall seeing it.

Q Now, that letter came at, or about, the time it bears date? A Right.

30

Mr. Engelke: I offer that letter (showing the same to Mr. Wagner).

Mr. Wagner: No objection.

(The letter is marked Exhibit C. 3.)

40 Mr. Engelke: I think that is all. Now, if your Honor please, I gave notice to Mr. Wagner of an application to amend the Shearer bill by the addition of a paragraph which is in the Elizabeth Heights papers, and should be in here—paragraph 4a to fol-

*W. J. Shearer, Jr., for complainant, further re-direct.*

low paragraph 4. Paragraph 4 sets out the recording of the certificate of sale, and certain papers annexed thereto, purporting to be notice to redeem and affidavits, etc. Now, the amendment reads as follows: "Paragraph 4a: That said affidavits purported to show that a notice to redeem was served upon the complainant, but this complainant charges the fact to be that said notices were not served or mailed in the manner set forth in said affidavits, or in any other manner, and that service of a notice to redeem upon this complainant was not made in any manner directed by statute; and that the said Karl Schaffer, purchaser of the said tax sale certificates, has not, in any manner directed by statute, cut off the right of this complainant to redeem the hereinbefore described lands and premises." I ask to amend my bill accordingly.

The Vice-Chancellor: Is there any objection? It does not seem to surprise you, does it, because that is really the issue.

Mr. Wagner: I think that is the issue. No objection.

The Vice-Chancellor: I will permit it to be amended. Have you the proposed amendment here?

Mr. Engelke: Yes, sir; I have it. (Producing same and handing it to the Court. Amendment filed.)

*Henry F. Wolfskiel, for complainant, direct.*

HENRY F. WOLFSKIEL, Esq., sworn.

*Direct examination by Mr. Engelke.*

Q Mr. Wolfskiel, are you a member of the Bar of this State? A I am.

10 Q And you have been such for how many years? A Since 1911.

Q And do you know Mr. William J. Shearer? A I do.

Q Do you know Mr. Karl Schaffer? A I do.

Q Your office and practice have been in Elizabeth? A Yes, sir.

Q Were you, at any time, consulted by Mr. Shearer with reference to certain properties in Elizabeth, that had been sold at tax sale to Mr. Schaffer? A I was consulted by Mr. Shearer with reference to properties that Mr. Schaffer had some tax interest in; whether they were sold, or not, that I would not say.

20 Q Did you do anything with reference to seeking or obtaining a redemption for Mr. Shearer from Mr. Schaffer? A I went to see Mr. Schaffer.

Q Did you have any conversation with him?

30 The Vice-Chancellor: Fix the time.

The Witness: It was sometime in the early part of 1925.

Q Did you have any conversation with Mr. Schaffer? A I did.

Q More than one? A Only one, that I remember—only one.

Q You fix the date of that one in the early part of 1925? A In the early part; it was before April.

40

*Henry F. Wolfskiel, for complainant, direct.*

Q What did you say to Mr. Schaffer, and what did he say to you, in reference to this proposition? A Why, I cannot repeat the conversation verbatim; I told Mr. Schaffer that Mr. Shearer had been to see me with reference to these properties, or some properties that Mr. Schaffer had some tax interest in; and Mr. Schaffer told me, at that time, that Mr. Shearer's interest had expired, and that he would not do anything except make a proposition to allow Mr. Shearer something for a quit-claim deed. Now, that is the conversation as I recall it. I went for the purpose of attempting to have Mr. Schaffer fix the amount that he would take, I think; it was a general discussion on this entire situation; but that was the final result of it. 10

Q Mr. Schaffer would not accept any sum you wanted to pay Mr. Schaffer—is that it? A I did not offer Mr. Schaffer anything. 20

*By the Vice-Chancellor.*

Q Did you tell him what your purpose was in coming to him? A It was just to discuss whether or not this could be settled, whether or not he would accept anything from Mr. Shearer. He took the position that Mr. Shearer's interest had expired, that Mr. Schaffer's right had been perfected, or was in such shape that he was in a position to pay a consideration to Mr. Shearer for a deed, a quit-claim deed. 30

*By Mr. Engelke.*

Q Did you so report to Mr. Shearer? A I reported back that way to Mr. Shearer.

Q What did you tell him?

The Vice-Chancellor: He said he reported that back. 40

*Henry F. Wolfskiel, for complainant, cross.*

A I reported that back, and believe I told him I could not handle the matter, practically, in the beginning; I simply handled the matter in that way merely for the purpose of attempting to settle this between him and Mr. Schaffer, if it could be done without suit, but, when it came to  
10 a suit, I could not handle it at that time.

*Cross examination by Mr. Wagner.*

Q Mr. Wolfskiel, do you recall which property was mentioned? A Why, I procured a tax search at that time, just before I went in to see Mr. Schaffer, of the properties that I had in mind, that I spoke to him about. It was a general discussion, Mr. Wagner, on all the properties that he had an interest in.  
20

*By the Vice-Chancellor.*

Q Not all the properties—do you mean all the properties between Shearer and Schaffer, and also this Elizabeth Heights Realty Company and Schaffer; or was it only the Schaffer lots? A It was properties on Pennington street, and in that section of the town, not in the other section. But I think Mr Schaffer and I had a general discussion.  
30

*By Mr. Wagner.*

Q The only properties in which you were interested, Mr. Wolfskiel, were bunched together—on Pennington and West Grand—is not that correct? A Well, I wouldn't say that, Mr. Wagner.

Q Your tax search would disclose just what you were interested in, would it not? A That is true.  
40

*Henry F. Wolfskiel, for complainant, cross.*

Q Have you the tax search? A No, I turned all of them over.

Mr. Engelke: They are right here.

The Witness: We had a general discussion as to all those properties.

Mr. Wagner (to Mr. Engelke): Have you the tax searches mentioned by Mr. Wolfskiel? 10

Mr. Engelke: Yes, I have them.

Mr. Wagner: May I see them?

Mr. Engelke: In just a moment I will give them to you (producing and handing to Mr. Wagner some papers).

Q Now, I asked you before, Mr. Wolfskiel, and you said that your best impression of this transaction is that the tax searches you ordered would indicate the properties you had under discussion—is that right—you said that to me in reply to my question just a moment ago? A Yes; and then, of course, the discussion became general between Mr. Schaffer and myself. 20

Q Well, do you mean general as to properties? A General as to the entire situation.

Q Well, the situation was governed by the properties you were interested in, wasn't it? A No, Mr. Shearer came to me— 30

Q (Interrupting.) Well, just a moment—I show you a requisition for a search, the search itself bearing the name of "H. F. Wolfskiel"—that is your name? A Right.

Q And it is for property 861 and 863 Pennington street? A That is right.

Q Is that correct? A That is right.

Q Now, I show you another search for properties 901-907 Pennington street, bearing your name. A That is right. 40

*Henry F. Wolfskiel, for complainant, cross.*

Mr. Wagner (to Mr. Engelke): Have you any others with Mr. Wolfskiel's name?

Mr. Engelke: No.

Q And this is the property that you had searched for taxes? A No, I made no search—  
10 oh, I had it searched by the City, yes.

Q Will you show me any other tax search that you put in, on any other property for Shearer, or the Elizabeth Heights Realty Company? A Do you want me to show?

Q Yes. A I haven't got any; I don't know that there were any others.

Q These represent the searches you put in, do they? A They represent two of them, if there were any more.

Q Well, you don't know that there were any more? A I don't know that there were any more.  
20

Mr. Wagner: I call upon counsel to produce any others, if there were any others ordered by Mr. Wolfskiel.

Mr. Engelke: There are no others bearing the name of Mr. Wolfskiel in my possession; I don't know that there were any others.  
30

*By the Vice-Chancellor.*

Q You have stated, however, that your discussion with Mr. Schaffer was with respect to the West Grandstreet property? A Why, with reference to the properties that I had the tax searches on, and all of these properties in general. The situation was a general situation. Mr. Shearer came to me and went over the entire matter, and all of his lots. Now, there were  
40

*Henry F. Wolfskiel, for complainant, cross.*

other lots that Shearer owned, or claimed to own, on these different streets, that I did not put in tax searches for. These were the two at that time that—

*By Mr. Wagner.*

Q (Interrupting.) Did you put these searches in at his solicitation? A I think I suggested that before anything was done it would be better to get tax searches from the City and then show exactly what liens there were against the property. 10

Q And you made no effort to put in tax searches against any of the others? A Unless they can be produced. I don't remember them.

Q In fact, your recollection as to that is sandwiched in as part of a busy life? A I suppose that is very correct. 20

Q And many thousands of searches have passed through the mill, in your history, since then? A About five hundred, in the last two years.

Q And you did not want to handle this case at all, did you? A I could not.

Q And, therefore, your knowledge and recollection as to the subject-matter is more likely to be correct as governed by documents? 30

The Vice-Chancellor: Is not that argumentative, now?

Mr. Wagner: May I ask him if he can reply to it?

The Vice-Chancellor: I do not think you can ask him whether that would be more likely to be correct, because that is argumentative, is it not?

Mr. Wagner: I agree with your Honor. 40

*Henry F. Wolfskiel, for complainant, cross.*

Q As matter of fact, your recollection, aside from those matters that are fixed and determined by documents, is hazy, is it not? A A trifle.

Q But as to what is restricted to documents, that you are certain of? A Well, I wouldn't say that, Mr. Wagner.

Q Well, I mean you know, for instance—you having been shown a search you ordered on Pennington street, and a search on another part of Pennington street—you know that that was discussed among you? A Yes.

Q But you did not order a search on West Grant street? A Unless it is introduced.

Q Well, counsel says he has not got it.

20 The Vice-Chancellor: Well, counsel may not have got it, and it may have been ordered.

A I may have ordered one.

Q And you may not have ordered one? A And I may not have ordered one.

Q And your statement is not very conclusive as to proof as to whether you did, or not, is that correct? A If you can produce any other tax search bearing my name, then I ordered it.

30 Q Your only positive testimony is as to those two? A As to those two.

Mr. Wagner: I ask that these be marked for identification.

Mr. Engelke: I am willing to have them go into evidence.

(The two tax searches were thereupon marked respectively Exhibit C. 4 and Exhibit C. 5.)

*Frederick Simon, for complainant, direct.*

*Re-direct examination by Mr. Engelke.*

Q Mr. Wolfskiel, your conversations with Mr. Schaffer were not limited to any particular parcel of land, were they?

Mr. Wagner: Objected to, as leading. 10

The Vice-Chancellor: Well, I think it is improper re-direct, because you might have exhausted your examination in chief, if you wanted to.

Mr. Engelke: I know, but in the cross examination that question was very much dwelt upon.

The Vice-Chancellor: You have gotten from this witness already that he discussed the Grand Street property and the Pennington Street property—that the discussion was in general of all the properties; if there is any misunderstanding about that, I would like to have it corrected. 20

A No, there was a general discussion.

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FREDERICK SIMON, Esq., sworn. 30

*Direct examination by Mr. Engelke.*

Q Mr. Simon, are you a member of the Bar of this State? A I am.

Q And have been such for how long? A Since 1918.

Q And have been practicing in what city? A Elizabeth, N. J.

Q Do you know Mr. Shearer, the complainant? A I do. 40

*Frederick Simon, for complainant, direct.*

Q And also Mr. Schaffer, the defendant? A I do.

Q Do you recall ever being consulted by Mr. Shearer with reference to the redemption of some properties in Elizabeth from tax sales that had been made to Mr. Schaffer? A Yes, I was  
10 consulted by Mr. Shearer about his properties.

Q Do you recall when? A Sometime in the latter part of 1925.

Q And what, if anything, did you do, with reference to seeking a redemption of the properties from Mr. Schaffer? A Mr. Shearer brought me some tax searches which had been made by Mr. Wolfskiel, and I advised Mr. Shearer that I would not handle the legal matter for him, so far as legally redeeming the prop-  
20 erties through Chancery proceedings, but I would take up with Mr. Schaffer the question of adjusting the matter, one way or another—whatever Mr. Shearer wanted me to do. I consulted with Mr. Schaffer—

Q Pardon me—before consulting with Mr. Schaffer did you have any tax searches made? A Not before I consulted with Mr. Schaffer, no; I used the tax searches made by Mr. Wolfskiel.

Q Did you go to see Mr. Schaffer? A I did.

30 Q Do you recall when it was you went to see him? A Not the exact date, excepting it was in 1925, towards the latter part.

Q Can you give us the month? A No, not positively.

Q Well, was it the latter part or early part of 1925? A The latter part—right after summer, I should say.

Q Of 1925? A Yes, sir.

40 Q And do you remember what conversation, if any, you had with him at that time? A I

*Frederick Simon, for complainant, direct.*

asked Mr. Schaffer what about getting this matter straightened out, the tax title question; and Mr. Schaffer told me that he had a good title, so far as he was concerned, and he was not going to treat with Mr. Shearer or me on the question of anything, but that he would pay a nominal sum for a deed from Mr. Shearer.

10

Q What properties were discussed between you and Mr. Schaffer at that time? A I can principally remember the Pennington Street property.

Q Were any others discussed? A Well, I did not specify particularly any property to Mr. Schaffer at the time; I had Mr. Wolfskiel's tax searches, and I talked concerning those.

Q I show you three tax searches relating to property on William avenue, Halstead Road and West Grand street, and ask you whether Halstead Road is not the same as William avenue now? A I don't know.

20

Mr. Wagner: I will admit that Halstead Road and William avenue are equivalent.

Q Do you recall having these searches made?  
A Yes, sir, I do.

30

Mr. Engelke: I would like to offer these, unless you object to them.

Mr. Wagner: I would just like to see them?

Mr. Engelke: Well, you can cross examine upon them, if you want to.

Mr. Wagner: May I see them?

Mr. Engelke: Surely. (The papers were shown to Mr. Wagner.)

40

*Frederick Simon, for complainant, direct.*

Mr. Wagner: No objection to their use.

(The papers were thereupon admitted in evidence and marked, respectively, Exhibit C. 6, Exhibit C. 7 and Exhibit C. 8.)

10 Q Examining these searches, does that refresh your memory any, Mr. Simon, as to whether or not you discussed with Mr. Schaffer the other properties at any subsequent time than the one you have just mentioned?

Mr. Wagner: I think that question leads to a denial of his former statement.

20 The Vice-Chancellor: No; he says "subsequent to the time just stated"—he wants to know if these refresh his recollection as to any conversation between him and Mr. Schaffer at any subsequent time to the time just stated.

Mr. Wagner: Oh, I thought it was an offer to reconstruct or vary from the witness' original statement that he did not order searches until after he had talked with Schaffer.

30 The Vice-Chancellor: Well, I don't know; all I can pass on is this question as it is put, and that is as to whether that refreshes his recollection as to any conversation with Schaffer subsequent to the time he stated.

Mr. Wagner: I withdraw the objection.

A My conversations with Mr. Schaffer all along—

40 The Vice-Chancellor (to the Witness): First of all, you are asked whether this refreshes your recollection as to any conversation?

*Frederick Simon, for complainant, direct.*

A No, it does not refresh my recollection of the matter.

Q Did you have conversations at any time with Mr. Schaffer regarding other property of Mr. Shearer than the Pennington Street property? A Only in a general way; I did not specify particularly any property. 10

*By the Vice-Chancellor.*

Q In what way did you talk with him? A I would say to Mr. Schaffer—"Is there anything we can do about getting this matter straightened out, one way or the other?"

Q What "matter" were you referring to? A The matter of tax certificates, in general.

Q Tax certificates as to what? A As to the Shearer property, nothing else. 20

The Vice-Chancellor: Is there any dispute between counsel that the only tax titles in difference between Shearer and Schaffer were the ones to which these searches relate?

Mr. Engelke: None, as far as I am concerned.

Mr. Wagner: I would be hesitant to make a statement like that, because Mr. Brockhurst has many titles. 30

The Vice-Chancellor: All right; I was just looking to see if we could shorten this situation.

Q And what was the upshot, or what did Mr. Schaffer tell you with reference to arranging a redemption on the part of Mr. Shearer? A Mr. Schaffer insisted that he had a good title, and would not do anything excepting to offer 40

*Frederick Simon, for complainant, cross.*

Mr. Shearer a nominal sum for a deed; that is all I could get out of the entire transaction.

10 Q Did you ask Mr. Schaffer as to the amount that would be necessary for Mr. Shearer to redeem? A I asked Mr. Schaffer "what he would take to settle the matter"—that is the phraseology I recall using—and Mr. Schaffer told me that same thing that I stated before—that he had a good title, but that if Mr. Shearer had any counter-proposition to make, that he would listen to it.

*Cross examination by Mr. Wagner.*

20 Q You did not proceed very much further with it after that, did you, Mr. Simon? A No, sir.

Q See if I am right in this, Mr. Simon—that when the subject was first broached with you, you had before you the searches of Mr. Wolfskiel? A Yes, sir.

Q And, at that time, had ordered no searches of your own? A No, sir.

30 Q And were those searches in your possession, relating to Pennington street—is that correct? A That seems to be in my mind—Pennington street.

Q Relating to Pennington street—you approached Mr. Schaffer and discussed that with him? A Yes, sir.

40 Q Now, do you recall, at that time (and this may throw some light on the reason for making these searches)—do you recall, at that time, that Mr. Schaffer had this yellow slip, and that he said to you, "Besides the Pennington Street properties I have title to a number of other properties, and if you will get me a quit-claim deed for all

*Frederick Simon, for complainant, cross.*

of them, I will pay a sum that we can agree upon"—do you recall that conversation, Mr. Simon? A Yes, Mr. Schaffer said, all along, that he had a good title for all the property, all the Shearer properties.

Q Did he show you such a list? A I do not recall whether he showed me a list, or not; I could not say that. 10

Q But after the conversation with Mr. Schaffer, it was then that the searches on the other properties were ordered? A Yes; Mr. Shearer asked me—

Q (Interrupting.) Is that correct? A That is correct.

Q Now, is it not a fact that the searches on the other properties corresponded to figures, street numbers, that Mr. Schaffer had suggested to you—is not that correct? A I cannot recall the fact that the street numbers were detailed, now. 20

Q (Showing the witness the paper referred to.) I point out to you that the upper part, where the lines are drawn through, seems to be reserved to West Grant street and Pennington street, and then, below that, are items of various properties which these three tax searches that you present are listed for? 30

The Vice-Chancellor: Do you want to know if that refreshes his recollection as to whether or not that yellow sheet was shown him?

Mr. Wagner: Yes, sir.

Q Whether that yellow sheet was shown you, and whether or not these searches were ordered after your conversation with Mr. Schaffer, in 40

*Frederick Simon, for complainant, cross.*

order that you might properly advise Mr. Shearer concerning the sum to be paid for a quit-claim deed? A I do not recall seeing that yellow paper. I do know that Mr. Schaffer told me that he had title to other Shearer properties, and that if he and Mr. Shearer would get  
 10 together on a quit-claim deed, he would pay him a nominal sum. This is not in response to your question, but I can make a statement as to what actually happened—may I?

The Vice-Chancellor: As far as I am concerned, you may.

Mr. Wagner: Go ahead.

A After I had talked to Mr. Schaffer about the  
 20 Pennington Street property Mr. Shearer came into the office, and asked me to get these other searches, and Mr. Shearer then drew some diagrams for me, and I got the searches. That is how the searches happened to be obtained by me.

Q I point out to you, Mr. Simon, that, on this yellow sheet, No. 217 and 219 William street corresponds to your search, does it not? A Yes.

Q And that No. 203 and 205 William street corresponds to your search, does it not? A Yes.

30 Q That the number 183 and 181 William street corresponds to your search, does it not? A Yes, sir.

The Vice-Chancellor: When you say "search," what exhibit is that, so we will have the record straight?

Mr. Wagner: Exhibit C. 7.

Q And I point out to you that the memorandum on this 900 and 902 West Grand street

*Frederick Simon, for complainant, cross.*

corresponds to your search for the same property, shown on Exhibit C. 6? A Yes.

Q Now, Mr. Simon, doesn't that tie that up—aren't those two incidents tied up, in your recollection? A I cannot say positively "yes, sir."

Q I do not want you to say, if you are not certain of it. A I am trying to give you the best of my recollection. 10

Q Mr. Simon, you are quite certain of this—that you went and talked about Pennington street? A That is the principal thing I talked about.

Q And Mr. Schaffer stated to you, "I have a number of titles to Shearer's property"? A That is correct.

Q "I have cut him out"? A That is correct. 20

Q "If you will get me a deed for all the things, I will pay a sum that can be agreed upon"? A That is the substance of the conversation.

Q Is that correct? A Yes, sir.

Q And you reported that to Mr. Shearer, did you? A I did.

Q And then, directly after that, you ordered these tax searches? A I don't know how soon, but sometime after that I ordered those tax searches. 30

Q Did you make any further effort to close with Mr. Schaffer? A I had a series of conversations with him on the same line that I have just stated, and the conclusions were always the same.

Q You could not bring the parties together? A No, I could not get them together.

Q And the next thing you knew, the matter was taken out of your hands? A Well, I told 40

*Frederick Simon, for complainant, cross.*

Mr. Shearer I would not handle the matter any further for him, that that was the best I could do.

Q And the best you could do was to try to get a solitary figure, and you failed in it? A I failed to get them together.

Q Did you ever make any offer to Mr. Schaffer of any sum of money? A No.

Q Did you ever make any offer to the City Treasurer to redeem? A I never did.

Q Mr. Simon, the conversation with Mr. Schaffer occurred in Mr. Schaffer's office, did it not? A Principally in Mr. Schaffer's office.

Q Or Judge David's library? A That is right.

Q And don't you recall that, at that time, he said to you—"Before you can intelligently advise Mr. Shearer as to whether or not what I am offering him for a quit-claim is a fair sum, you will want to have a search of the properties and some knowledge of them," and that he then indicated what properties he meant, on this list—do you recall that? A I do not recall that.

Q But you would not say it was not so? A Oh, no, I do not recall it; I do not recall having that brought to my attention in that way. I do know that Mr. Schaffer said to me that he had title to other Shearer properties.

Q What I mean, Mr. Simon, is that your failure of recollection is not predicated upon a denial of that, but upon an inability to recall just how it was done—is not that so? A I am giving you the best of my recollection.

The Vice-Chancellor: He is not denying it; he says he don't recollect it.

The Witness: No, I just do not recall it. I am giving you the best of my recollection.

*James J. O'Brien, for complainant, direct.*

Q That is only one out of many that you had handled? A Yes.

The Vice-Chancellor: Is there anything with respect to the Elizabeth Heights Realty Company there that he has just testified to?

Mr. Wagner: Mr. Schaffer is willing to consent that the testimony Mr. Wolfskiel and Mr. Simon have given in this case is the same as would be given in that case. 10

The Vice-Chancellor: Is that satisfactory.

Mr. Engelke: I might ask this—that if there should be anything develop I would like an opportunity to recall them.

The Vice-Chancellor: Well, I think, in view of the fact that you are allowing these two counsel to go away, I will afford you an opportunity of recalling them, if you think the record will disclose some omission on your part, because I want to get at the truth of this matter, and you are trying to enable me to get it. 20

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JAMES J. O'BRIEN, sworn.

*Direct examination by Mr. Engelke.* 30

Q Mr. O'Brien, what is your employment at the present time? A In the County Register's Office in Union County.

Q Do you appear in response to a subpoena directed to Edward Bauer, Register of Union County? A I do.

Q You have been subpoenaed to produce the original tax sale proceedings, including the tax 40

*James J. O'Brien, for complainant, direct.*

sale certificate, notice to redeem and affidavit of service, which are recorded in Deed Book 988, page 230—have you it there? A Yes (producing the same).

10 Mr. Engelke: There is this distinction about these papers, your Honor: These papers are not only recorded, but filed; and if it were a paper in the possession of my adversary I could give notice to produce, but the only way we could get these here was by subpoena duces tecum.

The Vice-Chancellor: What does the new statute say?

Mr. Engelke: It says "records," only.

20 The Vice-Chancellor: However, that does not make any difference, as long as the papers are here.

Mr. Engelke: I have certified copies of them right here, but I offer the originals in evidence.

The Witness: I have got orders not to leave them go out of my possession.

The Vice-Chancellor: Well, you have violated your order already, haven't you?

30 The Witness: I mean, I am going back with them.

The Vice-Chancellor: Well, we will see about that.

Mr. Engelke: This paper, being an original paper, cannot be marked as an exhibit; I offer this paper now.

40 The Vice-Chancellor: Let a notation be made of it; I do not want it formally marked.

*James J. O'Brien, for complainant, direct.*

Mr. Engelke: I offer in evidence Tax Sale Proceeding, consisting of the original tax sale certificate; the original notice to redeem; the original affidavit of service of notice to redeem; the original affidavit of the tax sale purchase by Karl Schaffer; which proceedings were recorded in Book 10 988 of Deeds for Union County, at page 230, and filed April 13, 1925.

The Vice-Chancellor: Does that filing mark relate to all the papers together, or each one separately?

Mr. Engelke: Here is a discrepancy here—it is filed “April 13/24,” and marked “Recorded, April 13, 1925.”

The Vice-Chancellor: That might be all 20 right—they may be a year behind in their recording.

Mr. Wagner: (To Mr. Engelke.) You do not charge us with the condition of the record, I hope.

Mr. Engelke: I don't know; I am charging you as far as I can.

The Vice-Chancellor: Look inside and see if there is any separate marking on each 30 paper.

Mr. Engelke: The certificate of sale is No. 2206; there is nothing to identify the notice and affidavit of service.

The Vice-Chancellor: The certificate is made by whom to whom?

Mr. Engelke: Made by the Comptroller of the City of Elizabeth to Karl Schaffer.

The Vice-Chancellor: When is that certificate of sale dated? 40

*Mrs. Mabel S. Graff, for complainant, direct.*

Mr. Engelke: The certificate is dated November 20, 1916.

The Vice-Chancellor: For what amount of money is the certificate?

Mr. Engelke: For \$9.81.

10 The Vice-Chancellor: This record, being an original record, will not be marked in evidence.

Mr. Engelke: I would like to offer the others, in the other case, at this time.

Mr. Wagner: They ought to be here during the taking of the testimony.

The Vice-Chancellor: No, you have certified copies, I understand.

20 Mr. Engelke: I have certified copies of all these papers; yes, sir.

Mr. Wagner: Well, I have a purpose in requiring the originals for the other case.

The Vice-Chancellor: Well, you had better let the witness wait, then.

No cross examination.

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MRS. MABEL S. GRAFF, sworn.

30 *Direct examination by Mr. Engelke.*

Q Mrs. Graff, where do you live? A 611 Magie avenue, Elizabeth.

Q In Elizabeth? A Yes.

Q And how long have you resided in Elizabeth? A All my life.

Q You were in the office of Mr. Schaffer? A Yes, sir.

40 Q And have been in his office since when? A Why, with Abe J. David, I have been there.

*Mrs. Mabel S. Graff, for complainant, cross.*

Q Since when? A About the last seventeen years.

Q And your formal name was Mabel Seibert?  
A That is right.

Q When were you married? A August 16, 1919.

Q I show you a signature "Mabel Seibert Graff," to an affidavit made by Charles L. Bauer, Jr., and written on the back of what purports to be a notice to redeem—"Mabel Seibert Graff"—is that your signature? A That is my signature. 10

Q Were you Mabel Seibert Graff on October 19, 1919? A Yes, sir.

*Cross examination by Mr. Wagner.*

Q You are in no way connected with Mr. Schaffer, are you, Mrs. Graff? A Only in the office. 20

Q You are his stenographer? A No, not his stenographer.

Q You are the stenographer of Judge David?  
A That is correct.

Q At the time you took these affidavits were you a notary public? A Yes, sir. 30

Q And was that your name? A Yes.

Mr. Engelke: I object to the question—the answer got in hastily—as to whether or not she was a notary; I think she has to produce her commission; it appears here that she was not.

Mr. Wagner: Do you charge that she was not a notary?

Mr. Engelke: Yes. 40

*Mrs. Mabel S. Graff, for complainant, cross.*

The Vice-Chancellor (to Mr. Wagner): Well, I guess I had better let you prove that she was a notary more strictly.

Mr. Wagner: There is nothing in the bill to apprise us of this.

10 The Vice-Chancellor: I know; but this may imperil some of the proceedings; because if these papers were sworn to before somebody who had no authority to take the oath, you had better watch your step.

Mr. Wagner: Well, if that is going to be an issue, your Honor, we will resolve it right now—may I?

20 The Vice-Chancellor: You cannot do it by asking her whether she is a notary, because there is better evidence for that. There are many of these notaries—or, at least, my experience has been, that many of these parties appointed notaries in New Jersey have forgotten that the duration of their appointment has expired and have continued to take acknowledgments and act officially, and then it is brought to their attention, and the result is that there are validating acts passed from time to time to try to cure these defects.

30 Mr. Wagner: May I ask counsel for the complainant at this time if it is the intention on their part, as part of their case, to show that Mrs. Graff was not a notary authorized to take these affidavits?

Mr. Engelke: Positively.

40 The Vice-Chancellor: He says "Positively,"—in other words, Mr. Wagner, you are relying, I presume, upon certain papers having been sworn to by some persons before

*Mrs. Mabel S. Graff, for complainant, cross.*

a supposed notary; now, he is questioning the authority of that person as a notary; he says that person who was a supposed notary was not such in fact, at the time. We all know that notaries are only appointed for five-year periods.

Mr. Wagner: At the present time his question and his proof is limited to the name of this witness, and that is all there was asked of this witness.

10

The Vice-Chancellor: He has referred the witness to some paper, as I remember.

Mr. Engelke: Yes; and your Honor can see that I showed her the original signature, in order to show whether there may or may not be some other "Mabel Graff."

20

The Vice-Chancellor: And she has identified her signature on this paper.

Mr. Engelke: Yes. That is the reason I produced this paper—because I could not use a certified copy.

Mr. Wagner: At this time she is asked her name, and if she was the person who took the oath.

The Vice-Chancellor: You will have to be governed by what the record shows, as much as I. I do not want to mislead you, but you are charged with what the record shows, as much as I am.

30

Mr. Wagner: As the matter stands, I have no more questions.

The Vice-Chancellor: No more questions?

Mr. Wagner: At the present time. I would wish to recall the witness in case it is pursued any further.

40

*Mrs. Mabel S. Graff, for complainant, cross.*

Mr. Engelke: I would like, again, to make the offer to use the other papers in the same manner, so as to save the time of this witness and the other witnesses.

10 The Vice-Chancellor: And I suppose counsel is going to make the same suggestion here, that he would rather have the cases tried separately. I think, too, that inasmuch as you raise this question, that both cases should be tried separately, insofar as this witness' testimony is concerned. I think it will be better for both parties, because the proof should be quite positive on it.

*By Mr. Wagner.*

20 Q Did you reply to the question that your name, before marriage, was "Mabel Seibert"?  
A Yes, sir.

The Vice-Chancellor: She stated her name, and she identified her signature, as I understand, on that paper. And you say, Mr. Engelke, that there was no "Mabel Seibert" as notary public at that time?

30 Mr. Engelke: Yes, sir. I now offer a certificate of the Secretary of State, under the seal of the Secretary of State.

The Vice-Chancellor: Show it to counsel, don't show it to me.

(The paper was handed to Mr. Wagner for his inspection.)

Mr. Wagner: If your Honor please, if this is to be introduced, and your Honor will permit that to go in—

40 Mr. Engelke: I offer it, your Honor.

*Mrs. Mabel S. Graff, for complainant, cross.*

The Vice-Chancellor: He is offering it; now, let us do one thing at a time; he is offering this in evidence—have you any objection?

Mr. Wagner: I have an objection, unless your Honor will take—

The Vice-Chancellor: I cannot pass upon two questions at once. Let me deal with this one first, then I will deal with the other afterwards. 10

Mr. Wagner: I have no objection.

The Vice-Chancellor: All right; it will be marked in evidence.

(The paper was thereupon marked Exhibit C. 9.)

The Vice-Chancellor: Have you anything else that you have to say to me, Mr. Engelke? 20

Mr. Engelke: No, sir; I have just offered this paper and it is marked, that is all. I have not finished my case.

The Vice-Chancellor: Do you want your matter to go in now, Mr. Wagner, or in the orderly course? You cannot very well interrupt his case, unless there is something that is urgent that you think you ought to bring to my attention. 30

Mr. Wagner: I feel, in justice to our case, that it ought to be drawn to your Honor's attention that at no time have we been apprised in any way by the pleadings, or anything else, that the authority of the notary would be questioned. If such proof as we have here before your Honor today may be considered as informal, I ask that we be given an opportunity to make correct 40

*Mrs. Mabel S. Graff, for complainant, cross.*

formal proof such as will be satisfactory to your Honor.

The Vice-Chancellor: If you can meet his proof, I will give you an opportunity to meet it.

10 Mr. Wagner: Whether we do it today, or later?

The Vice-Chancellor: Yes; I am not going to decide this case on any captiousness on the part of either one side or the other; and while I am loath to continue cases, nevertheless, in a case of this kind I am not going to shut counsel out.

20 Mr. Wagner: In order not to keep Mrs. Graff here, would your Honor be willing to suggest to counsel that Mrs. Graff be recalled to explain, so far as she can, at the present time?

The Vice-Chancellor: What good would her explanation be?

30 Mr. Wagner: We have a letter from the Secretary of State, showing that she raised that question as to whether she could continue to use her name as "Mabel Seibert," or whether she should take out a new certificate, or what she would do; and the Secretary of State notified her that she should continue to act as notary, writing her full name. Now, we only have the letter as to that.

40 The Vice-Chancellor: I presume you appreciate that the letter of the Secretary would be officious, in that respect, rather than official. But is it your contention, Mr. Engelke, that this witness was not actually a notary public at the time in question, or

*Mrs. Mabel S. Graff, for complainant, cross.*

that she had been appointed under her own name, and was subsequently married, and was not thereafter entitled to act under her maiden name—is that your point?

Mr. Engelke: Oh, no.

The Vice-Chancellor: I think you will find a statute covering that question. (After further discussion.) Well, I will let the other counsel go and examine the records before I close this case; but I may say that that would not help you much, because if the Secretary of State was in error, Mr. Wagner, it cannot help you. 10

Mr. Wagner: Oh, no; what I mean is that this is very informal proof, and we owe it to your Honor to have equally cogent proof from the Secretary of State that this is the Mabel Seibert who was appointed a notary; that she was a notary at that time; that she was thereafter married, and took the affidavit under her married name. 20

The Vice-Chancellor: Under her maiden name, or married name?

Mr. Wagner: Under her married name; that the name changed from a single name to a married name; but the identity does not change, and we are covered by the statute. 30

The Vice-Chancellor: This signature as notary is under the married name?

Mr. Wagner: Yes.

The Vice-Chancellor: And does your certificate show that there was no person of that name?

Mr. Engelke: Until 1924.

The Vice-Chancellor: Well, are you acquainted with the statute—that there is a statute relating to the change of names? 40

*Frank W. Maher, for complainant, direct.*

Mr. Engelke: I have not looked at the statute.

The Vice-Chancellor: You had better look at the statute.

10 Mr. Engelke: But if there were such a statute, I think we still have a sufficient answer—

The Vice-Chancellor: Well, it is time enough to meet that when we have to.

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FRANK W. MAHER, sworn.

*Direct examination by Mr. Engelke.*

20 Q Mr. Maher, where do you live? A 861 Hillside Road, Elizabeth.

Q What is your business? A Real estate broker.

Q How long have you been a real estate broker? A About three and a half years.

Q And where have you been principally conducting your business as real estate broker? A In and around Union County.

Q Any of it in Elizabeth? A Yes.

30 Q Have you bought and sold property? A Not myself, no; I have not; I have acted as broker.

Q And about how many sales of property in the vicinity of 900 and 902 West Grant street have you had? A None at all.

Q Do you know of any that have taken place in that vicinity? A Yes, I do.

Q How many? A Well, I know of one or two.

40 Q Are you familiar with the values of property, 900 and 902 West Grant street?

*Frank W. Maher, for complainant, direct.*

Mr. Wagner: Objected to as irrelevant.

The Vice-Chancellor: What is the relevancy?

Mr. Engelke: To show the value of the property we sought to redeem.

The Vice-Chancellor: How is that material? What difference does it make whether it is worth ten dollars or ten thousand—the principles of law are to govern, are they not? 10

Mr. Engelke: I am not sure that it is material, to be frank, but I thought your Honor might want to be informed as to the value of the property sought to be redeemed.

The Vice-Chancellor: It will not take much time and I am going to admit it; I will admit what you offer, but if you are going to open the door I think I ought to do it for Mr. Wagner, too. I do not think it is material. 20

Mr. Wagner: I object to the evidence, your Honor, and ask for an exception.

The Vice-Chancellor: I will receive it, subject to your objection; and I am going to permit you to put in that evidence that I precluded you from putting in before over his objection. 30

Q What do you say is the value of the property 900 and 902 West Grand <sup>Street</sup> Avenue? A Well, I would like to answer that question in this way: When I was first called in to appraise this property—

The Vice-Chancellor: Do not make a discussion; you are asked the question; do you know? 40

*Frank W. Maher, for complainant, direct.*

The Witness: Do you want the actual value now?

Q Yes, at the present time. A The actual present-day value I should say is about eighty-five to ninety dollars a foot.

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*By the Vice-Chancellor.*

Q That is land value—there are no buildings on this property, are there? A No, sir; not to my knowledge.

Q Does that mean a square foot? A No, front foot.

*By Mr. Engelke.*

20 Q Are you familiar or acquainted with the values of property on Pennington street? A To a certain extent, I am, yes, sir; I have not had any dealings up there.

Q Do you know of any sales that have taken place in Pennington street recently? A Not within the past six months; no, sir, I do not.

Q Have you any opinion as to the value of property on Pennington street?

30 Mr. Wagner: Well, what good is his opinion, if he has no knowledge?

The Vice-Chancellor: It is no good yet—I mean he is not yet qualified, is the reason I say “no good yet”; it may be good if he shows qualification.

Q What sales, six months ago, do you know of? A Why, the sale of a 40-foot lot on Pennington street, near the corner of Elmora avenue.

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*Frank W. Maher, for complainant, direct.*

Q How far is that from either 861 or 907 Pennington street? A That is about a block and a half, I should say.

Q A block and a half in which direction? A South.

Q Is that direction nearer, or more distant from the city? A It is nearer the city. 10

Q Would the fact that the premises 861 to 907 Pennington was further away increase or enhance, or decrease the value of that property? A I would say that it would decrease it.

Q Do you know of any other sales than that, six months ago, at that place? A No, sir.

Q What, in your opinion, is the value of the premises 861, 863 Pennington street?

Mr. Wagner: Objected to, as not having shown the qualifications necessary. 20

The Vice-Chancellor: I think I will have to sustain that objection; and anyway, I think it is immaterial; I do not think I ought to go into that question.

Mr. Engelke: As I said before, I am inclined to agree with your Honor, but I thought you might want some idea as to the value of the property.

The Vice-Chancellor: I presume that you have in your mind, possibly, in suggesting that to me, the idea as to whether the Court will regard it as unconscionable to hold a property that might be worth a large sum of money when he paid very little for it; but I do not think that is material. 30

Mr. Engelke: That is the only reason I offer it; I thought your Honor might conclude that it shocked the conscience; but I think the decisions are against that theory. 40

*Frank W. Maher, for complainant, cross.*

The Vice-Chancellor: I think I will sustain the objection, anyhow, on the ground that the witness has not shown proper qualification.

*Cross examination by Mr. Wagner.*

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Q How long have you been in business? A Nine and a half years.

The Vice-Chancellor: I think I shut out all of that testimony.

Mr. Wagner: All of that testimony is out?

The Vice-Chancellor: Yes, I think I struck it out, on the ground that the witness has not shown qualification, and also that it is not material.

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Mr. Wagner: Also the testimony as to Grant street is stricken out?

The Vice-Chancellor: Yes. (to Mr. Engelke): Now, if you have any objection as to the striking out, go ahead.

Mr. Engelke: Oh, no.

Recess until two o'clock, P. M.

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AFTERNOON SESSION.

Hearing of the cause resumed at two o'clock, P. M.

Mr. Engelke: With reference to 861, 863, 901, 903 and 905 Pennington street, the allegation in the bill is to the effect that they were sold to Mr. Wiltsie, on July 26, 1920, and in 1921 and in 1922, and assigned by Mr.

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*Benjamin Seligman, for complainant, direct.*

Wiltsie to Mr. Schaffer in 1923, and again sold to Mr. Schaffer in 1923 and 1924. Those are the allegations of the bill; and the defendant answers, admitting the allegations of the bill, but adds that these certificates have been since assigned to Silvia Tove of Maryland. These facts are conceded to be so by both parties. Mr. Wagner says he has the certificates, but I am willing to concede the situation, and I will have to ask, if your Honor thinks the matter cogent, for leave to amend by bringing in Mrs. Tove. 10

The Vice-Chancellor: Well, you certainly will have to bring that party in, because she seems to be so tied up with this title that we will have to make one job of it.

Mr. Wagner: I have no objection to bringing her in. 20

Mr. Engelke: Well, I will bring her in by process before your Honor disposes of the matter.

The Vice-Chancellor: How can you get service on her—has she an attorney.

Mr. Engelke: I was just going to ask Mr. Wagner if he will acknowledge for her.

The Vice-Chancellor: Well, you can arrange that between yourselves. 30

Mr. Engelke: Well, we can arrange that later, I think, pending your Honor's conclusion.

BENJAMIN SELIGMAN, ESQ., sworn.

*Direct examination* by Mr. Engelke.

Q Where do you live? A Newark.

*Benjamin Seligman, for complainant, direct.*

Q And what is your business? A I am in the Department of Revenue and Finance, City of Newark, Comptroller's Department.

Q Do you know William J. Shearer? A I do.

Q Do you know Mr. Schaffer? A I do not.

10 Q Do you recall making a visit, with Mr. Shearer, to Elizabeth, in the month of March, 1926? A I do.

Q Do you remember the date? A March 20th.

Q Where did you go with him at that time? A To the Comptroller's Office in the City of Elizabeth.

20 Q When you went there, whom did you first meet? A John Ahearn, one of the Clerks, Arthur Lenox and Joseph Pfirman; I think Mr. Pfirman is the Chief Clerk.

30 Q Now, Mr. Seligman, suppose you state exactly what transpired at that time, saying what you said, what Mr. Shearer said, and what was answered by the various officials in the office that you visited at that time, with reference to the properties of Mr. Shearer and the Elizabeth Heights Realty Company and the taxes that were due on them? A Why, I am well acquainted with the boys in the City Comptroller's Office, and of course we explained the different methods that are employed in the various departments—that is, theirs and ours—and I told Mr. Lenox that Mr. Shearer wanted to redeem all of the tax sales on the various properties for which I held the tax searches in my hand at the time—

Q Let me interrupt you for a moment: I show you Exhibits C. 4 to C. 8, and ask you if those are the tax searches you had in your possession at the time? A They look very much like them; I think they are.

40

*Benjamin Seligman, for complainant, direct.*

Q Now, proceed. A They told us—one of the clerks down there, I think it was Lenox—told us we would have to do business with Mr. Schaffer. I then asked Mr. Shearer whether he had received notice from Mr. Schaffer to redeem on any of these pieces, and he said that he had on West Grant street, but not on the others; so then I told him that the custom was to accept redemption at the Collector's Office, but proof of service had not been filed. They told me that, after having made a tax sale, they did not accept redemptions in their office, but the business had to be done direct with the purchaser of the certificate. I suggested to Mr. Shearer then that we get the figures due and offer to pay them. Mr. Lenox then went aside and figured everything due on each piece of property on these tax searches, on a sheet of manila paper, and came back and told Mr. Shearer the total amount due on all of them, including, as I had suggested, redemption costs. Mr. Shearer said—"I desire to pay for those"—oh, after the amount was given, I said to Mr. Shearer—"Have you money enough with you here?" He said—"Yes, I want to pay for them right now;" so Mr. Lenox said we would have to go to the Treasurer (the Treasurer in the City of Elizabeth is equivalent to the Collector in other cities—the Comptroller does not collect the money), so as we went around the front toward the Treasurer's Office (Mr. MacGrath), Mr. Lenox went around through the inner office, and told Mr. McGrath our mission there, as well as Mr. Shearer had told him—that he wanted to pay for all taxes and redemptions against the pieces in the list that Mr. Lenox then held in his hand; and Mr. MacGrath said, in substance, "I am sorry I cannot accept this money,

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*Benjamin Seligman, for complainant, cross.*

because you have no bills; I can only take payment for matters for which you have a bill." So Mr. Shearer then asked whether a note would be made to the effect that he had offered tender, and Mr. MacGrath said that was up to the Comptroller's Office, and asked Mr. Lenox whether  
 10 he would take care of the matter, and Mr. Lenox took us into Mr. Pfirman, and then Mr. Shearer requested Mr. Pfirman to make note of the fact that tender had been offered, or had been made.

Q Was such note made? A As we were about to go out of the building I went back into the vault where Mr. Pfirman and Mr. Lenox were with the ledgers, and I said to Mr. Pfirman—  
 "Now, Joe, be sure to have notes made on your ledgers," and he instructed Mr. Lenox, in my  
 20 presence, to make those notes.

Q You did not see him make them, however?  
 A I did not.

Q When Mr. Shearer spoke to Mr. MacGrath, did he have any money about him? A Yes, he had the money in his hand. Mr. Lenox was present at the time.

Q Did you, at any time, either prior or subsequent to the conversation you have just related, have any conference directly with Mr. Schaffer?  
 30 A No.

*Cross examination by Mr. Wagner.*

Q Mr. Seligman, did you, at any other time, accompany Mr. ~~Schaffer~~ <sup>Shearer</sup> in an effort to make a tender, or in an effort to make redemption? A At any subsequent time, no.

Q At any subsequent, or at any prior time?  
 40 A No.

*Benjamin Seligman, for complainant, re-direct.*

Q So far as you know, this was the only effort to make payment to the Comptroller? A It is the only time that I was present.

Q You do not know exactly how much money Shearer had with him, do you? A He told me afterwards—that is, he told me in going out.

Q I say, did you know at that time? A No, I did not count his money; no. 10

Q And you do not know what the various amounts were estimated to be, do you? A No, I do not recall.

Q Did you say that Mr. Shearer had a list of them in his hand? A Mr. Lenox had the list that he had compiled before—the interest figures, and all, that he had computed.

Q Did you or Mr. Shearer make a copy of that list? A I think the list was subsequently given to Mr. Shearer; I am not sure now whether it was given to him, or whether it remained in the Comptroller's Office. There were quite a number of papers there, you know, that Mr. Shearer had; and, in fact, I had figures also from the Comptroller's Office, that were made up prior to that for me. 20

Q Are you a friend of Mr. Shearer's? A Yes.

Q And went with him as a friendly service? A Yes. 30

*Re-direct examination by Mr. Engelke.*

Q Just one more question: When Mr. Shearer was at the window talking to Mr. MacGrath, do you recall whether or not the specific lot numbers were mentioned by anyone at that time? A I mentioned them—oh, when we were at the window? 40

*Arthur E. Lenox, for complainant, direct.*

Q Yes. Yes; yes, Mr. Shearer read off those addresses from the sheets. There were some pieces on William avenue, and some pieces on Pennington, and the top piece, particularly, that headed the list was West Grant street.

10

ARTHUR E. LENOX, sworn.

*Direct examination by Mr. Engelke.*

Q Mr. Lenox, where do you live? A Elizabeth, N. J.

Q And what is your occupation? A Finance Clerk of the City of Elizabeth.

20 Q And you are in what office? A In the City Hall.

Q In what office? A The Comptroller's Office.

Q In that capacity, do you have any care or custody or charge of the books? A Yes, sir.

Q Do you remember a visit, in March, 1926, by Mr. Shearer and Mr. Seligman? A Yes, sir.

Q Do you remember having any conversations with them? A Yes, sir.

30 Q What did Mr. Shearer, or Mr. Seligman, or both, say to you, and you to them, at the time? A Why, the substance of our conversation, after exchanging friendly greetings (we have known each other a long time) was that Mr. Shearer was there for the purpose of redeeming certain properties from tax sales, at which sales the properties were bought by a Mr. Schaffer—Karl Schaffer.

40 Q Had you any means of knowing what properties they were? A Yes, sir; we had the tax

*Arthur E. Lenox, for complainant, direct.*

searches brought along by both Mr. Seligman and Mr. Shearer.

Q I show you what have been marked in evidence as Exhibits C. 4 to C. 8, both inclusive, and ask you if those searches represent the properties that were discussed at the time of Mr. Seligman's and Mr. Shearer's visit? A (After examining the papers.) Yes, sir; they were. 10

Q After the ordinary civilities and greeting each other, what was said by Mr. Seligman and Mr. Shearer with reference to these taxes? A Why, Mr. Seligman spoke for Mr. Shearer and asked that he be permitted—that is, Mr. Shearer be permitted—to redeem these properties; and we explained to him that it was the custom of our office never to prepare a bill for redemption of a piece of property any time after two years from the date of the sale, because of the fact that we were not acquainted with the fact, or, I will say, that process was taken to acquire title. 20

Q And did you do anything, nevertheless? A Why, I personally prepared the figures showing what the redemption amount would be had redemption been allowed to be taken at that time.

Q Had Mr. Schaffer filed any affidavits with your office, showing his disbursements as a tax sale purchaser, for searches and notices, etc.? 30

A As to what properties?

Q As to any of these properties? A Well, I would have to refer to the books.

Q Suppose you do so? A And at what particular sale, may I ask?

Q Well, these are the sales—

The Vice-Chancellor: I think you had better direct his attention to each one. 40

*Arthur E. Lenox, for complainant, direct.*

Q The earliest sale was 1916, of Lots 900 and 902 West Grand street?

Mr. Wagner: I do not see the materiality of that, your Honor.

10 The Vice-Chancellor: I suppose he wants to prove that you did not file notices. You claim that you filed some notices, and I guess he wants to show that you did not.

Mr. Wagner: Our notices are filed with the Register.

The Vice-Chancellor: I don't know; that is the question he asked him—"Do your books show the filing of any notices?"

Mr. Engelke: No—the filing of any affidavits showing disbursements.

20 The Vice-Chancellor: Well, I will admit it, anyhow. If you want to object, you may object and state your ground of objection.

Mr. Wagner: I simply thought we were losing time, your Honor; I do not get the materiality of it.

30 The Vice-Chancellor: Well, perhaps counsel thinks he has a right to look to the filing of papers, under the particular conditions; now, I cannot see what it is leading to. The statute says where they shall be filed. (Question allowed.)

Q I asked you the question as to 1916, about 900 and 902—did he file such affidavits? A Yes, sir.

Q That is, an affidavit of expenses? A An affidavit of expenses, yes.

Q He did? A Yes, sir.

40 The Vice-Chancellor: Relating to what property?

*Arthur E. Lenox, for complainant, direct.*

The Witness: 900 and 902 West Grant street.

The Vice-Chancellor: Will you state on the record what book you are referring to which contains that record, and what page it appears on?

The Witness: Book 6 of Transcript of Sales, folio 55; sale, November 12, 1917, for taxes of 1916. 10

Q That is not the one—I want the sale in 1916 for the delinquent tax of 1915; that one you refer to is only a two-years sale.

Mr. Wagner: I wish to correct counsel in that.

The Vice-Chancellor: What he says does not make it so. He is directing his attention now to the sale of 1916 for the tax of 1915. 20

Q Do you find such? A On Folio 29, Sales Transcript No. 6; sale of November 9, 1916, for unpaid tax of 1915, for property 900 to 902 West Grant street, sold to Karl Schaffer; affidavit No. 3121 has been filed.

Q Now, I direct your attention to the Pennington street properties? A The same sale? 30

Q Oh, no; much later; the properties are 861, 863, and 901, 903, 905 and 907 Pennington street—taxes for 1919, sold in 1920 to Mr. Wiltsie? A 861 to 907 Pennington?

Q Yes, that is right. A The Sales Transcript (Chapter 237, Laws of 1918) folio 49; property 861-907 Pennington street, sold to Charles H. Wiltsie; affidavit No. 8 filed.

Q Now, the same property, sold in the year 1921? A For the 1920 taxes? 40

*Arthur E. Lenoæ, for complainant, direct.*

Q Yes, sir. A Same book; folio 72; 861-907 Pennington street; sold for 1920 taxes; Charles H. Wiltsie; affidavit filed, No. 22.

Q Now, the tax for 1921, sold in 1922—on the same property? A 861-907 Pennington street; same book, folio 93; sold for 1921 taxes; 10 Karl Schaffer; no per cent.

Q Karl Schaffer, or Wiltsie? A For 1921 tax to Karl Schaffer.

Q Was that the sale of 1922? A No, that is the sale of 1923 for 1921 taxes. We did not sell until two years afterward.

Q Well, not according to this on the record?

The Vice-Chancellor: Well, you are disputing the witness; let him say what the 20 record shows; and if you can show some varying record, you can do it.

Q This shows the sale of 1922 for tax of 1921, to Charles Wiltsie? A Certificate 719.

Q I don't know what the certificate number is. A 861-907 Pennington street, sold June 26, 1922, was for the 1920 taxes, to Charles H. Wiltsie?

The Vice-Chancellor: I would be very 30 much surprisd to learn that in June, 1922, they sold for the 1921 tax, because, as I recall the statute, it says after the following year it may be sold.

The Witness: That is so.

Mr. Engelke: I simply have a note of what I have here, and that is what it says.

The Vice-Chancellor: Well, do not argue with the witness..

40 Q Well, read your record there?

*Arthur E. Lenox, for complainant, direct.*

The Vice-Chancellor: He did read it.

A For 1920 tax, the sale was June 26, 1922; the certificate was No. 558; to Charles H. Wiltsie, at 8%; and affidavit No. 22 was filed.

*By the Vice-Chancellor.*

10

Q And that relates to the 1920 tax? A 1920 taxes.

The Vice-Chancellor: Do you want the 1921 tax sale now?

*By Mr. Engelke.*

Q The only other one on record, that I know about, is the next sale, of 1923. What is the next one, then, that you have? A The next sale of that property?

20

Q Yes.

The Vice-Chancellor: Why cannot you check up these tax searches you have here, and see whether they are recorded?

Mr. Engelke: The tax search does not show for what year it was sold; it only gives the date of the sale.

30

The Vice-Chancellor: Well, proceed and get any other record you want.

Q Well, have you any other sale, in 1923, of these properties in Pennington street? A Yes.

Q Will you read it? A Sale of March 12, 1923—861-907 Pennington street; sold for 1921 taxes to Karl Schaffer, at no per cent; and no affidavit of expenses filed.

Q When was the next year's sale, if there was any? A 861-907 Pennington street, sold

40

*Arthur E. Lenox, for complainant, direct.*

March 10, 1924, for taxes of 1922, to Karl Schaffer, at 8%; and no affidavit of expenses filed.

Q Is that the latest one you have, or are there others? A I believe that is the last sale—no, 861-907, inclusive, was sold for 1923 taxes on May 11, 1925, to Harrington Company, at 8%; and no  
10 affidavit of expenses filed.

Mr. Engelke: Well, that has been redeemed.

The Vice-Chancellor (to the witness): Is there any indication of redemption there in your books?

The Witness: No, sir.

Q Now, is there any note in any of the books  
20 that you have just testified from, showing the tender made by Mr. Schaffer? A No, sir.

Q Is there any writing, or record that you have in your possession, and here in court, made in your office, of that tender, by you? A I have no papers showing the notation. They were made on very large books in the vault, but they are not books of original entry.

*By the Vice-Chancellor.*

30 Q But have you made a notation anywhere of the visitation of these men who attended there? A Yes, sir.

*By Mr. Engelke.*

Q And that notation was made where? A In the Arrearage Books in the vault of the Comptroller's Office, which is a memo system.

*Arthur E. Lenox, for complainant, direct.*

*By the Vice-Chancellor.*

Q Does that show the date when the tender was made—that memorandum you speak of? A Yes, sir.

*By Mr. Engelke.*

Q Do you know the date? A March 19, 1926. 10

Q March 19th? A March 19th.

*By the Vice-Chancellor.*

Q And was it made to you? A No, sir—made to the City Treasurer, it was.

*By Mr. Engelke.*

Q Did you see what took place, at the time, between Mr. Seligman and Mr. Shearer and the City Treasurer? A Yes. 20

Q Just relate what you saw take place at that time—also what you heard? A Well, after I had told Mr. Seligman and Mr. Shearer the amount of money which ordinarily would have to be paid to redeem these properties, if the two years' time had not elapsed, and we were allowed to render a bill, I personally went into the Treasurer's Office, through the back way, and Mr. Shearer and Mr. Seligman went around through the front way; I introduced them to Mr. MacGrath, and handed Mr. Shearer the slip of paper, and explained their mission, that they wanted to make tender for the redemption of these properties, and that, in accordance with our custom in the office, we had to refuse to make a bill. 30

*Arthur E. Lenox, for complainant, direct.*

*By the Vice-Chancellor.*

Q You handed Mr. Shearer the slip of paper, or Mr. MacGrath? A Mr. Shearer.

*By Mr. Engelke.*

10 Q Now, what did Mr. Shearer say, or do? A He told Mr. MacGrath he wanted to make a tender, and he formally made a tender to Mr. MacGrath for the redemption of these properties shown on the list.

*By the Vice-Chancellor.*

Q What is Mr. MacGrath's title in the office? A He is the City Treasurer.

20 *By Mr. Engelke.*

Q Does he collect the taxes for the City of Elizabeth? A He performs the duties ordinarily performed by a tax collector.

30 Q What did Mr. MacGrath say to Mr. Shearer? A I do not know the words, exactly, but he refused, in very nice terms, and told him that inasmuch as the Comptroller's Office would not render a bill, he could not accept the redemption; that it is the custom of the Comptroller's Office not to render a bill in the matter of redemption of property at any time two years after the date of sale.

*By the Vice-Chancellor.*

40 Q Do you mean to say that if a person whose property has been sold comes to your office and offers to redeem that property ten or fifteen years after the sale, and your records do not show compliance by the purchaser with the stat-

*Arthur E. Lenox, for complainant, cross.*

utory requisites, that you would not receive the money from the property owner? A Yes, sir.

*By Mr. Engelke.*

Q Did you notice whether Mr. Shearer had any money in his hand? A Yes, sir; he had sufficient money to pay for the redemption of these properties, if he had been allowed to redeem them. 10

Q After the conversation that you have just related, had with Mr. MacGrath, did either Mr. Seligman or Mr. Shearer have anything more to say about the transaction? A Why, they came into our office and asked the Chief Clerk to be sure to arrange to note on the records in our office the redemption tender.

Q And it was subsequent to that that this notation was made that you have testified to, was it? A I, personally, made it that afternoon. 20

*Cross examination by Mr. Wagner.*

Q Did Mr. Shearer, at any time prior to March 19, 1926, or anyone in his behalf, make a tender for redemption of this property? A Not to my knowledge—that is, prior to March 19th. 30

Q Now, if anyone, a purchaser at a tax sale, had served notice and attached affidavits, and filed them with the Register of the County of Union, you would have no knowledge of that unless you specifically went up there and searched those records? A No, sir.

Q Do you keep, in your office, a transcript of certificates of tax sales, to which records of service and affidavits of redemption have been 40

*Arthur E. Lenox, for complainant, cross.*

attached, which have been filed in the form of a deed at the Register's Office—do you keep a transcript of them at your office? A We do not keep a transcript of it; but in our transcript of sales, wherever a deed is issued, we mark on the transcript of sale to the effect that  
10 a deed has been issued.

*By the Vice-Chancellor.*

Q But you do not have, in your office, any record of any dealings that the purchaser at a tax sale may have with the Register's Office, do you? A No, sir; except any papers that the purchaser might file in our office for our information.

20 *By Mr. Wagner.*

Q In this particular instance, the certificate that Mr. Schaffer received for 902, the notice to redeem which was thereto attached, the affidavit of service, the affidavit of non-redemption (all of which are attached and are introduced as one of the exhibits here today)—you would not have any information as to that, in your office, unless you deliberately went up to the Register's Office, and got it, would you? A Only through the  
30 affidavit of expenses and disbursements.

The Vice-Chancellor: Do you want this witness in the other case?

Mr. Engelke: Yes, sir.

Mr. Wagner: I am satisfied, if your Honor please, to facilitate matters, and not to burden the City, if counsel for the complainant is willing, that the testimony which Mr. Lennox has given in this case, and the  
40

*Arthur E. Lenox, for complainant, cross.*

cross examination, shall apply in *toto* to the other case of Elizabeth Heights Realty Co.

The Vice-Chancellor: Does the testimony cover all the property in question?

Mr. Engelke: No, it does not. I confined it to this case. 10

Mr. Wagner: Well, I am satisfied that counsel, if he wishes, may introduce excerpts to be used in the other case.

Mr. Engelke: Well, this is the end of my case. I rest now; so there is no use of going into that now.

The Vice-Chancellor: You mean you rest now?

Mr. Engelke: Yes, sir; only I want to offer a certified copy of the same certificate of sale proceedings, the original of which the Register has produced; it is the same thing, only it is a certified copy of it. 20

The Vice-Chancellor: Have you any objection to that offer?

Mr. Wagner: The original is already in.

The Vice-Chancellor: I know, but the original I am not keeping here; I have got to have some record before me; and I suppose his purpose is to let me have the use of that. 30

Mr. Engelke: Precisely; that is the purpose.

The Vice-Chancellor: It is cumulative—you see, it is additional to what is already in.

Mr. Wagner: We had one made, too, your Honor; there is some writing on ours which does not appear on others. 40

*Mrs. Mabel S. Graff, for defendant, direct.*

Mr. Engelke: It is under the seal of the Register's Office.

The Vice-Chancellor: He says his is under the seal, too.

10 Mr. Engelke: If he wants to contradict it, he may offer that in his case. I offer this now.

The Vice-Chancellor: (To Mr. Wagner.) Have you any objection to this coming in, subject to correction if it proves to be erroneous in any respect?

Mr. Wagner: That will be correct.

20 The Vice-Chancellor: Well, mark it in that way. You can compare it with the other copy, if you wish—that is, if there is one. Certified copy marked C. 9.

(The complainant rests.)

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### THE CASE FOR THE DEFENDANT.

MABEL S. GRAFF, recalled.

*Direct examination by Mr. Wagner.*

30 Q Mrs. Graff, did you have a commission issued to you? Have you made any effort to search in your office for a certain paper that was issued to you in 1919 by the Secretary of State? A Yes, I have.

Mr. Wagner: Of course, I am touching on very delicate ground—

40 The Vice-Chancellor: I know you are; you are saying in your question that a paper was

*Mrs. Mabel S. Graff, for defendant, direct.*

issued to her by the Secretary of State—  
now, that is a matter of proof, is it not?

Mr. Engelke: I do not know what the  
paper was; that is why I did not object.

The Vice-Chancellor: If you are going to  
prove that she was a notary public at that  
time, duly commissioned, you will have to  
prove it by other proof, because I cannot  
take her statement, even if you found the  
commission that was issued to her. There  
must be some record of it. If a commission  
was issued to her there has got to be some  
notation made of it. In the Clerk's Office  
you might find some evidence of it; if you  
do not find it, there must be some original  
record in the office of the Secretary of State.

Mr. Wagner: Well, your Honor, we could  
have disposed of it by producing the commis-  
sion, itself, but we cannot find it. This is a  
new question to us, and we ought to have  
an opportunity to produce all the proof.

The Vice-Chancellor: These commissions  
expire every five years. Now, you say that  
she was commissioned at one time; and you  
can show that that commission continued in  
existence.

Mr. Wagner: We want to have an oppor-  
tunity of showing the records.

The Vice-Chancellor: I will grant you  
permission to do it.

(The witness was thereupon directed to  
stand aside.)

10

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30

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*Karl Schaffer, for defendant, direct.*

KARL SCHAFFER sworn.

*Direct examination by Mr. Wagner.*

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

10 Q What is your occupation? A President of Roselle Park Trust Company; and also in the real estate business.

Q You reside in Roselle? A I reside in Roselle, N. J.

Q Do you know Mr. William Shearer? A I saw him once.

Q The complainant in this suit? A Yes.

Q When did you first see him? A 1925.

Q And where was it that you saw him? A At my office.

20 Q For what purpose did he call? A He came over, and he wanted to know what I wanted—

The Vice-Chancellor: Tell us what he said.

A He asked me what I wanted for the property on Pennington street in which he claimed to be interested.

30 Q What did you tell him?

The Vice-Chancellor: Won't you tell us what he said, instead of saying what he "claimed to be interested in?" Just tell us the conversation.

The Witness: I cannot remember the exact language.

The Vice-Chancellor: Substantially?

40 The Witness: He said, "I am interested in some lots in Pennington street, which

*Karl Schaffer, for defendant, direct.*

you bought; how much will you want for your title?"

The Vice-Chancellor: You did not have any title, did you?

The Witness: When?

The Vice-Chancellor: I mean at that time did you have title; did you ever receive a deed for this property, or have you just got a certificate of sale? 10

The Witness: I claimed to have served notice, although at that time I did not know just the numbers of the property, because he didn't know it, either; so I told him to write to me and give me the facts, with the numbers, and I would then take it up with him; and he left. 20

Q And did he write to you? A Yes, sir.

Q This letter, which is marked P. 1 for identification, I show you and ask you if you ever received that letter? A Yes, sir; that is a letter that came after his visit to me.

The Vice-Chancellor: What is the date of the letter?

The Witness: It is not dated.

Mr. Wagner: There is no date to the letter. I offer it in evidence. 30

Mr. Engelke: No objection.

(The letter is marked Exhibit D. 1.)

Q Mr. Schaffer, this was his reply to your conversation? A This was after he saw me.

Q He testified that he saw you in October of 1919, and offered to redeem property Nos. 900, 902 West Grant street, and that he offered to redeem other property—did he see you at 40

*Karl Schaffer, for defendant, direct.*

that time? A No, sir; I did not know the man until 1925.

*By the Vice-Chancellor.*

Q When, in 1925, do you say it was? A I cannot recollect, but I can refresh my memory; it was a few days before this letter came.

Q Did you see him before Mr. Wolfskiel called to see you? A That was before Mr. Wolfskiel came to see me, yes—after this letter.

Q And Mr. Simon? A Yes; that was before they came to see me.

*By Mr. Wagner.*

Q In other words, the time when Mr. Shearer saw you, and the time when these two attorneys saw you, is somewhat contemporaneous? A Very close.

Q Very close? A Yes.

Q But Mr. Shearer saw you before? A He saw me first; then the letter came; then, if I remember correctly, Mr. Wolfskiel saw me, and then Mr. Simon.

Q Did Mr. Shearer, at any time within the time limited for redemption of premises 900-902 West Grand street, offer you any money for the redemption of the properties?

The Vice-Chancellor: I will ask you to reframe this question, because I do not think this witness is competent to say within what time he was privileged to do that.

Mr. Wagner: I will withdraw the question.

Q Did Mr. Shearer, at any time, offer you any money for the redemption of this property, 900-

*Karl Schaffer, for defendant, direct.*

902 West Grant street? A No, sir; he never spoke to me about this property.

Q Never spoke to you about West Grant street? A No, sir.

*By the Vice-Chancellor.*

Q What property did he speak to you about? 10

A Pennington street.

*By Mr. Wagner.*

Q Did you, or anyone in your behalf to your knowledge, speak to him about making an adjustment of your affairs and his affairs, and getting from him a deed? A I did not speak to him personally about it, but I spoke to his attorneys.

Q Spoke to his attorneys? A Yes. 20

*By the Vice-Chancellor.*

Q Who do you mean were his attorneys? A Mr. Wolfskiel and Mr. Simon.

*By Mr. Wagner.*

Q Now, as far as Mr. Shearer was concerned, the only conversation you had with him was in 1925, prior to the receipt of this letter, Exhibit D. 1? A Prior to this letter. 30

Q Shortly after that, who saw you, Mr. Wolfskiel or Mr. Simon? A Mr. Wolfskiel, first.

Q What did Mr. Wolfskiel tell you, and what did you tell him? A Mr. Wolfskiel told me that Mr. Shearer spoke to him in reference to the Pennington street property, and that he would like to know how much I wanted for it; I told Mr. Wolfskiel that the Shearers were in very bad shape, they were transferred from one company to the other; I made title to several other prop- 40

*Karl Schaffer, for defendant, direct.*

erties coming out of that bankrupt estate, and unless I could make some adjustment I could not do any business with them; that I would be willing to give them a nominal sum for a quit-claim deed, if they could straighten out my title, or could help me to do so; and that finished my conversation.

10

Q What was the substance of your conversation with Mr. Simon? A Mr. Simon came to my office, and he spoke about the Pennington street property in the same way. I told Mr. Simon something in substance the same as I told Mr. Wolfskiel; and he wanted to know what properties I had made title to. I made out a list and gave them a copy of it, and told him that if he examined the entire procedure, if he found out that his client has any title to it, he is perfectly welcome to redeem it, but that if he felt that I am right I would still be willing to pay him a nominal sum for a quit-claim deed and get it out of the road.

20

Q I show you a yellow memorandum and ask you if you recall that paper? A Yes; this is the copy of the sheet of paper that I gave Mr. Simon.

Q Did you, or did you not, have that before you when you talked to Mr. Simon? A I had. I made it out in his presence.

30

Q And that was the one you showed him? A Yes, sir.

Mr. Wagner: I offer this in evidence.

The Vice-Chancellor: Well, it is a self-serving declaration; I do not see how you can use it. (To Mr. Engelke): What have you to say about it?

Mr. Engelke: I object to it on that very ground.

40

*Karl Schaffer, for defendant, direct.*

Mr. Wagner: I will withdraw it.

Q Did any results come of your conversations with Mr. Simon? A Mr. Simon came back, and he told me that he does not care to deal with those people and he will give it up. I said, "All right."

10

Q Now, at the time that you spoke to Mr. Shearer in 1925, and at the time that you spoke to these two attorneys, do you know whether or not notices had been served on the respective owners of the properties that were discussed? Do you know whether or not those notices, together with the certificate, and together with the affidavit of service and your affidavits of redemption, were or were not prepared? A I cannot remember that; and I don't know about the service, of my own knowledge, except what I did myself.

20

The Vice-Chancellor: All right; tell what you did yourself.

Mr. Wagner: With regard to premises 900-902 Pennington street? This is a certified copy—may I speak from that, your Honor?

The Vice-Chancellor: I do not know what your purpose is, but you put your question, and then I will see.

30

Mr. Wagner: I will ask Mr. O'Brien to let me have the original of the paper which he has testified to.

(Mr. O'Brien thereupon produced the paper referred to and handed the same to examining counsel.)

Q I show you Tax Certificate No. 2206, which has already been introduced in evidence, con-

40

*Karl Schaffer, for defendant, direct.*

cerning Lots 900-902 West Grand street, and ask you if that is the certificate which was issued to you? A As far as I remember; yes, sir.

Q I direct your attention to the notice of sale attached to the certificate, and ask you if the signature "Karl Schaffer" is your signature? A

10 Yes, sir.

Q I direct your attention to the affidavit on the back of the certificate, of Charles L. Baurer, being an affidavit of service, and ask you if that affidavit was, or was not in your possession directly after the date of execution, October 16, 1919?

Mr. Engelke: Is it material to this issue whether it was in his possession? It is now produced from the record.

20

The Vice-Chancellor: Are you objecting? If you are, tell me why. All you are doing is trying to argue. If you object, and state the ground of objection, I will rule upon it.

Mr. Engelke: I do object, on the ground that it is immaterial whether it was in his hands or possession or not. It speaks for itself. It either falls or stands on the paper presented.

30

The Vice-Chancellor: Mr. Wagner, did you really mean, in your question, what you said, when you said that affidavit was written on the back of the certificate? As matter of fact, is it not written on the back of the notice?

Mr. Wagner: I meant "on the back of the notice."

The Vice-Chancellor: Well, anyhow, you included in your statement what appears to be, so far, an unwarranted assumption of

40

*Karl Schaffer, for defendant, direct.*

fact, and that is that it is an affidavit; there is no proof here, so far, that that is an affidavit. I will rule it out just now, unless you can show that it is what you claim it is, an affidavit.

Mr. Wagner: Well, Section 59 of the Act of 1903, under which all of these papers are filed and recorded states that the certificate, plus the notice, plus the affidavit, when filed, shall be evidence of all the facts therein contained. 10

The Vice-Chancellor: Yes; but does not Mr. Engelke question the authority of this supposed notary to certify or to take affidavits. Suppose it appears that this lady is not such notary, in fact, then how can you call it "an affidavit?" That is the reason I am directing your attention to it, or that is the reason I am saying that, thus far, I think I will have to rule it out, because you are referring to it as an "affidavit," and the other side say that the one before whom the affiant is alleged to have been sworn was not a Notary Public and had no authority to take it. 20

Mr. Wagner: Well, as the record now stands, this certificate, plus that which is appended to it, is in evidence, and the Act of 1903, Section 59, states that when the certificate, plus the affidavit of service, plus the affidavit of non-redemption, has been recorded with the Register of Deeds, it shall thereafter be taken in evidence in all courts—that is, that it shall thereafter be presumptive evidence of all the facts therein contained. So far, it is presumptive. Now, if 30

*Karl Schaffer, for defendant, direct.*

Mr. Engelke proves to us that Mrs. Graff is not authorized—

10 The Vice-Chancellor: Well, there is also in evidence here a certificate of the Secretary of State saying that the party that purports to be a Notary Public is not such, in fact.

Mr. Wagner: It does not say that.

The Vice-Chancellor: Well, I understood that that is what it said. What is that certificate of the Secretary of State, I did not read it. (The paper was thereupon handed to the Court by Mr. Engelke.) What is the date of that alleged affidavit?

20 Mr. Wagner: This affidavit is dated October 16, 1919.

30 The Vice-Chancellor: (Reading the certificate of the Secretary of State, referred to.) Now, in view of that, which is in evidence, how can you possibly say that this person, who purports to sign as a Notary Public, was such in fact? I appreciate what you say, that it is said to be presumptive evidence, but you have permitted this other evidence to go in now, which is pretty positive proof that the presumption is overcome. You made no objection to that. If you had made an objection to it, I had something in my mind with regard to that; but you agreed to have it go in.

Mr. Wagner: Well, I did not want to hold back anything that might throw light on the matter.

40 The Vice-Chancellor: Well, anyhow, if you say the statute will give you the benefit of this as presumptive evidence, you cannot

*Karl Schaffer, for defendant, direct.*

better it by anything this witness says, can you?

Mr. Wagner: Well, your Honor has given them an opportunity to prove whatever they had to prove; but we will show that she is the same person.

10

*Q* At the time that you conversed with Mr. ~~Schaffer~~ <sup>Shearer</sup> in 1925, and at the time that you conversed with Mr. Simon and with Mr. Wolfskiel, had this notice been drawn and signed by you and turned over to Mr. Bauer for service? A Yes, sir.

*Q* Do you recall when you prepared that, and turned it over to Mr. Bauer for service? A I could not remember that, except from the records; I couldn't remember exactly. It was 1919.

20

The Vice-Chancellor: Is there anything in that record that shows when he turned it over to Mr. Bauer?

The Witness: I turned it over the day before it was served.

The Vice-Chancellor: I will strike out what he says about it being served, because there is no proof of that.

30

*Q* But you do recall that you turned it over to Mr. Bauer for service before the conversations that you have related? A Oh, yes—years before.

*Q* Have you related all the substance of the conversation that took place between you and Mr. Shearer? A As far as I remember.

*Q* And between you and Mr. Simon? A As far as I remember.

40

*Karl Schaffer, for defendant, direct.*

Q And between you and Mr. Wolfskiel? A Yes, sir—the substance of it; I won't say I used the exact words.

Q No, I am speaking of the substance of it? A Yes, sir.

10 Q I show you a letter which is marked Exhibit P. A. 2, dated January 3, 1920, purporting to come from William J. Shearer, which Mr. Shearer has testified to, and ask you did you receive that letter? A Yes, sir.

Q Did you reply to Mr. Schaffer in regard to that? A I did.

Mr. Wagner: You have the reply to that letter, Mr. Engelke?

20 Mr. Engelke: Yes (producing and handing to examining counsel a paper).

Q I show you letter dated January 5, 1920, which is marked Exhibit C. 3—a letter from you to Mr. Shearer, and which apparently is in reply to that (Exhibit P. A. 2), and ask you if you wrote this letter? A I dictated this letter; I remember dictating it.

Q But it was at your instance that that letter was written? A Yes, sir.

30 *By the Vice-Chancellor.*

Q Is that your signature attached to the letter? A No.

Q Whose is it? A The stenographer's.

Q The stenographer signed at your direction? A Yes, sir.

*By Mr. Wagner.*

40 Q And you take the responsibility for that letter? A Yes, sir.

*Karl Schaffer, for defendant, cross.*

(The letter was thereupon handed by examining counsel to the Court.)

Mr. Wagner: Now, Mr. Engelke, you have the Steinberg letter?

(Mr. Engelke produced the letter called for and handed the same to examining counsel.)

10

Q Mr. Schaffer, I draw your attention to the fact that the notice to redeem is addressed to "William J. Shearer and Mrs. William J. Shearer, wife of William J. Shearer, Jr."—did you or did you not know, at that time, whether Mr. William J. Shearer was married? A I did not know; I thought he was married, and I turned over the notice to Mr. Bauer, also a notice to be served on his wife; and afterwards I was informed that he was single.

20

Q Now, this notice is also addressed to a "Morris Steinberg"—I ask you to explain why the name "Morris Steinberg" appears on that notice? A There appeared on the search a judgment against a William Shearer in favor of Morris Steinberg, and we included them, and afterwards I received information that the "William Shearer" mentioned in this judgment is not the same Shearer that we were interested in, and we did not serve them.

30

*Cross examination by Mr. Engelke.*

Q Mr. Schaffer, you say you did not see Mr. Shearer in 1919? A No.

Q You are positive of that? A Positive.

Q You did not hear from him, or his father, or anyone else, until 1925—is that right? A That is not so; I heard from his father by telephone, and also by the letters produced.

40

*Karl Schaffer, for defendant, cross.*

Q You heard from his father? A Yes.

Q In 1920? A Whenever the letter says; I do not remember the date.

Q Prior to that, you had not seen Mr. William J. Shearer, is that right? A No, sir.

10 Q You never talked to him in your library, as he has described, or in Judge David's library in Elizabeth? A I did not speak to him in Judge David's library at any time. It was at my desk, when he came in and told me what I said.

Q And that was in what month in 1925? A The only way I can recollect is just before this letter came.

*By the Vice-Chancellor.*

20 Q Which letter? A The letter sent by Mr. Shearer, Jr.

Q Just prior to the letter, Exhibit D. 1? A Yes, sir—just a few days before this letter came.

Q And that letter is undated, is it not? A Yes, it is not dated.

*By Mr. Engelke.*

Q The letter came just in the form in which it is here? A Just as it is there.

30 Q Did you ever answer this letter? A To the best of my knowledge, I did; I could not find a copy of my letter.

Q How soon after did you answer it? A I cannot say—in a day or so—in the usual routine—probably the next day, or two days later.

Q You say you searched for that letter, did you? A Yes, sir.

40 Q A copy of the letter? A No, I did not search for that particular letter, I searched for all letters that we had.

*Karl Schaffer, for defendant, cross.*

Q And you could not find any letter in answer to this? A No.

The Vice-Chancellor: When you say "in answer to this," what do you relate to?

Mr. Engelke: Referring to Exhibit D. 1.

10

Q But you did answer him, five years before, in January, 1920, "I beg to say that the time to redeem this property has expired and I am now preparing the papers in order to take title to the same"—that is right?

Mr. Wagner: I object; I do not want any confusion here. Mr. Engelke refers to "him"—now we had letters from William J. Shearer, the father, who is now dead, and we had letters from William J. Shearer, Jr.—to which do you refer?

20

Mr. Engelke: Exhibit D. 3, addressed to "William J. Shearer."

Mr. Wagner: That is the father, William J. Shearer, this complainant is William J., Jr.

Mr. Engelke: I will let the question stand:

Q Did you write that to him? A I wrote that to Mr. William Shearer, Sr.—to the father—in reply to this letter.

30

Q Now, Mr. Schaffer, as a matter of fact, according to the exhibit which you have offered here—

The Vice-Chancellor: Which one—Exhibit what?

Mr. Engelke: Exhibit C. 9, the certified copy of the tax sale proceeding.

40

*Karl Schaffer, for defendant, cross.*

Q —if the statements there made, or sworn to, are true, you did have the papers served in October, 1919, didn't you? A Whatever the paper says.

Q And you had the papers typewritten and ready for execution in October, 1919, hadn't you?  
10 A Not all of them.

Q I am not asking about "all of them," but that one? A Yes, that one; we prepared the notice and the affidavit of service, and I think that is what I had at that time.

Q Your affidavit of non-redemption you did not make at that time, did you? A I don't think so.

Q You say you don't know? A I don't think so.

Q Well, why, if you had already prepared  
20 papers, Mr. Schaffer, did you say "I am now preparing the papers in order to take title to same"? A Well, the only way I can explain it—I don't remember what was in my mind at the time—the notices were made—they were at my desk, ready to do the rest of the work, and I thought, instead of going through that, I would take a quit-claim deed and save all that; that is my recollection.

Q And you left it off record until April 13,  
30 1925, didn't you? A I must have, yes, if the record so shows.

Q Why did you leave it off of record so long? A The property, at that time, was practically valueless; there were taxes in arrears, and I really did not consider—

Q (Interrupting.) And yet you say that Mr. Shearer was about to redeem that property by paying you the amount that was due on it?  
40 A I did not say that. I did not get any offers.

*Karl Schaffer, for defendant, cross.*

Q What did you mean when you wrote this letter (I am speaking now of Mr. Shearer, Sr.)—when you wrote him this letter of January 25, 1920, that he had no right to redeem, and you were preparing the papers? A That is right.

Q What did you mean by that? A I simply meant this—that while I had title to the property, and while it was not worth very much, I was not going to give him the benefit of my work, and, in view of the further fact that he was in bankruptcy and trimmed everybody, I was not going to do it. 10

The Vice-Chancellor: I do not think it is fair to say that; I will strike that out—that is harsh language to use—about him being “in bankruptcy and trimming everybody.” It may be so, and it may not; but I cannot leave it stand as stated by you in that way. 20

Q And, notwithstanding that, you have never changed your opinion, from the time you wrote the letter of January 5, 1920, to this time, about not permitting Mr. Shearer, or his father, or anyone else, to redeem this property, have you? A No, sir; I have not. 30

Q You have always maintained that it was yours and you were going to keep it? A Yes.

Q And if they had come to you with one hundred dollars in their pockets (if that were enough to redeem) and had said, “Mr. Schaffer, here is one hundred dollars in cash, we want to redeem,” you would have said, “Nothing doing,” wouldn’t you?

Mr. Wagner: Just a moment—within what time? 40

*Karl Schaffer, for defendant, cross.*

Mr. Engelke: At any time, up to the present.

Mr. Wagner: You mean, up to the time to redeem expired?

Mr. Engelke: Yes.

10 The Vice-Chancellor: We don't know what time the time to redeem expired.

A Well, after I thought the time to redeem had expired I would not have accepted just the amount of redemption.

Q You mean to say that, at no time after you had served this notice, and the sixty days had expired, you would not take it, even though you did not have the papers recorded, don't you?

A No, sir; I would not take it.

20 Q You would not take it? A No, sir.

Q Now, as matter of fact, Mr. Schaffer, the Pennington street property—

The Vice-Chancellor: (To Mr. Engelke.) Let me ask, does that question of yours relate to the Tax Sale Certificate of 1916 for the year 1915, or does it relate to all of the certificates?

30 Mr. Engelke: No, sir; it only relates to that one, because the others are in a different posture entirely.

Q As a matter of fact, Mr. Schaffer, the sales of the Pennington street property have never been perfected by proceeding to give the notice to redeem, have they? A As far as I can remember, it was.

40 Q Do you mean that you have served notice to redeem and recorded your certificates? A I don't remember, unless I see the records; I have

*Karl Schaffer, for defendant, cross.*

quite a few of them, and I would not remember unless I saw those records.

Q But if I was to tell you that they were not recorded as deeds, and were to ask you whether or not you would accept redemption now, what would you say?

10

Mr. Wagner: Objected to.

The Vice-Chancellor: I will permit it. I can see where it is leading to.

A I would say this, if I could satisfy myself that good service was gotten—

*By the Vice-Chancellor.*

Q No, he is assuming that the service was not good; he is assuming, in his question, that you did not perfect the proceedings that were required by the law to be perfected, which would prevent the person from redeeming, and then, if he was willing to redeem, would you give him an opportunity to redeem? A Yes, sir; I would.

20

The Vice-Chancellor: (To Mr. Engelke.) That was your question, was it not?

Mr. Engelke: That is the question, exactly.

30

*By the Vice-Chancellor.*

Q When Mr. Shearer did call to see you (whatever time it was), did he speak to you about the parcels 900 and 902 West Grand street?

A No, sir; he did not mention it.

Q When did you acquire the certificate of sale for the Pennington street property—what year? A I cannot remember that.

40

*Charles L. Bauer, Jr., for defendant, direct.*

Q Well, was it before 1925? A Oh, yes; quite a few years before that.

CHARLES L. BAUER, JR., SWORN.

10

*Direct examination by Mr. Wagner.*

Q Mr. Bauer, where do you reside? A Elizabeth.

Q What is your occupation? A Title-searcher and real estate.

Q You serve process sometimes, do you? A I did, yes.

20 Q Did you serve process, occasionally, for Judge David? A Not in recent years, but I did in 1919 and 1920.

Q And you served notices in proceedings for the perfection of tax sale titles? A I did.

Q Many of them? A Many of them.

Q Do you know Mr. William J. Shearer? A Very well.

Q Did you know him in 1919? A Yes.

30 Q I show you Certificate No. 2206, tax sale certificate for premises 900-902 West Grand street, which is marked in evidence, and ask you if you ever saw that before? A This particular certificate?

Q Yes. A Yes, I have.

*By the Vice-Chancellor.*

Q Under what circumstances did you see it? A Why, I have seen them several times; I only saw them about—

40 Q Not "them"—this particular certificate? A I got it out about two weeks ago for Mr. Edward

*Charles L. Bauer, Jr., for defendant, direct.*

Bauer, the Register; that is when I saw them last, but I saw them before that.

Q I am directing your attention to this particular certificate? A Yes, this particular certificate I saw probably a month ago.

Q That was the first time that you saw it, was it? A The first time I saw this particular one, yes. 10

Q Well, that is the one he is calling your attention to; it is No. 2206. The first you saw that was about a month ago? A Yes.

*By Mr. Wagner.*

Q I draw your attention to the paper addressed to William J. Shearer, Sr., and Mrs. William J. Shearer, Sr., and to William J. Shearer, Jr., and to Morris Steinberg, relating to Nos. 900, 902 West Grand street, and which appears to be a notification to them— 20

The Vice-Chancellor: Do not say what it "appears to be."

Q —which is attached to this certificate, and ask you when you last saw that, and what you did with it? A When I last saw it? 30

Q Yes. A I saw it at the same time I saw this (referring to the certificate); it was all tacked together.

*By the Vice-Chancellor.*

Q That is, about a month ago, you mean? A Yes.

Q At the Register's Office you took it out and looked at it? A Yes. 40

*Charles L. Bauer, Jr., for defendant, direct.*

*By Mr. Wagner.*

Q I mean, did you have it in your possession at any time before then? A That I don't remember; but I certainly had that in my possession.

10 The Vice-Chancellor: You say "that"—do you mean what he is directing your attention to?

The Witness: Yes.

Q Did you have this or any copies of it? A Yes.

Q Copies of the notice? A Yes.

Q What did you do with those copies? A Served this one personally on Mr. Shearer, Jr.

20

*By the Vice-Chancellor.*

Q You do not mean that you served this one, you mean you served a copy of this one? A A copy of this one.

*By Mr. Wagner.*

Q On William J. Shearer? A Jr.

30 Q Do you recall when you did that? A Why, this date says—

The Vice-Chancellor: Have you any recollection, other than refreshing your recollection by looking at it?

Q Well, I ask you whose signature that is on the back of the notice? A That is mine.

Q "Charles L. Bauer"? A Yes.

Q And before whom did you sign that? A Mrs. Graff.

40

*Charles L. Bauer, Jr., for defendant, direct.*

Q On what day?

The Vice-Chancellor: How can he say that, very well, unless he is referring to that date (referring to the date stated in the jurat)? That date, I suppose, was set in there by Mrs. Graff, not by him. 10

The Witness: That is the day I signed it.

*By the Vice-Chancellor.*

Q How do you know that—you did not write that date down, did you? A No, sir. I served this notice on Mr. Shearer, Jr., on the 15th of October, 1919.

Q How do you know that? A Because that states so. 20

Q You mean that something written by somebody else states so? A Well, I swore to it, so I must have been there.

Q You say you did it, but the question is whether the party had a right to swear you. You mean that there is some typewriting there which indicates a date? A Yes.

Q And you think that refreshes your recollection as to when you served the notice? A Yes.

Q But, without looking at that writing, would you know what date you served it? A No, but I know I served some notice on William Shearer. 30

Q At some date? A Yes.

*By Mr. Wagner.*

Q Did you read this writing on the back of the notice before you signed it? A Yes.

Q And, at the time you read it, did you know whether the statements therein were true, or 40

*Charles L. Bauer, Jr., for defendant, direct.*

not? A They were, or else I would not have signed it.

Q Now, you set forth there that you served the notice to redeem on William J. Shearer on October 15, 1919? A That is right.

10 Q And you say that, at that time, when you signed this paper, you inserted the correct date? A Well, the dates were correct.

Mr. Engelke: I object to that.

The Witness: It was correct, or I would not have signed it, I said.

20 The Vice-Chancellor: I will have to strike out what the witness said just now. You had better not suggest anything, Mr. Bauer; let counsel take care of the case. (To Mr. Wagner: You see you are in error in your question; he did not say he inserted the date.)

Q You say now that the statement set forth on the back of this notice, and which you signed, represents a true statement of what you did? A Yes, sir.

30 Q Are you prepared to say, under oath today, that you served a notice to redeem, relating to these premises, on William J. Shearer, on October 15, 1919? A Yes, sir.

*By the Vice-Chancellor.*

Q Would you be willing to so swear, if it were not for the typewritten matter before you there? A As to the exact dates, I would not, no; but as to serving the notice on William J. Shearer, yes.

*Charles L. Bauer, Jr., for defendant, direct.*

*By Mr. Wagner.*

Q On the day set forth in that paper, did you, or did you not, swear to the truth of the contents?

Mr. Engelke: I object to that question.

10

The Vice-Chancellor: I sustain the objection, because that is a question I will have to determine when you get through here—as to the authority of this person to swear him.

Mr. Wagner: We will have to come back another day on this, your Honor.

The Vice-Chancellor: I will give you every opportunity to prove that fact. You know that if somebody who is not duly authorized by notarial commission to swear a person undertakes to swear him, it don't amount to anything.

20

Mr. Wagner: Yes, sir.

The Vice-Chancellor: And if there is any question about that, I will give both of you a full opportunity to straighten that matter out, because it may be an important matter, and, I take it for granted now, that it is.

Q At the time that you served this notice, did you serve any other notices? A At the same time?

30

Q Yes. A No.

*By the Vice-Chancellor.*

Q Where was this notice served? A At his home.

Q You heard Mr. Shearer's testimony this morning, that you served him sometime in the early part of October of 1919; your statement

40

*Charles L. Bauer, Jr., for defendant, cross.*

here sets it as the middle of October, 1919—  
which would you say is correct?

Mr. Engelke: He said, "sometime after  
the 15th."

10 The Vice-Chancellor: Your client testi-  
fied, as I recall it, that he believed it was  
served on the 19th of October; and Mr.  
Wagner drew his attention to the fact  
that if the paper shows the 15th, would that  
make his recollection any more certain; he  
said it would, but his best recollection was  
that it was on the 19th.

*Cross examination by Mr. Engelke.*

20 Q You said you had these papers in your  
hands about four weeks ago, or a month ago; is  
that right? A Yes.

Q Where did you have them in your hands?  
A At the Register's Office.

Q Why did you have them in your hands?  
A Why?

Q Yes. A Why, Mr. Schaffer wanted to  
get—

30 The Vice-Chancellor: Do not tell us what  
anybody said to you.

The Witness: Mr. Schaffer wanted to  
have these instruments produced in the court.

The Vice-Chancellor: You are not per-  
mitted to tell us what he wanted; you are  
asked a direct question.

(Question repeated.)

40 The Vice-Chancellor: Now, disregarding  
what anybody might have told you, what

*Charles L. Bauer, Jr., for defendant, cross.*

was the purpose of having them in your hands?

A Mr. Edward Bauer, the County Register (who is no relation to me, but a very good friend) asked me to get these papers out of the vault, which I did; he wanted to examine them. 10

Q Then they were in your possession for how long? A In my possession?

Q Yes. A About two or three minutes.

*By the Vice-Chancellor.*

Q Merely to transmit them to Mr. Bauer? A Yes, at the same time. And at the same time Mr. Bauer wrote a letter that these papers could not be taken out of his office. 20

*By Mr. Engelke.*

Q Did you examine them at that time? A No, I do not think so.

Q You did not have them open, like they are now on the table? A I may have looked at them, but I handed them right over to Mr. Edward Bauer.

Q Are you connected with the office there? A No, sir. 20

*By the Vice-Chancellor.*

Q How did you happen to be there at that time? A I was in talking to Mr. Bauer when Mr. Schaffer came in—in his office.

Q You were not connected with the office? A No, but I was in his private office, talking to Mr. Bauer.

Q And Mr. Bauer told you to go and get these papers? A Well, I have been around 40

*Mrs. Mabel S. Graff, (recalled) for defendant, direct.*

there for twenty years, I know as much about the place as anybody down there; so he happened to tell me to look them up.

*By Mr. Wagner.*

10 Q You were title searcher for the county for a time, were you not? A I do all the official work for the county.

Q You do the official searching for the county, do you not? A Yes; whenever they have any.

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MRS. MABEL S. GRAFF, recalled.

*Direct examination by Mr. Wagner.*

20 Q Mrs. Graff, I show you the notice concerning which Mr. Bauer has just now testified, and ask you if you ever saw him sign the back of that notice? A Yes, I saw him sign it.

Q You saw him sign it? A Yes, sir.

Q I ask you if the signature alongside is your signature? A That is mine.

30 Q I ask you if that was signed by you and by him on the day that you have therein set forth? A Yes, that very day.

*By the Vice-Chancellor.*

Q Now, how do you know when you put the typewriting on that paper—what refreshes your recollection as to that? A Well, Mr. Schaffer would have handed it to me, and then I would have typewritten it.

40 Q I understood Mr. Schaffer to say that there were three or four papers prepared, ready for service of some kind by Mr. Bauer, and they

*Mrs. Mabel S. Graff, (recalled) for defendant, direct.*

were in your possession—now, how do you know when you prepared that affidavit, even though it does bear that date of the 15th—how do you know the date that you wrote it out? A Why, I would have done it the same day he gave it to me.

Q Oh, well, you have, in your experience, antedate papers, and post-dated them? A Hardly ever. 10

Q But you have done it? A I may have.

Q “May have done it”—that is to say at some time you have antedated and post-dated papers, haven’t you? A You mean, took the acknowledgment ahead of time?

Q I mean dated them differently from the day on which you were writing them? A Well, I have done it—hardly ever. 20

Q The fact that you say “hardly ever” shows that you have done it, don’t it? A It shows it to me anyhow.

Q Now, when you say “hardly ever,” how many times do you think you did it—one hundred times, ten times, five times, or what?

Mr. Wagner: Is that very material to this question?

The Vice-Chancellor: You are trying to have this witness show that this writing by Mr. Bauer was made on this paper on a certain date— 30

Mr. Wagner: Well, we claim, your Honor that the time of counting, the two months within which he would have to redeem, is calculated from the day of the date of service; he himself admits that it was the 19th.

The Vice-Chancellor: Then it might become material; I don’t know; you folks are 40

*Mrs. Mabel S. Graff, (recalled) for defendant, direct.*

each objecting, one against the other, and I have got a record made up which I have got to pass upon afterwards; it may be material, and it may be immaterial. (To the witness: I will ask you no further about it.)

10 Mr. Wagner: As I understand, the record is clear that the service was October 19th—

The Vice-Chancellor: There don't seem to be any doubt about it; the reason I asked this question was for the purpose of testing the witness' credibility.

(The defendant rests.)

20 The Vice-Chancellor: I am sorry that the case has not been tried in a way that it could be disposed of now, but, because of the way it has been tried it cannot be disposed of now; and you have got to bring other defendants in; in the meantime, I suggest that you folks have this record written up, because it will be months before I get a look at it, and the thing will be pretty much out of my mind, without referring again to the record; but the record will refresh my mind, I think; and then you had better prepare your memorandums and submit them. I will give you some day as soon as I can, but I do not know just when it will be, when you can try the rest of your case after you bring in these other defendants.

30

Mr. Wagner: Wouldn't it be proper to take the testimony of these witnesses who are here?

40 The Vice-Chancellor: I will take these witnesses' testimony, if I have to sit here until five o'clock to do it; but I am speaking

*Mrs. Mabel S. Graff, (recalled) for defendant, direct.*

about the parties whom you would have to bring in. The case is not closed, anyhow; it remains open for you to make additional parties—Mrs. Tove, or whatever her name is, is one.

Mr. Engelke: That is all.

The Vice-Chancellor: Then you think you have amended your complaint—I do not think so—so you had better look at that, too. You have filed a notice for leave to amend, but I think you will find that that notice is not sufficient as to amendment.

10

Mr. Engelke: I have simply a question or two to Mr. Shearer.

The Vice-Chancellor: Go ahead; I will finish this case, if you want to finish with Mr. Shearer.

20

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#### COMPLAINANT'S REBUTTAL EVIDENCE.

WM. J. SHEARER, JR., recalled.

*Direct examination by Mr. Engelke.*

Q Mr. Schaffer has testified that the first time he saw you was in 1925—is that, or is it not, a fact? A It is not a fact.

30

Q The first time that you saw him was, as you testified, in October of 1919? A Right.

The Vice-Chancellor: What is the use of asking that?

Mr. Engelke: I want to bring in some corroborating proof.

40

*William J. Shearer, Jr., in rebuttal, direct.*

Q Is there anything that refreshes your memory as to whether or not you saw Mr. Schaffer in 1925? A Only that I received a letter from Mr. Schaffer, in answer to the letter that he exhibited, in which he said to call upon him, and I went down and saw Henry Wolfskiel, because I would not confer with Schaffer after my first experience in 1919.

Q And was there any date in your mind, or is there anything in evidence that refreshes your mind, as to the date that would indicate when those letters were written?

The Vice-Chancellor: What letters?

Q The letters which you have just referred to? A Why, I wrote all the individuals who had any liens, at the same time.

Q And those individuals were whom? A Wiltsie and Harrington & Company.

Q Just for the purpose of refreshing your memory as to the date, I show you a letter written by the Harrington Company to you, and a letter written to you by Mr. Wiltsie, and ask you whether the dates of those letters will help to refresh your memory with regard to the time you say you wrote Mr. Schaffer?

Mr. Wagner: I object to the use of data which is entirely extraneous of this case, and in regard to parties not concerned with this case, for use in the present case.

The Vice-Chancellor: He is doing it for the purpose of refreshing his recollection, as I understand; he is not offering the letters for any evidential value, but merely to indicate that those papers substantiate his state-

*William J. Shearer, Jr., in rebuttal, cross.*

ment that, at or about a certain time, he did a certain thing.

Mr. Wagner: All right.

A Yes, they do.

Q And that date is, then, what? A The 14th instant. 10

Q Of what? A Of March, 1925.

Q That was the date that you wrote to Mr. Schaffer? A It was; right.

*Cross examination by Mr. Wagner.*

Q Now, you say, Mr. Shearer, that these papers are an aid to you, to show that you talked to Schaffer before 1925? A No, that I wrote Schaffer in 1925, at that same time. 20

Q Now, you contradict Mr. Schaffer's testimony, which is that you never saw him until 1925, and you say you saw him in 1919? A Right.

Q And you bring these papers to aid your version of that story, is that correct? A I did not bring them; they were just put in.

Q I point out to you that these papers are dated March, 1925; this one (referring to the Schaffer letter) has no date on it; and that that "March, 1925," confirms Mr. Schaffer's version of the time when he spoke to you? 30

Mr. Engelke: Is not that argumentative?

The Vice-Chancellor: It is.

Mr. Engelke: I object to it, on the ground that it is argumentative.

The Vice-Chancellor: I will have to sustain the objection, because it is argumentative. You say it confirms Mr. Schaffer's 40

*William J. Shearer, Jr., in rebuttal, cross.*

version of the thing—now, that is for me to determine, is it not?

Mr. Wagner: Very true, your Honor.

10 Q If you desire to point out that you had a conversation with Mr. Schaffer in 1919, and rely upon this letter to confirm that, I ask you to point out to me how a letter dated March, 1925, has any relevancy to a conversation in 1919?

Mr. Engelke: I object to it; there is no such contention, and no such offer.

The Vice-Chancellor: I understood your contention to be that these papers would substantiate his statement that he talked with Mr. Schaffer prior to 1925?

20 Mr. Engelke: No, it would verify the fact that he wrote Mr. Schaffer in 1925, but did not talk to him.

The Vice-Chancellor: Mr. Schaffer says the first time he had any talk with this man was in 1925; now, you say it was in 1919?

Mr. Engelke: It was.

30 The Vice-Chancellor: And he is insisting that it was 1925—now, wherein do either one of these papers confirm your story that it was in 1919?

Mr. Engelke: I do not offer them for that purpose.

The Vice-Chancellor: I thought they were being offered for that purpose.

40 Mr. Engelke: No; I dislike to take the time, but here is a letter that is undated—Exhibit D. 1 is undated—therefore, I want to show that this letter (D. 1), like the ones that were sent out and brought these replies,

*William J. Shearer, Jr., in rebuttal, cross.*

were sent about the same time, namely, in March, 1925—that, by letter, the witness corresponded with not only Schaffer, who had liens, but with others who had liens.

The Vice-Chancellor: Well, your insistence is, then, that these two letters which have been referred to, written in March, 1925, couple up with this Exhibit D. 1? 10

Mr. Engelke: Yes.

The Vice-Chancellor: And not at all with the 1919 conversation, or alleged conversation?

Mr. Engelke: Exactly.

The Vice-Chancellor: All right; I do not suppose you will have any difficulty about that, Mr. Wagner? 20

Mr. Wagner: No, sir.

Mr. Engelke: I offer these letters now.

The Vice-Chancellor: What is the purpose of it?

Mr. Engelke: The purpose is to give a date to this undated letter, Exhibit D. 1.

The Vice-Chancellor: If there is no objection, I will admit them, but I cannot see the relevancy. Your client says the first time he spoke to Schaffer was 1919; the other man says 1925; now, wherein do these letters change the matter? 30

Mr. Engelke: In the first place, he said he did not speak to Schaffer in 1925, but he wrote Mr. Schaffer; and Mr. Schaffer produces the letter, and it is part of the *res gestae*; these letters are all as to one kind of transaction; and it bears the witness out to this extent—that it may be assumed that 40

*William J. Shearer, Jr., in rebuttal, cross.*

he wrote to all of the parties, but did not see them, in 1925. That is my point.

The Vice-Chancellor: Well, some of these letters indicate a telephone conversation.

Mr. Engelke: That was away back in 1920.

10

The Vice-Chancellor: I will receive them over your objection, Mr. Wagner, for just whatever they may be worth. I do not see the relevancy of them just at this time, myself.

(The letters were thereupon marked, respectively, Exhibit C. 10 and Exhibit C. 11.)

20

30

40

*Complainant's Exhibits.***EXHIBIT C. 1.**

Full covenant and warranty deed from ELIZABETH HEIGHTS REALTY COMPANY, a corporation of New Jersey, to WILLIAM J. SHEARER JR., Dated April 2, 1917, Recorded in the Union County Register's office on July 23, 1917, in Book 707 of Deeds for said County, at page 500, conveying to grantee, the fee simple title to: 10

ALL those tracts or parcels of land and premises, hereinafter particularly described, situate, lying and being in the City of Elizabeth, in the County of Union and State of New Jersey and more particularly described as being Lot (1) One, in Block (6), Lot (32) thirty-two in Block (3) and Lots (1), (2) two and (4) four in Block (4). All the above lots are on a certain map entitled "Map of Bellvue Property, in the City of Elizabeth, N. J. belonging to Isaac Holbrook, Meyer & Wonneberg, Surveyors, Elizabeth, N. J. 1868". 20

**EXHIBIT C. 2.**

Elizabeth, N. J.,  
Dec. 22, 1919. 30

Mr. Morris Steinberg,  
c/O Judge Abe David,  
Elizabeth, N. J.

Dear Sir;—

I understand that you have bought at tax-sale the following. Kindly let me know what amount is standing against each.

Lot 217-219 William Ave.

Lot 181-183 William Ave. 40

*Complainant's Exhibits.*

Lot 203-205 William Ave.  
 Lot 900-902 West Grand St.  
 Yours truly,

**EXHIBIT C. 3.**

10

KARL F. SCHAFFER  
 Real Estate  
 215 Broad Street, Elizabeth, N. J.

Jan. 5, 1920.

William J. Shearer, Esq.,  
 1100 Anna Street, City.

Dear Mr. Shearer:

20 Replying to yours of the 3rd instant, I beg to say that I have not received your letter of December 22nd, and would suggest that you inquire at the Post Office to ascertain what became of it.

30 As for lots 217, 219, 181, 183, 203, and 205 William Avenue and 900 and 902 West Grand Street, I beg to say that the time to redeem this property has expired, and I am now preparing the papers in order to take title to same. If you can save me the costs of going through this proceeding, I would be glad to pay a nominal sum for a Quit Claim Deed to the lots and save myself the costs and labor in connection with this work. Of course this offer should not prejudice my title to the property.

If you are willing to do this, I would suggest that you make an appointment to meet me at this office. I think we can get together on this matter.

Yours very truly,

Karl Schaffer

G.

40

*Complainant's Exhibits.*

**EXHIBIT C. 4.**

#14946.

COMPTROLLER'S OFFICE.

Elizabeth, N. J., March 12th, 1925.

I, DENNIS F. COLLINS, Comptroller of the City of Elizabeth, do hereby certify that I have examined the records in this office, and I find no Taxes or Assessments unpaid upon the property as shown on the above diagram except the following: 10

Included in sale of Nos. 861-863 and 901-907 Pennington Street, November 9, 1916 for taxes of 1915 to Harrington Company in fee.

Included in sale of Nos. 861-863 and 901-907 Pennington Street November 12, 1917 for taxes of 1916 to Harrington Company in fee. 20

Included in sale of Nos. 861-863 and 901-907 Pennington Street July 26, 1920 under Chapter 237 Laws 1918 to Charles H. Wiltsie at 0% redemption fee.

Included in sale of Nos. 861-907 Pennington Street, April 4, 1921 under Chapter 237 Laws 1918 to Charles H. Wiltsie at 8% redemption fee. 30

Included in sale of Nos. 861-907 Pennington Street, June 26, 1922 under Chapter 237 Laws 1918 to Charles H. Wiltsie at 8% redemption fee.

Included in sale of Nos. 861-907 Pennington Street, March 12, 1923 under Chapter 237 Laws 1918 to Karl Schaffer at 0% redemption fee for.....\$ 49.50 40

*Complainant's Exhibits.*

	Included in sale of Nos. 861-907 Pennington Street, March 10, 1924 under Chapter 237 Laws 1918 to Karl Schaffer at 8% redemption fee for.....	52.10
	Add interest at 8% from March 10, 1924.	
10	Taxes 1923 .....	12.36
	“ 1924 .....	12.32
	Add interest at 8% on one-half of these amounts from June 1st, of each year and on the remaining one-half from December 1st of each year.	
	Grading and Flagging Pennington Street	173.00
	Add interest at 8% from August 30, 1923.	
	Sewer in Pennington Street.....	337.70
20	Add interest at 8% from September 20, 1924.	
	Signed Dennis F. Collins Comptroller.	

**EXHIBIT C. 5.**

#15075.

**COMPTROLLER'S OFFICE.**

30 Elizabeth, N. J., March 26th, 1925.

I, DENNIS F. COLLINS, Comptroller of the City of Elizabeth, do hereby certify that I have examined the records in this office, and I find no Taxes or Assessments unpaid upon the property as shown on the above diagram except the following:

40 Included in sale of Nos. 861-863 and 901-907 Pennington Street November 9, 1916 for taxes of 1915 to Harrington Company in fee.

*Complainant's Exhibits.*

Included in sale of Nos. 861-863 and 901-907 Pennington Street November 12, 1917 for taxes of 1916 to Harrington Company in fee.

Included in sale of Nos. 861-863 and 901-907 Pennington Street July 26, 1920 under Chapter 237 Laws 1918 to Charles H. Wiltsie at 0% redemption fee. 10

Included in sale of Nos. 861-907 Pennington Street, April 4, 1921 under Chapter 237 Laws 1918 to Charles H. Wiltsie at 8% redemption fee.

Included in sale of Nos. 861-907 Pennington Street, June 26, 1922 under Chapter 237 Laws 1918 to Charles H. Wiltsie at 8% redemption fee. 20

Included in sale of Nos. 861-907 Pennington Street, March 12, 1923 under Chapter 237 Laws 1918 to Karl Schaffer at 8% redemption fee.

Included in sale of Nos. 861-907 Pennington Street, March 10, 1924 under Chapter 237 Laws 1918 to Karl Schaffer at 8% redemption fee for.....\$ 52.10

Add interest at 8% from March 10, 1923. 30

Taxes 1923 ..... 18.54

“ 1924 ..... 18.48

Add interest at 8% on one-half of these amounts from June 1st of each year and on the remaining one-half from December 1st of each year.

Signed Dennis F. Collins  
Comptroller.

*Complainant's Exhibits.***EXHIBIT C. 6.**

#17505.

## COMPTROLLER'S OFFICE.

Elizabeth, N. J., September 24th, 1925.

10 I, DENNIS F. COLLINS, Comptroller of the City of Elizabeth, do hereby certify that I have examined the records in this office, and I find no Taxes or Assessments unpaid upon the property as shown on the above diagram except the following:

Sold November 9, 1916 for taxes of 1915.  
to Karl Schaffer in fee.

20 Sold November 12, 1917 for taxes of 1916  
to Karl Schaffer for the term of 2  
years.

Bought by the City of Elizabeth at sale  
held July 26, 1920 under Chapter 237  
Laws 1918 at 8% redemption fee for.. \$21.27

Add interest at 8% from July 26, 1920.

	Taxes 1919 .....	10.00
	“ 1920 .....	13.70
	“ 1921 .....	15.10
	“ 1922 .....	15.90
30	“ 1923 .....	15.45
	“ 1924 .....	15.40

Add interest at 8% on one-half of these  
amounts from June 1st of each year and  
on the remaining one-half from Decem-  
ber 1st of each year.

Taxes 1925 .....\$ 16.40

Gas connection #900 West Grand Street.. 16.00

Add interest at 8% on one-half of these  
amounts from June 1, 1925.

40

*Complainant's Exhibits.*

Sewer, West Grand Street..... 196.73

Add interest at 8% from September 20,  
1924.

Paving, West Grand Street..... 259.00

Add interest at 8% from March 28, 1925.

Dennis F. Collins 10  
Comptroller.

**EXHIBIT C. 7.**

#17507.

**COMPTROLLER'S OFFICE.**

Elizabeth, N. J., September 24th, 1925.

I, DENNIS F. COLLINS, Comptroller of the  
City of Elizabeth, do hereby certify that I have  
examined the records in this office, and I find no  
Taxes or Assessments unpaid upon the property  
as shown on the above diagram except the fol-  
lowing:

Nos. 181-3 Halstead Road.

Sold November 9, 1916 for taxes of 1915  
to Karl Schaffer in fee.

Sold November 12, 1917 for taxes of 1916  
to Karl Schaffer in fee.

Bought by the City of Elizabeth at sale  
held July 26, 1920 under Chapter 237  
Laws 1918 at 8% redemption fee for..\$110.14  
Add interest at 8% from July 26, 1920

20

30

40

*Complainant's Exhibits.*

	Taxes 1919 .....	5.00
	“ 1920 .....	10.96
	“ 1921 .....	12.08
	“ 1922 .....	12.72
	“ 1923 .....	12.36
	“ 1924 .....	12.32
10	Add interest at 8% on one-half of these amounts from June 1st of each year, and on the remaining one-half from December 1st of each year.	
	Taxes 1925 .....	\$ 13.12
	Add interest at 8% on one-half of this amount from June 1, 1925.	
	Relaying sidewalk .....	84.00
	Add interest at 8% from July 21, 1921.	
20	Nos. 203-5 Halstead Road.	
	Sold November 9, 1916 for taxes of 1915 to Karl Schaffer in fee.	
	Sold November 12, 1917 for taxes of 1916 to Karl Schaffer in fee.	
	Bought by the City of Elizabeth at sale held July 26, 1920 under Chapter 237 Laws 1918 at 8% redemption fee for..	110.15
	Add interest at 8% from July 26, 1920	
30	Taxes 1919 .....	5.00
	“ 1920 .....	10.96
	“ 1921 .....	12.08
	“ 1922 .....	12.72
	“ 1923 .....	12.36
	“ 1924 .....	12.32
	Add interest at 8% on one-half of these amounts from June 1st of each year and on the remaining one-half from December 1st of each year.	
40	Taxes 1925 .....	13.12

*Complainant's Exhibits.*

Add interest at 8% on one-half of this,  
amount from June 1, 1925.

Laying sidewalk ..... 84.00

Add interest at 8% from July 21, 1921.  
Nos. 217-219 Halstead Road.

Sold November 9, 1916 for taxes of 1915  
to Karl Schaffer in fee. 10

Sold November 12, 1917 for taxes of 1916  
to Karl Schaffer in fee.

Bought by the City of Elizabeth at sale  
held July 26, 1920 under Chapter 237  
Laws 1918 at 8% redemption fee for... 110.14

Add interest at 8% from July 26, 1920.

Taxes 1919 ..... 5.00  
" 1920 ..... 10.96

DENNIS F. COLLINS, Esq., Comptroller: 20

Please search for Unpaid Taxes, Assessments  
and sales affecting the premises on the ac-  
companying diagram and certify the result below  
for *Owner's Name*

COMPTROLLER'S OFFICE.

Elizabeth, N. J.,.....19 30

I, DENNIS F. COLLINS, Comptroller of the  
City of Elizabeth, do hereby certify that I have  
examined the records in this office, and I find no  
Taxes or Assessments unpaid upon the property  
as shown on the above diagram except the fol-  
lowing:

Taxes 1921 .....\$ 12.08  
" 1922 ..... 12.72  
" 1923 ..... 12.36  
" 1924 ..... 12.32 40

*Complainant's Exhibits.*

Add interest at 8% on one-half of these amounts from June 1st of each year, and on the remaining one-half from December 1st of each year.

	Taxes 1925 .....	13.12
10	Add interest at 8% on one-half of this amount from June 1, 1925.	
	Laying sidewalk .....	84.00
	Add interest at 8% from July 21, 1921.	

D. F. Collins  
Comptroller.

**EXHIBIT C. 8.**

20

#17506.

## COMPTROLLER'S OFFICE

Elizabeth, N. J., September 24th, 1925.

I, DENNIS F. COLLINS, Comptroller of the City of Elizabeth, do hereby certify that I have examined the records in this office, and I find no Taxes or Assessments unpaid upon the property as shown on the above diagram except the following:

30

Sold November 9, 1916 for taxes of 1915 to Karl Schaffer in fee.

Sold November 12, 1917 for taxes of 1916 to Karl Schaffer in fee.

Bought by the City of Elizabeth at sale held July 26, 1920 under Chapter 237

Laws 1918 at 8% redemption fee for...\$110.14

Add interest at 8% from July 26, 1920.

40

*Complainant's Exhibits.*

Taxes 1919 .....	5.00	
“ 1920 .....	10.96	
“ 1921 .....	12.08	
“ 1922 .....	12.72	
“ 1923 .....	12.36	
“ 1924 .....	12.32	
Add interest at 8% on one-half of these amounts from June 1st of each year and on the remaining one-half from December 1st of each year.		10
Taxes 1925 .....	\$ 13.12	
Add interest at 8% on one-half of this amount from June 1, 1925.		
Laying sidewalk .....	84.00	
Add interest at 8% from July 21, 1921.		
Signed Dennis F. Collins		20
Comptroller.		

**EXHIBIT C. 9.**

THIS IS TO CERTIFY that I, JOSEPH F. S. FITZPATRICK, Secretary of the State of New Jersey, have made due and diligent search in the records of my office relating to commissions issued to persons in the State of New Jersey, as and for notary publics therein, and I find that on June 26th, 1924 a commission was issued by the Governor of the State of New Jersey, His Excellency, George S. Silzer, to Mabel S. Graff, of 210 Broad Street, Elizabeth, this state, for a period of five years, expiring June 26th, 1929;

And I further certify that I have made further search and I find that the foregoing is the only record in my office of any commission issued to or in the name of Mabel S. Graff or Mabel

30

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*Complainant's Exhibits.*

**EXHIBIT C. 11.**

HARRINGTON COMPANY

*Investments*

550-552 Montgomery Street

Jersey City, N. J.

In replying please refer to No.  
4527-5893

10

W. J. Shearer Jr.  
1100 Anna St.  
Elizabeth, N. J.

We are in receipt of your favor of the 14th inst. with reference to Lots Nos. 861-863-901-907, Map of Elizabeth

Replying thereto would say that you may redeem this property any time on or before March 31st. upon the payment of the sum of \$120.61 Upon receipt of your check for the above sum by return mail we will have the original certificate of sale properly endorsed showing that it has been surrendered for the purposes of cancellation and will forward same to you.

20

Yours truly,

HARRINGTON COMPANY,

By R. E. Whitman  
Secretary

30

Dictated A.

40

*Complainant's Exhibits.***EXHIBIT C. 9.**

City of Elizabeth	No. 2206 City of Eliza-
to	beth Tax \$7.76
Karl Schaffer	Sold for \$9.81
	Unpaid Tax Assess-
	ment Certificate

10

I, the Comptroller of the City of Elizabeth, Do Hereby Certify, that I have duly prepared a transcript of the Unpaid taxes assessed in the year nineteen hundred and fifteen so far as the same have been assessed upon any lands and real estate, within the said city or are a lien upon such lands and real estate; and have duly caused a notice to be published and printed in a newspaper printed and circulating in said city stating that said transcript of unpaid taxes has been made and that unless said taxes should be paid at my office within twenty days after the first publication of said notice the same would be collected by public sale according to law: And

20

I Do Further Certify that under and in pursuance of an act of the Legislature of the State of New Jersey, entitled "An Act for the assessments and collection of taxes" Approved April 8th, 1903, and the acts amendatory thereof and supplemental thereto I *ddi* give public notice, that on the ninth day of November, 1916 at twelve o'clock noon, at my office in the City Hall, in the City of Elizabeth aforesaid, I would expose for sale and sell the several tracts or parcels of land therein specified, including the herein described lands, or any part or parts of such lots sufficient for the purpose, on which taxes for the year nineteen hundred and fifteen then remaining in arrears to such person or persons as would purchase the same for the

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*Complainant's Exhibits.*

shortest term and pay the tax lien thereon, including interest, and costs, of sale or in fee when no one would bid for a shorter term stating the names of delinquents the land to be sold and the amount of the delinquent taxes thereon by advertisements, signed by me the said Comptroller and published once in each week for at least four weeks successively next preceding the day appointed for said sale in the Elizabeth Daily Journal and the Elizabeth Evening Times, being the newspapers named as the official papers of said City of Elizabeth, in which legal notices are required to be published, and printed published and circulating in said City and at the time and place so advertised I did expose the same to sale by public vendue, and there being no one who would bid for a shorter term I did then offer and expose the same to sale in fee in pursuance of the aforesaid act, whereupon Karl Schaffer did at such sale purchase the lot tract or parcel of land and real estate in the tenth ward of said City, and known and distinguished as L. 900 902 West Grand Street, assessed and taxes as the property of W. J. Shearer and further distinguished in the record of unpaid taxes Liber six, in my office, in fee; for the sum of Nine and 81/100 dollars, being the amount of the assessment for taxes for the year nineteen hundred and fifteen imposed upon and a lien on said lot, tract or parcel of land and real estate, and then remaining unpaid, including interest and cost of sale viz:

Amount for Tax of 1915.....	\$7.76
Interest .....	.55
Costs .....	1.50
	Total .....
	\$9.81

10

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*Complainant's Exhibits.*

In Consideration of which payment as aforesaid I did then and there sell said lot, tract or parcel of land and real estate to the said Karl Schaffer, his heirs and assigns, in fee as aforesaid, from which sale the right to redeem said lands will expire at the end of two years from the date of  
 10 said sale if notice to redeem is served more than sixty days before the end of the term or within sixty days after service of said notice, if served later, or in case no notice is given if there shall be no redemption within twenty years after the purchaser has entered into open possession since continued under the sale, then the rights of redemption will be barred:

In Witness Whereof, I the Comptroller of the City of Elizabeth aforesaid, have hereunto set  
 20 my hand and seal this twentieth day of November; one thousand nine hundred and sixteen,

DENNIS F. COLLINS (Seal)  
 Comptroller

STATE OF NEW JERSEY, } ss.  
 UNION COUNTY.

30 Be It Remembered that on this twentieth day of November, nineteen hundred and sixteen, before me a Commissioner of Deeds of said State, in and for said County, personally appeared Dennis F. Collins, the Comptroller of the City of Elizabeth, who I am satisfied, is the individual described in and who executed the above certificate and I having first made known to him the contents thereof, he thereupon acknowledged to me that he signed, sealed and delivered the same as his voluntary act and

40.

*Complainant's Exhibits.*

deed, for the uses and purposes therein expressed:

JNO. J. FARRELLY  
Commissioner of Deeds of N. J.

To  
William J. Shearer, Jr. Mrs. 10  
William J. Shearer, Jr. wife  
of William J. Shearer Jr.  
~~to~~  
Morris Steinberg

You are hereby notified that a public sale held by Dennis F. Collins, Comptroller of the City of Elizabeth, at the City Hall in said City on November 9th, 1916 under and by virtue of the provisions of an act of the Legislature of the State of New Jersey, entitled "An Act for the assessment and collection of taxes" approved April 8th, 1903 and the several acts supplementary thereto and amendatory thereof, Karl Schaffer, of the City of Elizabeth, State of New Jersey, bought for the sum of \$9.81 for unpaid taxes for the year 1915 a certain tract and parcel of land assessed in the name of W. J. Shearer and described as follows: 20

Lots 900 902 West Grand Street, 30

And you are hereby notified that you have or appear to have an interest, or estate in said land and real estate and a right to redeem the same and that unless said land or real estate be redeemed within two years after the said sale if this notice be served upon you more than sixty days before the expiration of said time or of not served until the expiration of said two years

*Complainant's Exhibits.*

then within sixty days, after the service of this notice your right of redemption will be barred.

Dated—

KARL SCHAFFER,  
Purchaser

10

STATE OF NEW JERSEY, }  
COUNTY OF UNION. } ss.

Charles L. Bauer, Jr. being duly sworn upon his oath deposes and says that for the purposes of serving the within notice to redeem he was the agent of Karl Schaffer, and that on the 15th day of October, 1919 he served duplicate of the within notice to redeem on William J. Shearer.  
20 Jr. by handing same to him.

CHARLES L. BAUER, JR.

Sworn and subscribed before me  
this 16th day of October, 1919

MABEL SEIBERT GRAFF  
Notary Public of New Jersey

30 STATE OF NEW JERSEY, }  
COUNTY OF UNION. } ss.

Karl Schaffer, being duly sworn deposes and says that he was the purchaser of premises known as numbers 900-902 West Grand Street, Elizabeth, New Jersey:—

That said premises were purchased by him by tax sale held by the Comptroller of the City of Elizabeth, on the 9th day of November 1916 for unpaid taxes of 1915.

40

*Complainant's Exhibits.*

That he caused <sup>search</sup> to be made to the title of the premises, above mentioned and ascertained that the parties appearing to have an interest of record, were William J. Shearer, Jr.

That he ascertained that the said William J. Shearer, Jr. was unmarried,

It also appeared from the record that one, Maurice Steinberg, held a judgment against the former owner of said property but upon investigation he ascertained that the judgment in question did not affect the said premises. 10

That he therefore caused Notice to redeem to be served on the said William J. Shearer, Jr. by Charles L. Bauer, Jr. his agent, Duplicate of said Notice and affidavit of Service of same is hereto attached,

That more than two years expired since the time of sale of said premises, and more than sixty days since the date of said notice to redeem. The said premises, not being redeemed from said sale 20

KARL SCHAFFER,

Sworn and subscribed to before  
me this eleventh day of April,  
1925

MABEL S. GRAFF  
Notary Public of New Jersey, 30

Rec'd April 13, 1925  
at 2:16 P. M. No. 16251

Recorded at request of K. Schaffer  
ten year deed filed

*Complainant's Exhibits.*

UNION COUNTY REGISTER'S OFFICE

STATE OF NEW JERSEY, }  
COUNTY OF UNION. }ss.

10 I, EDWARD BAUER, Register of the County  
of Union, do hereby certify that the foregoing is  
a true and correct copy of the record of a certain  
Tax Sale Certificate made by City of Elizabeth,  
(The Comptroller) to Karl Schaffer and also of  
the certificate of acknowledgment thereto an-  
nexed, as the same may be found recorded in my  
office in book 988 of Deeds for said County on  
Pages 230 &c

20 IN TESTIMONY WHEREOF, I have here-  
unto set my hand and official seal this 8th day  
of June A. D. 1926

EDWARD BAUER

(SEAL)

Register.

30

40

*Defendant's Exhibits.*

**EXHIBIT D. 1.**

1100 Anna Street,  
Elizabeth N, J;

Mr. Karl Schaffer,  
215 Broad St,  
Elizabeth N, J;

10

Dear Sir:

Enclosed please find memoranda of your liens against my property located at Nos. 861-863 and 901-907 Pennington Street Elizabeth N, J;

Will you kindly let me know at what price you will sell me your certificates on same that I may redeem?

Very truly yours,

William J. Shearer Jr.

20

Included in sale of Nos. 861-907 Pennington Street Elizabeth N, J; March 12 1923 under Chapter 237 Laws 1918 to Karl Schaffer at 10% redemption fee, for .....\$ 49.50

Included in sale of Nos. 861-907 Pennington Street Elizabeth N, J; March 10, 1924 under Chapter 237 Laws 1918 to Karl Schaffer at 8% redemption fee, for.\$ 52.10

30

*Defendant's Exhibits.*

**EXHIBIT D. 2.**

WM. J. SHEARER  
Elizabeth,  
N. J.

Jan. 3, 1920/

10 Mr. Karl Schaffer,  
Atty At Law,  
Elizabeth, N. J.

My dear Mr. Schaffer;—

As I said to you on phone, on Dec. 22, wrote you concerning some lots of my sons, Ralph Shearer and William J. Shearer, Jr/ which you bought in for taxes.

20 Not having heard from you, I called up on phone, but found you were out of city for a time.

In accordance with your suggestion over phone a few minutes ago, I am writing you as to the lots. My last letter must have gone astray, though I am sure I snet in care of Judge David.

The lots are as follows:—

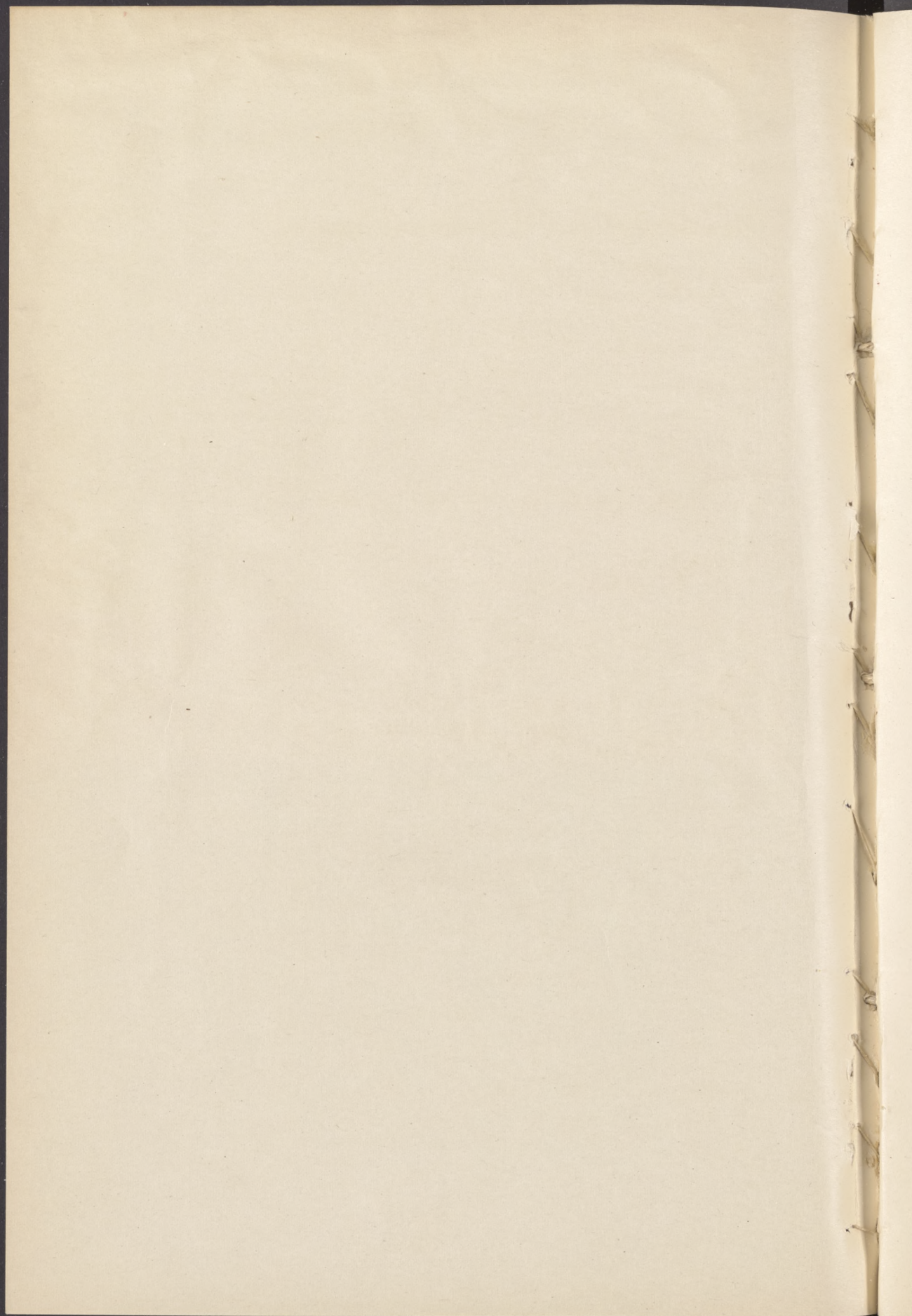
30 Lot 217-219 William Ave  
Lot 181-183 William Ave  
Lot 203-205 William Ave  
Lot 900-902 W. Grand St.

Thanking you for your attention to the matter, I am,

Very truly yours,

Wm. J. Shearer  
1100 Anna St

By reference to a present pending appeal, of the same defendant-appellant, case of Elizabeth Heights Realty Company vs. Karl Schaffer, exhibits D. 1, page 161, D.2, page 162, D.3, page 162, and D.4, page 164, in that case, the first three showing the appointment and qualification of Mabel Seibert as notary public, and the fourth showing qualification of Mabel S. Graff as notary public, are considered part of the present case, as exhibits for the defendant-appellant.



# New Jersey Court of Errors and Appeals

*Between*

WILLIAM J. SHEARER, JR.,  
*Complainant-Appellee,*

*and*

KARL SCHAFFER,  
*Defendant-Appellant.*

## **BRIEF OF DEFENDANT-APPELLANT.**

### **I.**

#### **Statement of the Case.**

The suit in question is one to redeem from a tax sale certificate which was perfected to the extent of making title.

There was a tax sale by the City of Elizabeth, at which the defendant-appellant was the purchaser, and the complainant-appellee was the owner of record. Service of notice of sale was made upon such owner, and a time limitation set thereby for redemption according to the statute. Thereafter, the certificate of sale, with the affidavit of such service, and affidavit of non-redemption, were recorded among deeds. The procedural papers are set forth as Exhibits in the case, and the substance on which these statements are based appear in the evidence.

The bill of complaint and amendment originally included four parcels. Any controversy concerning all but one of these was settled. Only one lot remains the subject of this litigation. It is known as Nos. 900-902 West Grand street. The learned Vice-Chancellor who heard the case

advised a decree allowing redemption, and giving costs and counsel fee.

The issue is confined to whether the complainant-appellee has a right to redeem from this lot, the defendant-appellant claiming that he was served in accordance with the statute, that he did nothing within the statutory time that would effect a redemption and that he is consequently cut off, and that, therefore, the decree permitting redemption should be set aside.

In his opinion, the Vice-Chancellor indicated that there resided in him the right to believe or disbelieve witnesses, and to find what were the facts. There appears some contradiction in the testimony, but it does not pertain to what we consider controlling matter. It is our opinion that the two contending parties stood equal before the Court as to credibility, and that there was nothing from which a basis for disbelief could be predicated more against one than the other, and that under these circumstances a moving party has upon him the burden of maintaining an assertion.

However, we are prepared to waive all this, and to proceed upon the assumption that the Vice-Chancellor was correct in the determination of any factual issue, and we say, in this regard, that granting all the statements and evidence of the complainant-appellee to be correct, they nevertheless did not show such tender as is required by the law, and such redemption as is contemplated by the law, and that, therefore, granting complainant-appellee's evidence and his complete case to be unrefuted, he nevertheless does not bring himself within the rules allowing redemption, and consequently there was no basis to allow redemption.

**II.**

**The certificate of sale and proceedings thereon established good title in the premises in the defendant-appellant.**

Exhibit C. 9, page 194 of the state of case sets forth the sale by the City of Elizabeth to the defendant-appellant, Karl Schaffer, for the premises in question, Nos. 900-902 West Grand street, assessed as the property of W. J. Shearer.

This Exhibit includes the notice to the parties who might be in interest, including the complainant-appellee, to redeem within sixty days after service, or their right of redemption would be barred. It sets forth also the affidavit of Charles L. Bauer, who made service upon Shearer on October 15, 1919. It sets forth also the affidavit of the defendant-appellant that more than two years had expired since the date of the sale, and more than sixty days since service of the notice to redeem, and that there had been no redemption of the premises. It sets forth also that these papers were recorded in Deed Book 988 for Union County on pages 230, etc. This was pursuant to the Tax Act, Laws of 1903, page 430, Sect. 56. The sale was held under that act. The same section gives presumptive force of verity to these proceedings. In addition to this, however, there is full substantiation by testimony on both sides.

There is the testimony of Charles L. Bauer, page 164, etc. and particularly on page 168, line 30, that he served the complainant-appellee. Such service was never denied by Shearer. He admits service in his testimony on page 51, line 8 and also on page 71, line 10. There is also the evidence of the defendant-appellant, Karl Schaffer, to substantiate the fact that there was no redemption within the time set forth by his affi-

davit. *Title to the premises therefore became absolute in Schaffer.*

The complainant-appellee seeks to base his right to redeem apparently upon three things. Two of them relate to an effort to redeem, of which one we will show was completely out of line with the law, and the second completely out of line with the time given by the law, namely, six years and three months too late. The third ground appears to be an attack on the status of the Notary who took the affidavits in Schaffer's proceedings. This we will consider later on, in two ways, one that her status was sound and secondly, even if it were not, the subject would not be relevant since after Shearer was once cut off it was no concern of his what Schaffer did with his papers, whether or not he recorded them, and if he did record them whether there was any flaw in such recording, since such recording, under the statute, is purely permissive, and is merely a muniment of title for the benefit of the tax purchaser.

### III.

**The complainant-appellee never made any redemption within the time fixed by the statute, and the defendant-appellant's title to the premises in question became fixed.**

We are at the point in the discussion where a sale of the property by the City to Schaffer has taken place, and where service is made and when, therefore, the onus is upon Shearer to protect his property by proper redemption according to the law, if he wishes to prevent it automatically becoming the property of Schaffer.

The sale of the City is not questioned, nor could it be under Laws of 1925, page 480.

The certificate of tax sale is incontestably good in these proceedings. The service upon Shearer also is not questioned. It is proved by the evidence and admitted by Shearer. At this stage, the mere lapse of the time within the notice, coupled with non-redemption, vests title in the tax purchaser.

We then come to consider what, if anything, Shearer did to assure recovery to himself. The subject is dominated by the Tax Act of 1903. This fixes the method of sale, the method of procedure by a purchaser at a tax sale, the method in which the owner can be cut off and the means by which he must protect himself, and the time within which he must act.

The law sets two years from the time of sale within which redemption can be made, and also fixes the period within and after that of sixty days from the time of giving notice, bearing in mind at all times that not less than two years shall be allowed, Laws of 1903, Chap. 208, Sections 57 and 59. Where notice to redeem is served, then if there is no redemption in two years from the sale, or within the time fixed by the notice, "*the right of redemption shall be barred.*"

The time of giving notice is the crucial thing in these matters. We need to bear in mind that notice was served on October 15, 1919, that the sale was held several years before, in 1916; that the service of this notice, no phase of which is in dispute, automatically, by the determination of the statute, limited the time of Shearer for redemption to December 15, 1919. Anything he did up to that time within the law to constitute redemption would have been of avail. Anything he did after that, or anything which occurred

after that is without potency to give him assistance, because if there were no redemption by December 15, 1919, the force of the statute automatically barred him.

We need to consider in the light of this situation just what Shearer did, and if it amounted to a redemption within the statute. We need to bear in mind also that no determination of the Vice-Chancellor as to a finding of facts could extend beyond the actual evidence, and if that actual evidence does not constitute, within sight of the law, redemption, there is no power on the part of equity to permit redemption. Equity cannot extend relief beyond the law.

*Langley v. Jones*, 43 N. J. Eq. 404;

*Nugent v. Hayes*, 94 N. J. Eq. 305.

It is important not only to consider the time within which redemption is permissible and beyond which it is not permissible, but to consider the place and manner.

In this connection, it is important to consider also the time of the tax sale itself, and the laws applicable then, which become controlling.

The sale, as appears from the certificate, Exhibit C. 9, page 194, line 31, occurred on November 9, 1916. The sale was under the 1903 Act. The method governing redemption is set forth in the then existing amendment to the Act, it having been amended in 1907, 1908 and 1909, and is set forth in Compiled Statutes, page 5136, Section 57, as follows:

“The owner, mortgagee, occupant or other person having an interest in the land sold for taxes, may redeem the same at any time within two years from the date of sale or at any time thereafter until the right to redeem has been cut off in the maner hereinafter set forth, by paying to the collector or

other collecting officer of delinquent taxes on lands of the municipality where the land is situate, the amount of purchase money shown on the certificate with twelve per cent. interest thereon, together with such other fees and expenses as may be incurred by the purchaser, etc.”

Section 59 of the Act provided, among other things,

“If there shall be no redemption within the said term of two years after the sale, or thereafter within the time limited by said notice, or in case no notice is given, if there shall be no redemption within twenty years after the purchaser has entered into open possession since continued under the sale, then the right of redemption shall be barred.”

Under this status there was only the single definitive method indicated to Shearer whereby he could redeem his property, if he wished.

All the requirements of the statute had been observed by the defendant-appellant in the steps towards perfecting title, namely, the giving of notice to the owner of record, and the setting of a time within which to redeem, which, as has been observed, is shown and admitted by Shearer. The single thing and only thing for Shearer to have done within the direction of the statute was, therefore, to appear before the collecting officer of the municipality, within the time given, and there offer redemption. By the notice he was definitely bound to make such redemption at the office of the Collecting Officer by December 15, 1919. After that time all his interest would be barred.

It remains to consider how he proceeded, and whether he conformed to these provisions. Whatever he did, or whatever was done in his behalf

must be gleaned from the testimony alone, and that of his witnesses.

On the subject of Shearer's attempt to redeem, we have his testimony, as it appears on pages 50 and 51 of the state of the case, particularly page 51. He points out that shortly after he was served, on or about October of 1919, which would have been some time in the month of October, 1919, he called upon Schaffer and said he had come to redeem the lots regarding which he had been served, that Schaffer became excited, said Shearer had no more interest in the property, and the only question was what Schaffer would be willing to give for a Quit Claim Deed. In other words, that Schaffer would not accept redemption.

Shearer's next effort, in this direction, is a consultation with an attorney, Mr. WolfsKeil, in February of 1925. See page 54, line 4. His next effort is a consultation with a lawyer, Mr. Siman, in March of 1925, page 54, line 26. His next effort occurred on March 20, 1926, when Shearer, together with the witness, Benjamin Seligman, went to the office of the Comptroller of the City of Elizabeth, there to offer redemption, page 56, line 3. This is repeated in his cross examination, page 75, line 38, page 76, line 3, also page 78, etc.

The testimony of the witness, Henry F. WolfsKeil, for the complainant-appellee, is negligible, and is in fact helpful to Schaffer, because he states that the only time he saw Schaffer was in April, 1925, five years and five months after the time for redemption had expired (see p. 94, l. 40) and also that he made no offer of redemption and did not offer Schaffer anything (see p. 95, l. 20).

The testimony of the witness, Frederick Siman, is in the same category. He also saw Schaffer only in the latter part of 1925 (see p. 102, l. 10, etc.). There is no trace of any offer to redeem, and if there were, it would be way out of time, and it appears on pages 105 and 106 of the testimony that there was merely a discussion that Schaffer claimed title, and it appears on page 110 of the testimony, line 10, etc. that no offer to redeem was made.

The testimony of the witness, Maher, for the complainant-appellee, is not in any way relevant or pertinent (see p. 122). It relates to the value of the land in question, which matter counsel for the complainant-appellee conceded had no bearing. The witness plainly did not qualify, and even if it did have a bearing, the inference to be taken was that the complainant-appellee showed no interest at all outside of the single conference with Schaffer in October, 1919, and only came to life some five years later, when the property began to have some appearance of value. It is significant also that no taxes were paid or interest evinced till such time as it appeared that the premises began to have some value.

The testimony of Seligman and of the witness Arthur E. Lenox, for the complainant-appellee, page 132, relates entirely to the visit of Shearer and Seligman to the Comptroller's Office in March, 1926, six years and three months after Shearer's right to redeem had expired. On this occasion Shearer seeks to show that he sought to redeem, and that he had enough money to redeem, but that the Comptroller would not accept redemption for the premises in question after that lapse of time. He was out of time.

The entire case of the complainant-appellee, therefore, on the subject of redemption, and all that he produces, and all that the trial court could use as a foundation for any decree, simmers down then to this, that in October of 1919 Shearer called upon Schaffer and was refused redemption, and that more than six years later, long beyond the time allowed by the law, he called at the Comptroller's office and sought to redeem.

I cannot see how the last visit could, by any stretch of reasoning or by any implication of the law, or any interpretation thereof, be of the slightest assistance to the complainant-appellee.

It is so clearly inconsistent with the plain statement of the law as to the time limit. It is so completely and convincingly beyond the time limit. Conceding everything that occurred there to be true, it has no particle of avail to the complainant-appellee.

As to the other and former visit on Schaffer himself, conceding that also to be true, and there is ground for believing it to be untrue, that also does not help the complainant-appellee. His statement of what occurred at the visit is flatly disputed by Schaffer, and they appear equal before the Court. There is nothing to indicate why one or the other should be preferred as to credibility, and the onus and burden is upon Shearer as the moving party to give support to his assertion by preponderance of proof.

Schaffer, in his testimony on page 148, line 1, states that he never knew Shearer till 1925, and that the visit of which Shearer speaks occurred in 1925. In rebuttal testimony, Shearer (see p. 175, etc.) sought confirmation of the year by drawing attention to correspondence, which he said was

apt, but this correspondence turned out to be of the year 1925. How correspondence of the year 1925 could be a reminder to a man and fix in his memory something which he alleged to have taken place in 1919, must remain a mystery.

But putting that aside, and granting the latitude of the trial court to find a definite set of facts for one side or the other, and assuming that Shearer's version is entirely correct, we find, however, that nothing occurred in October, 1919, except his conversation with Schaffer, nothing occurred except his oral offer to redeem made, as he says, to Schaffer, which he says was refused. There was no tender of money. Shearer said he had \$50 with him. There is no testimony to show whether or not this would have been sufficient. But aside from this, the law plainly indicated what Shearer, under the circumstances, was to do if he wished to redeem, namely, to go to the Collecting Office of the municipality not later than December 15, 1919, which he did not do. He himself says so, and all the testimony shows this to be so. Under the circumstances, therefore, there was nothing at all in this phase of the case, on which the equity court could have properly based a right of redemption.

Shearer states both in his direct testimony and on cross examination that except for the visit in 1919 to Schaffer, at which no redemption occurred, and could not occur, since the law plainly directed him to go to the Collecting Office of the Municipality, he did nothing at all till 1926, when he went to the Taxing Office.

The first visit is fruitless and abortive, non-compliant with the law. The second visit must be barren of result in effect in this case because it is completely and conclusively beyond the pale

of time limit set by the law. By force of circumstances, by force of what occurred, and by application of the law by reason of Shearer's indifference and failure to redeem, Schaffer became the indisputable title owner of the premises in question, on December 15, 1919.

#### IV.

##### Law on the subject of redemption.

I have refrained from insertion in the foregoing of references to the cases on the subject, so that I might be able to preserve, so far as possible, continuity of thought on the pivotal issue.

In this portion of the brief I will seek to mention some of the cases.

In *Welles v. Schaffer*, 98 N. J. Equity 31, it is stated that the only issue which the Court can entertain is whether the right to redeem is still open to complainants.

*Nugent v. Lindsley*, 100 N. J. Eq. 87;

*Nugent v. Meeker*, 4 N. J. Misc. 1041;

*Nugent v. Spinning*, 4 N. J. Misc. 1043.

The fact that there was a due sale, that a certificate was issued, that notice was served upon Shearer, that there was no redemption within the time limited by law, and that these papers were filed as a deed in Book 988 of Deeds for Union County on page 230, etc., established affirmative title in Schaffer.

Laws of 1903, Chapter 208, Section 56. It devolved upon Shearer affirmatively to show a weakness therein, *Milmore v. Zimmerman*, 97 N. J. Equity 326, which he has failed to do.

In *Fitzsimmons v. Bonavita*, 77 N. J. Equity 277, where the subject of tender was at issue, it was pointed out that a tender must be "sufficient." Definiteness, timeliness and sufficiency are inherently basic requisites to afford substance to a tender.

*Gonzales v. Harrington*, 2 N. J. Misc. 311, instances a case where the purchaser accepted no redemption, and the owner promptly went to the collector. The dates also show that he was within time. This case indicated an interpretation of the act. The dates show that the parties seeking relief acted within time stipulated by the law, this being an essential requisite to afford right to redeem.

A contumacious purchaser cannot defeat redemption. The door is left open **permitting** the owner to go to the collecting office, but he cannot do so at his own pleasure. He **must** go within time. He cannot go six years later. If that clear violation of the statute were permitted, he could equally go ten, twenty or fifty years later. The statute, so far as giving force to its words is concerned, would become an absurdity, and so far as a tax purchaser is concerned, it would be a shallow assemblage of words. Moreover, as pointed out above, at the time of this sale, which is the law now also, the statute required Shearer to go to the collecting office to redeem, and to do so within the time limit of the notice, and in default of so doing, which was the case, his equity of redemption would be barred.

In *Fitzsimmons v. Bonavita*, 77 N. J. Equity 277, where redemption was refused by the purchaser, there being a dispute over fees, the owner applied to the collector, filed an affidavit

setting forth such refusal, and the Court commented on this, stating

“The owner, on the refusal to accept the tender at once filed the affidavit required by the fifty-eighth section.”

At that time the original 1903 Tax Sale Act, Section 57, page 431, provided

“The owner, mortgagee, occupant or other person having an interest in the land sold for taxes, may redeem the same at any time within two years from the date of sale, or any time thereafter until the right to redeem has been cut off in the manner hereinafter set forth, by paying to the *purchaser or his legal representative or assigns*, the amount of purchase money \* \* \*”

Section 58 of the 1903 Act, page 431, further then provided

“In case the purchaser is absent from the state or cannot be found therein, or is under disability, or will not on proper tender cancel, satisfy or assign the certificate, the redemption may be made by payment of the proper amount to the treasurer of the taxing district and filing with him an affidavit showing the right to redeem in that manner and paying him one percentum of said amount as his compensation; \* \* \*”

This remedial procedure did not apply in our case, since, as was pointed out, *supra*, the sale occurred in 1916, and the Act then in force and then controlling, and which is also now the law, by virtue of the 1918 Act, provided that the owner, in order to seek redemption, should go to the collecting officer of the municipality, the Legislature possibly having in mind that by referring redemption to a disinterested public official, controversies of fact between owner and tax purchaser could be obviated. Even if it had applied, it might be mentioned academically

that Shearer did not observe either the faintest compliance with the earlier provision, for, by his own testimony, the case is barren of any filing of any affidavit, or of any payment of the compensation, and it is barren of the slightest intimation that Shearer went to the treasurer of the taxing district before December 15, 1919, the only instance of his having gone to the collecting office being as he himself testified, *supra*, in March of 1926, six years and three months out of time.

By Laws of 1903, Chapter 208, Section 57, the owner is given two years from date of sale, for redemption, or by Section 59, sixty days after notice when served after twenty-two months from the sale. Section 59 goes on to say

“If there shall be no redemption within the said term of two years after the sale, or thereafter within the time limited by said notice \* \* \* then the right of redemption shall be barred.”

*Clift v. Frenche*, 83 N. J. Equity 437, states

“This statutory *ex parte* proceeding affords no method whatever for extending the time originally fixed by the notice.”

*Cadmus v. City of Bayonne*, 61 N. J. L. 494, says:

“There is not the vestige of authority in this court to extend the time for redemption, to alter the terms prescribed by the statute,  
\* \* \*”

The general rule is set forth in *Blackwell on Tax Titles*, 4th Edition, page 330, in this way:

“The right of a purchaser to a deed in pursuance of the sale and certificates when the time of redemption expires is a vested one; and the legislature cannot, without a violation of the contract between the state

and the purchaser, repeal the authority of the officer to execute and deliver a deed to him. Nor can the legislature extend the time of redemption, after the rights of the purchaser have attached. Those rights attach when his bid is accepted and he pays the purchase money, and the statute then in force constitutes the law of his contract; by it alone are the rights and duties to be determined; nor can the legislature renew the remedy once barred by the statute of limitations. The certificate vests such an interest in a purchaser that when the time fixed for the redemption has expired, and the officer improperly refuses to clothe the purchaser with the legal title a mandamus will be awarded at the instance of the purchaser, to compel the execution of a deed."

Equity has no jurisdiction to afford relief beyond the limits of the law.

*Langley v. Jones*, 43 N. J. E. 404;

*Nugent v. Hayes*, 94 N. J. Equity 305.

I find only one instance where the time to redeem is extended by the statute, Laws of 1913, page 821, which gives additional time to redeem where there is a dispute between the purchaser and the owner "concerning the amount of costs and charges to which the purchaser is entitled by law." That is not pertinent here.

Besides, in such an instance, the appeal must come "either before or within one year after the time of redemption has expired."

There is, of course, the general effect of the statute that when a tax certificate is being foreclosed, right of redemption extends up to the time of the entry of the decree, but this is not a foreclosure case, and that provision has no application here.

This is a bill on the part of the owner to redeem. To sustain such a bill he must show that he has a right to redeem. If it appears that he has been properly cut off, his right to redeem is gone, and equity cannot revive it.

The language of the cases stress the thought that redemption not having been made within time, the rights of the owner are cut off.

In *McKenna v. Harrington*, 96 N. J. Equity 700, redemption is denied in the following language:

“Because of her failure to redeem within the time limited by the statute, her equity of redemption in the premises in question was effectually cut off, and she is not entitled to the relief prayed for in her bill of complaint.”

Just as a right to redeem resides in the owner at the time of a tax sale, so equally a right to perfect a title inures in the purchaser at the time of sale. Neither can be abridged. Neither can be deprived of the specific rights given under the statute.

This is pointed out in *Rodgers v. Cressman*, 98 N. J. Equity 209, in which the Court stated

“Her (defendant's) right to redeem vested in her at the same time the right to perfect the title vested in the purchaser (the complainant), which was on the day of the sale.”

If our tax sale act means anything at all, if it is to have any vitality or substance, and if it is to afford any real significance to a tax purchaser, its chief import is that when a tax purchaser has once cut off the owner, the right to redeem is forever gone.

If such right of the purchaser is diminished beyond the statute, or if the right of redemption

is extended beyond the clear confines of the statute, then such right of the purchaser is taken without warrant, and he is deprived of the rights and title which the Tax Sale Act, by its plain language, gives him.

## V.

The complainant-appellee's attack upon the status of the notary public is of no avail, because her standing as a notary public was never recalled, and also because the recording of documents after an owner has been cut off is permissive, and has no bearing to revive any right of an owner, once it has been lost.

There is only one other point to the complainant's case. This is that the notary public who took the affidavit of Bauer as to service on Shearer, was a married woman, and that her commission had been issued when she was single. The claim is that the jurat is defective. This affidavit appears in Exhibit C. 9, on pages 198 and 199. This Exhibit is the tax sale certificate, with the addition of the notice to redeem, the affidavit of service and the affidavit of non-redemption. The affidavits are taken by Mabel Seibert Graff, notary public. In the latter affidavit, her name appears as Mabel S. Graff.

There is evidence that she was a notary, her commission having been issued to her under her single name, Mabel Seibert. Thereafter she was married, and used her full name, Mabel Seibert Graff.

The point of the complainant-appellee seems to be that although she was a duly constituted notary public, her marriage curtailed her authority. There are two answers to this. First—having been appointed a notary public by the

Governor of the State, only two means are provided in the statute for the extinguishment of her authority; one, removal by the Governor, and secondly, her death, besides, of course, the normal expiration of the term. None of these exigencies appear in the case. The idea that a duly commissioned officer loses authority through marriage is rather novel.

Secondly—even if it were to be assumed that her authority ended by marriage, that in no way gives an owner, who has been cut off, the right thereafter to redeem, once his title is gone.

I intend to comment on the first part and thereafter upon the second.

Relating to the first part, this case was somewhat associated with another case, practically between the same parties, tried at the same time, namely, Elizabeth Heights Realty Company, complainant-appellee, and Karl Schaffer, defendant-appellant, which is also now before this Court. The same question as to the notary appeared in that case, and by arrangement with the Vice-Chancellor, the exhibits in either case on the subject became pertinent.

It is shown from these exhibits that Mabel Seibert was a notary from April 22, 1909, at which time she was appointed by the Governor, and that she was such notary at the time the affidavits were taken, and continued to be such notary by subsequent re-appointment under her married name. The exhibits are Exhibits D. 1, page 161 in the case of Elizabeth Heights Realty *v.* Karl Schaffer, which shows her appointment on April 22, 1909, expiring April 22, 1914; again on April 22, 1914, expiring April 22, 1919, and again on June 19, 1919, expiring June 19, 1924. Exhibit D. 2, page 162 of the latter case certi-

fies to her qualification on April 22, 1909. Exhibit D. 3 on the same page certifies to her qualification on June 19, 1919, these being under her single name. Exhibit D. 4, on page 163, certifies to her qualification as such notary on June 26, 1924, under her married name, Mabel S. Graff. There is, therefore, unbroken record of her activity as such notary, and there is nothing to show a cessation or abrogation of this authority.

The appointment as notary is to an individual, and not to an empty name. The name is for identification of the individual.

In 29 Cyc. 1075, opinion collected from various states is to this effect:

“Generally a person acting as a notary under color of authority with public acquiescence is held to be a notary *de facto*, and as to the public and third persons, his acts are valid and cannot be attacked collaterally.”

Also from New Jersey:

If an affidavit is in fact properly sworn to, the failure of the officer to sign or certify the same is not fatal. *Capner v. Fleming. Min. Co.*, 3 N. J. Equity 467.

In general, an affidavit may be amended *nunc pro tunc*, *Ely v. Fen*, 12 N. J. L. 321.

Where an affidavit is sufficient in substance, extraneous proof to supply a deficiency of form in the jurat is admissible, in the absence of a showing that an injustice would be done thereby, *Whitehead v. Hamilton Rubber Co.*, 53 N. J. Equity 454.

There is no injustice to the owner in this case, as he no longer had an interest, he having been served and barred by failure to redeem

within time. Only persons in interest can be heard.

Section 57, 4 Comp. St. N. J. 5136;  
*Mitsch v. Owens*, 82 N. J. Equity 404;  
*State (Cadmus) v. Bayonne*, 61 N. J. L.  
494;  
*Frazier v. Johnson*, 65 N. J. L. 673.

In *Magowan v. Baird*, 53 N. J. Equity 656, the affidavit was taken in a foreign jurisdiction, and the jurat was on its face deficient. But the Court of Errors and Appeals refused to void the affidavit. This case is quoted in *Dreier v. Dreier*, 101 N. J. Equity 342.

Our statute relating to notaries, Laws of 1894, page 35, gives the Governor the power to appoint, with a provision that they shall hold office for the term of five (5) years, but shall be removed from office at the pleasure of the Governor.

There is nothing to show, and, of course, there could not be anything to show that the Governor, in this instance, had removed the notary in question.

The same Notarial Act provides that women may be appointed as notaries, and that anything in the act relating to notaries referring to the masculine gender, shall apply to females as well as to males.

The institution of marriage is one that has the favorable sanction of judicial support. It is not conceivable that it should have been the intention of the Legislature to extinguish the notarial rights of a woman who marries and follows the accepted practice of adopting her husband's name, and that this approved social procedure should automatically debar rights

which the solemn act of the Chief Magistrate of the State conferred.

If it is a question of determining the identity of the notary, then the above cited cases indicate that this can be furnished extraneously, and in the present case the identity is shown by the records and by the testimony of the witness in the two cases, on pages 114 and 144, etc. of the present case, and on page 96 of the Elizabeth Heights Realty case.

Moreover, legislative tendency has been in the direction of effectuating affidavits. This is shown in the Laws of 1926, page 44, validating affidavits, and also in Laws of 1930, page 317, which particularly validates all deeds, mortgages, acknowledgements and other papers, wherein there is an affidavit taken before a notary who was a single woman and thereafter married, by which ever name she signed. That act alone disposes of this point.

There is unconstrained freedom in adopting names. Collected cases in 29 Cyc. 270 and 271 set forth:

“A man may lawfully change his name without resort to legal proceedings, and for all purposes the name thus assumed will constitute his legal name just as much as if he had borne it from birth.”

Our own courts upheld this in *re Witsenhausen*, 42 N. J. L. J. 183:

“There is nothing in the common law prohibiting a man from taking another name if he so desires.”

It also holds that 3 Compiled Statues 3685, providing a legal method for change of name, does not repeal the common law by implication or otherwise, but merely gives an additional

method of effecting change of name, whereby a record may be kept of such change.

So far as actual substance is concerned, in the affidavit of Karl Schaffer, page 199 of this case, the date is April 11, 1925, at which time the notary had her designation in her married name. Also the other affidavit on page 198, that of Charles L. Bauer on October 16, 1919, the name Mabel Seibert Graff is used. She was then a notary under the name of Mabel Seibert, and Graff was her married name. Her identity is established. Besides, the substance of the affidavit, namely, that Shearer was served in the manner and at the time set forth, is substantiated by the testimony of Bauer, and is submitted by the testimony of Shearer, as already pointed out in this brief.

The second part of the reply to this phase of the complainant-appellee's point is perhaps even more determinative. We have here the undisputed situation of a good tax sale certificate, service of notice to redeem upon the owner, substantiated in court by the person who made the service, and admitted in court by the owner himself. We have also complete failure of the owner to redeem within the time limited by law. The force of the statute relating to tax sales, already cited, thereupon automatically cuts off the owner from any right to redeem. He is no longer an interested party.

Section 56 of the Act, *supra*, states that the tax purchaser may then take his papers and record them in the Register's Office in the form of a deed. This, however, is purely an optional privilege on the part of the tax purchaser, just as it is the privilege of a grantee to record his deed, or to refrain from recording it. It

may be wiser to record it, but unrecording cannot restore to a grantor title with which he has parted. In the same way, the unrecording of the tax certificates and accompanying proofs cannot restore to an owner, who has been cut off, what the statute has deleted from him. Consequently, it is normal reasoning that anything that occurs in such recording after an owner has been cut off is of no avail to revive a right, which he, in conformity with the statute, has lost.

In *Fort Lee, etc. v. Harrington Co.*, 102 N. J. L. 541, the section of the Tax Act referring to filing of such title papers is defined to mean "*there is no statutory time limit*" for doing so. A tax purchaser may or may not record them, and at any time.

To allow an owner to come in to redeem after he has been cut off because of any details of recording that occurred after he has been cut off would be to revive his right to redeem beyond the statutory period, and both the statute and the cases have explicitly reiterated that when he has been served and has failed to redeem within the statutory time, such right of redemption is gone.

Suppose there were a proper mortgage foreclosure, a proper decree, a sale of premises by the sheriff, which, by the wording of the statute on mortgages, and the conformable wording of the decree, cuts off the owner from and after the sale by the sheriff, and suppose afterwards the sheriff, in the recording of his deed, made an error in name or description, could it be contended that this revived the right of the former owner? Manifestly not, and manifestly such an error, if there were one, would be purely

between the sheriff and his grantee, and would not at all concern the former owner, who by force of the statute, had been effectually cut off by the sheriff's sale.

The same reasoning could apply in the case of a judgment. Suppose there were a judgment, an execution, and a sale of the premises, all of them unquestioned in propriety, and thereafter the sheriff, in drawing his deed to the grantee, had in it an affidavit by a single woman who had become married, and took the jurat in her married name, could this possibly revive any rights of the judgment debtor when they had been effectually extinguished by a sale? Any question that might hinge about such an affidavit would be purely one between persons in interest subsequent to the owner who had been cut off. Similarly in this case, any question, if there were one, about this jurat, would be one, not that concerned Shearer, who had been already cut off, but between Schaffer and any possible subsequent grantee.

The tax certificate, the proof of service and the proof of non-redemption when the previous owner has been cut off conformably with the statute, are purely muniments of title in the hands of the tax purchaser. This point is set forth in *McCandless v. Schaffer*, 103 N. J. Equity 170. The wording of the opinion in that case is:

“The right is barred (that is, right of redemption, my insertion) *not by a perfect record title, but by failure to redeem within the time limited by law after notice.* An owner has two years from the date of sale in which to redeem, provided 60 days' notice to redeem be given within that time, and thereafter, 60 days after notice. Thereafter the statute says, ‘the right of redemption shall be barred.’ The purchaser's

title is thenceforth absolute, and he *may* make it a matter of record by recording the certificate, etc. \* \* \*”

This case emphasizes the fact that the controlling thing in determining if an owner has been cut off, is not the filing of papers, but whether or not he has been served, and whether or not he has redeemed in time. If he was not served, his rights remain irrespective of filing affidavits, etc. If he has been served, and has failed to redeem, he is cut out, whether or not the tax purchaser subsequently chooses to record his papers. In this case there is no question of Shearer having been served, and having failed to redeem in time, and of having been cut out.

No person holding a certificate and attempting to take title, nor any derivative could be secure, if an owner, who had been cut off in the manner provided by the statute, could come in afterwards and revivify an expired right ten, twenty or thirty years later, by examination of a record with which he was no longer concerned.

In such cases as I have been able to find on the subject, there is not a single New Jersey case in which once an owner has been properly cut off, anything that occurred subsequently enabled him to come in and extend the time of redemption beyond what the law fixed.

In *Nugent v. Lindsley*, 100 N. J. Equity 87, which related to a Comptroller's tax deed, which is significant on the same point of the interposition of bar against redemption, the following is said:

“Notice and default are indispensable conditions to the divestiture of title by deed under the tax sale. The comptroller's deed operates as a bar only upon owners who have been served, in the manner required by

the act, with notice to redeem, and who have defaulted. As to those not served, the deed is ineffective \* \* \*. The deed may be likened to a decree in foreclosure against defendants who were not served with process. As to them the decree is invalid and may be attacked anywhere and at all times, *while as to those served it is an effectual bar.*"

## VI.

The decree awarding a right of redemption should be set aside because it is based in part on matter not appearing in the case.

The bill of complaint in this cause sets out a number of tax certificates, disposed of outside the case, and only one property, namely No. 900-902 West Grand street, the subject of this litigation, remained. Among these others was a certificate which appears in the pleadings as that of Sylvia Tove. The answer, page 13, paragraph 10, sets out that this certificate was assigned to Sylvia Tove March 29, 1926, and was recorded on March 30, 1926, in Book 769 of Mortgages for Union County on pages 453, etc., so that complainant, before filing his bill, had notice thereof. She was, nevertheless, not made a party. By settlement as to other parcels mentioned in the bill which did not stand in the same category as the one under the present litigation, it was possible to reduce the issue to the single one of 900-902 West Grand street.

But it appears from the conclusions of the learned Vice-Chancellor, page 20, that consideration of these certificates, although they were not a part of the case, and although nothing evidential as to any of them appears in the case, was, nevertheless, laid as foundation by the Vice-

Chancellor, and his conclusions, of necessity, influenced the decree.

In the final decree, page 26, lines 10, etc., there is a finding of overpayment in settling these extraneous certificates, and on page 27, lines 14, etc., there is an order to repay \$45.37 relating to these extraneous certificates, all of which are extraneous to the issue. There is no foundation for charging the defendant-appellant, Schaffer, with any settlement of relations between the complainant-appellee and someone altogether outside of the case. This portion of the decree is particularly without basis, and beyond warrant, since by a stipulation concerning these extraneous certificates, appearing on page 17 of the case, the parties agree as to a definite amount to be paid. There is no authority indicated for a departure from this amount, nor any basis laid for the trial court to have gone beyond this amount.

In a recent case, *Borough of Chatham v. Board of Conservation, et al.*, 8 Ad. Reports 514, this Court set aside a finding that was based upon data considered by the court below, and which was not an evidential part of the case.

## VII.

**A tax purchaser cannot be deprived of the rights given him by a tax sale act.**

The learned court below, in the conclusions on which the decree was based, cited *Harrington v. Horster*, 89 N. J. Equity 270, which enjoins due performance of every step as a condition precedent to making title.

The expression is sometimes quoted that a Court of Equity will seize upon the slightest flaw of substance in tax sales to restore property to the owner.

The Harrington-Horster case was not a redemption case, but one to foreclose. While, of course, it must be true that where there is a flaw of substance, the proceedings of a tax purchaser are necessarily vulnerable, this expression cannot extend to imply an invariable mantle of sympathy over all owners, but is no more than a declaration that the law is to be followed. It could not be extended to mean that when a tax purchaser, as in the present instance, has duly complied with the law, a Court of Equity, out of generous feeling, can, nevertheless, divest him of a title which he has perfected. It can mean no more than when the law has not been followed, the tax purchaser gains nothing, and that when the law has been followed the tax purchaser is entitled to whatever the statute gives him.

We are concerned with laws, and their due and just interpretation as affecting all parties concerned.

A tax sale act should not be devitalized; otherwise there is no purpose in having any, and otherwise the means of collecting taxes is destroyed.

Municipalities and governments live only by taxes. All the machinery of Courts, the police power, protection from destroying elements, and the vast utilities and benefits which arise from communal living rest on taxation. It is the only means through which the united agency of the people can carry out their constructive work, and in essence, represents the contribution of members of the community towards the perpetuation of their communal life. If taxes are to be collected, then the means of collection need to be enforceable.

The sale of land for non-payment of taxes is the means indicated by the statute for collection of these taxes in the cases of those who omit or do not meet their share of the community's burden. The purchaser at a tax sale thereby contributes to the maintenance of civic living.

The Courts have increasingly shown their regard for this essential factor by statutes on the subject, and making it possible for a sale to a tax purchaser to mean something of substance to him, and not have it barren of real effect and so cloaked with insurmountable difficulties that such sales become empty in the hands of a tax purchaser.

An instance is the Act which makes the sale unquestionable in Chancery, unless directly attacked, Laws 1925, page 480; also note the difference between the 1903 Act, Section 56, which makes records presumptive proof, and the comparative section 48 in the 1918 Act which makes them conclusive proof after two years. Note also the sweeping guarantee given to the purchaser by the supplementing act of 1922, Chapter 115, page 207, which makes the title of any person claiming under any tax sales free from all municipal liens except those recited in the certificate.

An instance also is *McKenna v. Harrington*, 96 N. J. Equity 700, which reiterates the previous doctrine of *Wilson v. Trenton*, 53 N. J. L. 645, and points out that service need not be technical, but that the statute is met when actual service is made.

This is shown also in *Fort Lee & Manhattan Realty Corp. v. Harrington Co.*, 102 N. J. L. 541,

in which counsel for the present complainant-appellee appeared, and in which it was said

“This act shall be deemed and taken to be a remedial act, and to operate both prospectively and retrospectively, and be liberally construed to effect the remedial objects thereof.”

The same thought is expressed in *Keys v. State*, 117 Atlantic Reporter 166, a Maine case, which mentions that since the State has adopted a policy of enforcing payment of taxes by the sale of property upon which taxes are delinquent.

“\* \* \* the purchaser at a tax sale, should not, in any proceeding to test or touching the validity of such sale, be regarded with suspicion, or put at a disadvantage merely because he is such purchaser.”

## VIII.

### SUMMARY.

It is respectfully urged that assuming all the facts to be true as the learned Vice-Chancellor found them, there is, nevertheless, not laid the basis for any right of redemption within the statute by the complainant-appellee, and that, therefore, no redemption should have been awarded.

It is respectfully submitted that the trial court is limited to the finding of only those facts which are set forth in the testimony, and that no facts or conditions can be elaborated beyond the testimony, and that no conclusion can be reached, or decree rested, except as warranted by the testimony.

The undisputed and admitted proofs show a clear sale of the premises in question to defend-

ant-appellant, service of notice upon the owner, failure on his part to redeem within time, and a consequent devolution of title to defendant-appellant.

The testimony of the complainant-appellee, and of others adduced in his behalf, falls far short of showing any redemption within the time and in the manner laid down by the statute, and nothing is shown of substance by which the title of the defendant-appellant to the premises is defeated.

It is respectfully urged, therefore, that the decree awarding right of redemption of the complainant-appellee, be set aside.

Respectfully submitted,

CHARLES WAGNER,  
Solicitor for and of Counsel  
with Defendant-Appellant.

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May Term  
# 102

## New Jersey Court of Errors and Appeals

Between

WILLIAM J. SHEARER, JR.,  
*Complainant-Appellee,*

and

KARL SCHAFFER,  
*Defendant-Appellant.*

On Appeal from  
Chancery.

### BRIEF OF COMPLAINANT-APPELLEE.

#### Statement of the Case.

The amended bill of complaint, foundation of this suit, was filed with reference not only to one but to a number of lots which had been sold at tax sale (Case, pp. 2 and 4).

By stipulation (Case, p. 17) it will appear that the redemption of some of the parcels mentioned in the amended bill of complaint was agreed to by the parties. This redemption having taken place, only the parcel on West Grand Street was the subject of the evidence adduced.

The bill prays that the complainant-appellee, Shearer, might be decreed entitled to redeem and that the pretended tax sale proceedings of the defendant-appellant, Schaffer, recorded in the Union County Register's office, be cancelled and effaced from the records.

As a basis for such relief, the bill alleges that in the month of October, 1919, Shearer endeavored

to redeem the lands from Schaffer but such redemption was refused on the ground that the land was sold and gone and that Shearer had no further interest therein and by the menaces and threats of Schaffer, Shearer became so intimidated that he was forced to withdraw and failed in his effort to redeem. That subsequent efforts to redeem were made in Shearer's behalf by his father and attorneys, but with like effect, with the result that the tax sale certificates and "proceedings" were recorded in the Register's office and became a cloud upon Shearer's title.

## POINT I.

### **Lands sold at tax sale may be redeemed.**

The West Grand Street property was sold on November 9, 1916, and the tax sale certificate was dated November 20, 1916. Consequently, the statutes in force were those adopted in 1903 (C. S., p. 5136, Sec. 57 as amended; P. L. 1914, p. 633).

*Rodgers v. Cressman*, 98 N. J. E. 209; 130 Atl. 17.

The statute in question, so far as applicable, reads:

"57. The owner \* \* \* may redeem the same at any time within two years from the date of sale *or at any time thereafter* until the right to redeem has been cut off in the manner hereinafter set forth \* \* \*."

*P. L. 1914*, p. 633.

The first question then presented is whether Shearer was "cut off in the manner" the law requires.

## POINT II.

Shearer's right to redeem the lands in question was not cut off as required by the law, for two reasons,—(a) Shearer sought to redeem and was prevented from doing so by the fraud of Schaffer, and (b) Schaffer has not perfected the proceedings required by the law to obtain a statutory tax title thereunder.

Schaffer, as a tax sale purchaser seeking to cut off the right to redeem, must, as a part of the proceeding, serve a notice upon the owner to that effect. He claims he did this in October, 1919.

Acting upon the advice contained in such notice, Shearer, *within the time* given for redemption in Schaffer's notice, went to Schaffer, told him of having been served and stated that he had come to redeem the lots. The conversation is fully set out in Case, page 51. Suffice it to say that Schaffer misinformed Shearer when he stated that he had lost his property and that the only question was the amount of money Shearer would take for a quitclaim deed. Schaffer made it clear that unless Shearer would discuss the terms on which he would execute a quitclaim deed he had better get out, which he did.

(a) Shearer, complainant-appellee, sought to redeem but was prevented by the fraud of Schaffer, defendant-appellant.

Such conduct on the part of Schaffer obviates the necessity of formal tender for it showed conclusively that he sought to mislead Shearer into a belief that his right to redeem was gone and to lull him into inactivity, which for a time he really succeeded in doing, for it was not until some time later that Shearer consulted attorneys.

The cases strongly support this contention.

“One who is under a duty to give information to another and who states a fact to be true when he has no knowledge on the subject, and thus misleads the other to his injury, is as much liable in law as for a fraud, as if he had wilfully misstated a fact to be true when he knew it to be false. *Crislip v. Cain*, 19 W. Va. 438; *Mason v. Chappell*, 15 Grat. 572.

\* \* \* \* \*

“Plaintiff did not actually tender the amount of money necessary to redeem the land, but Watson’s statement to him that the land had been redeemed, was tantamount to a refusal to accept it, and is a good excuse for not making an actual tender.”

*James v. Piggott*, 70 W. Va. 435.

Virginia Code, Section 661, provides “that the purchaser’s tax deed shall be defeated by proof ‘that the payment or redemption of said real estate was prevented by fraud or concealment on the part of the purchaser.’”

\* \* \* \* \*

“It is sufficient to say that upon careful consideration of it (the evidence) we are of the opinion that it cannot be read by anyone with an open mind, without the conviction being reached that throughout these transactions appellants were engaged in an effort to suppress and conceal the information, which they alone possessed, in order to defeat the redemption of the land within the time prescribed by law.”

*Reid v. Penfield*, 118 Va. 670.

“This he did surreptitiously, not only omitting to inform the complainant of the pendency of the suit but designedly concealing the matter when honesty and candor dictated that he should communicate it to her. Evidently his object was not that he might collect what

he considered due him but that he might through her ignorance obtain her property for himself at whatever sacrifice of her interest he could bring about. This is a fraudulent abuse of legal process against which a court of equity may properly give relief, the court of law being unable to reach the title thereby acquired."

*Kirkhuff v. Kerr*, 57 N. J. E. 623 at 626.

Under the circumstances detailed in the testimony, a legal tender was obviated and became unnecessary.

"There is no merit in the defense of want of legal tender. We are satisfied that this plea was an after thought and not made in good faith. The tender was peremptorily refused because defendant was of the opinion that the delay for redemption had expired and he was in a position to maintain his claim of ownership of property worth from \$15,000 to \$25,000 under an adjudication made to him for the paltry sum for which he bid it in at the tax sale. In these circumstances no tender at all was necessary since the law does not demand anyone to do a vain and useless thing and a formal tender is not required where it would be made to no purpose."

*MacLeod v. Hoover*, 159 La. 244; 105 So. 305.

"It seems clear from the pleadings and the evidence in this case that defendant's refusal to accept the check in question was never based on the grounds of insufficiency as to amount or that it was not a legal tender for they claimed then as now that plaintiff's right to redeem was barred by the statute of limitations. As shown by the foregoing authorities this contention cannot be sustained and so far as those questions are concerned, the plaintiff has established his right to redeem."

*Bundy v. Wills*, 88 Neb. 554 at 559; 130 N. W. 273.

The Vice-Chancellor finds himself convinced that Shearer's activities toward effecting a redemption of the tax sale certificates in question as evidenced by the proofs herein, sufficed to evidence compliance with the requisites of the law cast upon him in such respect (Case, p. 21).

In this conclusion he is fully warranted.

From the evidence it appears that Shearer visited Schaffer in the same month that he was served with the notice to redeem. He says to Schaffer: "I am Shearer, I have come to redeem the lots on which Charlie Bauer served me the other evening" (Case, p. 51).

Schaffer in contradiction says that Shearer said on the occasion of his visit: "I am interested in some lots on Pennington Street which you bought, how much will you want for your title?" (Case, pp. 146-7). There is nothing in the case that would warrant Shearer saying such or similar words; at no time did Schaffer have "title" to the Pennington Street lots.

Without further discussion of the evidence, it is sufficient to add that the Vice-Chancellor found the facts in favor of Shearer, and Schaffer's counsel concedes the force of this (Appellant's Brief, p. 11) and waives all the disputed questions and proceeds upon the assumption that the Vice-Chancellor was correct in the determination of any factual issue (Appellant's Brief, p. 2).

Shearer's case does not rest alone on the attempted redemption just discussed, for that was not his only attempt at redemption.

A tender properly made and refused or such conduct as frustrates the making of a proper tender or obviates its necessity, does not change the position of the parties. It is as if the tender had been accepted but nothing more had been done. The making of a tender or its illegal frus-

tration entitles the party making it or prevented from receiving the benefits of it from enforcing the same in a court of equity. The Court will then be the arm that performs the act which the party refusing or frustrating the tender should have performed. Consequently, when Schaffer refused the tender and by his fraudulent statements that he held the title, lulled Shearer into inactivity, Shearer lost nothing and it was perfectly proper for him even after the expiration of six years to have repeated his tender to the Comptroller's or other appropriate office for the redemption of his property and such a tender, made on March 19, 1926, in the presence of Mr. Seligman (Case, p. 129) and Mr. Lennox (Case, p. 139) was a good tender.

In this connection it is well to examine the testimony of the municipal officials. Mr. Lennox (Case, p. 133) says that it was the custom of the office never to prepare a bill for redemption of a piece of property "*any time after two years from the date of the sale.*" Mr. MacGrath, City Treasurer, said the same (Case, p. 140). Since the sale took place in 1916 and Schaffer did not serve his notice to redeem until October, 1919, any effort of Shearer to redeem from the municipal authorities would have proven as fruitless in 1919 as it would have in 1926.

It is argued by Schaffer that Shearer should have gone in the first instance to the Tax Collector to make his redemption. It has already been shown that such action in 1919 would have resulted in a fruitless effort. Moreover, Mr. Seligman was told that after a tax sale they did not accept redemptions in their office but the business had to be done direct with the purchaser of the certificate (Case, p. 129). Aside from this, however, there is no law, and counsel fails to cite any authority, for the contention that the redemption may *only* be made through the collecting officer. It is a well

known fact to counsel on both sides in this appeal, that more redemptions are made directly between owner and tax sale purchaser than through the indirect method of the collecting office. What more natural to a layman who receives a notice signed "Karl Schaffer," that if he does not redeem certain of his properties from the tax sale Schaffer claims to hold, he will lose the title, than to go directly to Schaffer to talk about it? And then when he talks he is told that he is too late, that his land is gone and that the only thing that Schaffer and he need talk about is the price of a quitclaim deed. These circumstances will never in equity be held to constitute sufficient evidence to support the forfeiture Schaffer claims. It is respectfully contended that Shearer's first visit to Schaffer, while fruitless, is not abortive and that his second visit to the municipal collecting office, while fruitless, was equally effective as the first visit to Schaffer, the conduct of Schaffer making this result positive and sure.

(b) The appellant, Schaffer, has not perfected the proceedings required by the law to obtain a statutory tax title thereunder.

What does Section 59 (C. S. 5137) mean, when it says that

"the purchaser may after the time to redeem has expired without redemption *annex the notice and affidavit of service to the certificate of sale, together with an affidavit that the sale has not been redeemed, and record and file the same* therewith in the office of the County Clerk or Register where the same shall be recorded as a deed or conveyance, and the said *notice and affidavits and the record thereof* shall be presumptive evidence of the service and facts therein stated; after the time to redeem has expired without redemption, cutting of timber by the purchaser shall not constitute waste"?

Schaffer claims to have fallen strictly and legally within the bounds of this section by having given notice, by having recorded the tax sale certificate, such notice and proof of its service and non-redemption, and thereby claims to have obtained title. It is worthy of notice that although the tax sale was acquired in November of 1916, the notice was served October 15, 1919, almost three years later, and that the entire proceedings were not recorded until April 13, 1925, nine years after the sale and six years after the service of notice.

Schaffer asks this Court to declare that the Legislature had no more in mind when adopting this part of Section 59, than a grant of permission to a tax sale purchaser to record the notice, proof of service and non-redemption, if and when he felt so inclined. If this be so, why does the Legislature conclude Section 59 by saying:

“after the time to redeem has expired without redemption, cutting of timber by the purchaser shall not constitute waste”?

If Schaffer's contention be true, that when the notice to redeem has been served and the time within which to redeem has expired, *eo instante*, the tax sale purchaser has an absolute title, why should the Legislature tack on the quoted words about the cutting of timber? How could it constitute waste if the tax sale purchaser were, on the mere service of the notice and the expiration of the time therein limited, the holder of the absolute legal title? Why should the Legislature tack on words without a meaning?

It is respectfully urged that such is not the case. The Legislature intended that when notice to redeem had expired without redemption, the tax sale purchaser might then perfect his statutory title by

doing those things above required, namely, prove the service of the notice to redeem, which proof must establish its service in strict conformity with the statutory requirements, prove the fact of non-redemption and *file* and *record* these "proceedings" and until all these requisites have been accomplished, the complainant's right to redeem has not been "cut off in the manner" required by statute (Sec. 57, C. S., p. 5136).

How other than by *affidavit* is this proof to be made? An affidavit should be taken and subscribed before an appropriate and qualified officer. The Vice-Chancellor found:

"The affidavits relating to service of notices to redeem appear to have been taken before one Mabel Seibert, who, by such name, was commissioned a Notary Public of New Jersey. She was married on August 16, 1919. The jurat to the affidavits purporting to be proofs of service and non-redemption were signed by her as Mabel Seibert Graff, Notary Public. In the absence of statutory authority the person commissioned as Notary Public under the name of Mabel Seibert was unauthorized to sign her name to jurats as 'Mabel Seibert-Graff, Notary Public' and consequently the purported affidavits must be regarded as a nullity." Vice-Chancellor's Conclusions (Case, pp. 21-22).

The Vice-Chancellor's conclusions are correct. The proof was that Mabel S. (or Seibert) Graff was commissioned a Notary on June 26, 1924, for a term of five years, and that was the only time. It thereby appears that Mabel Seibert Graff was not a Notary Public on October 16, 1919, when she took the proofs of service of the notice of redemption. Mrs. Graff was sworn and testified that she was a Notary in 1919, commissioned as Mabel Seibert but had married on August 16, 1919.

When these cases were tried, there was no statute which provided for the continued exercise of her office of Notary Public by a single woman after she married similar to such statutes which applied to Masters in Chancery (P. L. 1923, p. 265) and to Attorneys at Law (P. L. 1923, p. 267).

The act relating to women as Notaries was only that of 1894 (P. L., p. 35). This act is entitled "Supplement to an Act entitled 'An act concerning promissory notes, bills of exchange and Notaries Public' (Revision) Approved March Twenty-seventh, One thousand eight hundred seventy-four."

It is now incorporated in the Compiled Statutes, page 3761. It may be pointed out that the title of the act as well as the act itself, endeavors to do two things,—first, it amends the original act and then supplements the same by providing for the appointment of women as Notaries. Does not this piece of legislation violate the fiat of the Constitution of New Jersey because in the title its object is not correctly expressed and also that it has more than one object?

The Legislature in 1930 (P. L. 1930, p. 955), further attempted to legislate on this subject. It is important to note the title of the act:

"A further supplement to an act entitled 'An Act concerning promissory notes, bills of exchange and notaries public' (Revision of 1877) approved March Twenty-seventh, One thousand eight hundred and seventy-four."

By this Act, the Legislature seems to concur in counsel's view that previous to this legislation a married woman had no authority and needed legislative authority and regulation in order to be qualified to administer an oath as a Notary Public where she had been previously commissioned under another name.

The question of Notaries Public was dealt with in an advisory opinion by the Justice of Massachusetts and reported in 165 Mass. 599; 32 L. R. A., p. 350. Other cases can be found in 6 L. R. A., p. 842.

The affidavit proving the service of the notice to redeem was taken before one demonstrated to lack authority to administer an oath, and was no proof of affidavit and consequently the proceeding was defective.

Citation of authority from other states can be of little assistance except where the statutes involved are somewhat similar. In West Virginia we find a statute somewhat similar to the one in question which provides, among other things, that it shall be the duty of the County Clerk to issue and serve a notice to redeem upon the owner of real estate sold for delinquent taxes, and concludes with the provision that "the notice and return of service thereon \* \* \* shall be recorded by the Clerk of the County Court along with the plat and description or report of the surveyor" which in turn should be filed with the so-called deed. The Court when dealing with a situation in which this plat or survey and the notices to redeem with the proof of service were not recorded although the deed was, decides that the statute has not been complied with and that the owner might still redeem. The Court continues:

"The notice and service are not in the record. It is true that the plaintiff alleges the substance of these notices and the fact and method of their service \* \* \*. They are not attacked for want of substance or form, but the deed is attacked because they are not recorded together with the returns of service \* \* \*.

"\* \* \* the notice (to redeem) with return (of service) must not only be returned to the Clerk but must be recorded with the deed

showing compliance with the statutory requirement and showing complete title in the purchaser. No other provision is made for the perpetuation of this important evidence of a fact, necessary to sustain the purchaser's title."

*Koontz v. Ball*, 96 W. Va. 117.

See also:

44 *L. R. A.* (N. S.) 667 n.;

2 *Cooley on Taxation*, 3rd Ed., p. 1034;

37 *Cyc.* 1405.

All that has been said would be idle and a waste of words were the courts unwilling to accept the contention that defects of this character are such as to open up the right to redeem and will be seized upon by courts of equity to relieve against the forfeiture.

### POINT III.

**The sale of land for the nonpayment of taxes is such an extreme interference with private property that equity will seize upon the slightest flaw in the proceedings or in the conduct of the tax sale purchaser to restore the property to the owner by permitting him to redeem.**

Where a Deputy Sheriff instead of the Sheriff executed the tax deed a Virginia Court set it aside and in the opinion the Court said:

"These sales and purchases founded on forfeitures deserve no indulgence from the Court. It is, therefore, the well settled law, that he who claims under a forfeiture must show that the law has been exactly complied with. Here

a tract of land, forfeited as it is said for non-payment of taxes, is bought for forty-eight cents.

\* \* \* \* \*

"I will add that these laws of forfeiture ought to be strictly construed and that there should be no leaning in favor of the transaction by which a tract of 30 acres of land is sacrificed to a purchaser for forty-eight cents."

*Wilson v. Doe*, 7 Leigh. 22 (Va.).

"Forfeitures are not favored in the law. They are often the means of oppression and great injustice. And, where adequate compensation can be made, the law in many cases, and equity in all cases, discharged the forfeiture upon such compensation being made."

*Insurance Co. v. Norton*, 96 U. S. 244.

Cited with approval in

*Graham v. Security Mut. Life*, 72 N. J. L. 298; 62 Atl. 681.

Vice-Chancellor BERRY permitted redemption where the affidavit of service of notice to redeem was fatally defective and concludes his findings:

"There are *so many defects in the proceedings* to perfect title, which was attempted by notice under the statutes, that it would be a waste of time to recount them all."

*Sichel v. Willett*, 145 Atl. 721.

Justice PARKER believes that all the elements of the proceeding must be complete and says:

"Moreover, the proviso (under the 1918 Act) saves any proceedings under the former law (Act 1903) *not complete* at the time the act takes effect. The serving of notice to redeem is *part* of the tax sale 'proceeding' which is

complete *only after notice is served*, proof of service *made and filed*, and time for redemption has expired.”

*Moore Securities v. Hammel Co.*, 97 N. J. Eq. 292; 127 Atl. 207.

Not only do defects in the formalities required by the statute in the so-called tax sale proceeding open the door for redemption, but even where the proceedings have been strictly regular but the conduct of the defendant has been inequitable, the Courts are prone to grant the right to redeem.

In this particular, Vice-Chancellor BACKES says:

“On the second ground, that the tax title deed under which L. claims ownership was procured by fraud, there can be no question that equity can and will relieve \* \* \*.

“It is the peculiar province of equity to relieve against fraud regardless of correctness of legal formality.”

*Nugent v. Hayes*, 94 N. J. E. 305; 120 Atl. 38.

In an early case Vice-Chancellor EMORY speaks of the proceeding under the 59th section as a “strictly *ex parte* statutory method” and concludes that a tax sale purchaser must follow it strictly. In this case the tax sale purchaser led the owner to believe that he would extend the time of his notice to redeem and then failed to do it with the result that the owner did not redeem and was forced to file his bill.

“By this conduct he must be considered as in equity to be estopped from setting up, as against the complainants, the right to use this sixty day notice as the basis of a strict statutory foreclosure. \* \* \* defendant was obliged to give a new 60 day notice \* \* \*.

By himself leading the complainants to delay beyond the fixed statutory time, defendant is, in my judgment, estopped in equity, under the circumstances in this case, from setting up this failure to redeem under this notice as the basis of his statutory absolute title. And this tax title, must, therefore, be declared subject to redemption."

*Clift v. Frenche*, 83 N. J. Eq. 437; 91 Atl. 817.

In a case where during the proceeding on a bill to redeem, the tax sale purchaser had legally perfected its title by the recording of the required documents and where the tax sale purchaser had refused to discuss with the owner the amount due, insisting upon an amount the Court concluded to be excessive, Vice-Chancellor FIELDER found that by such conduct the tax sale purchaser was estopped from setting up any claim or right under its notice to redeem. The Vice-Chancellor concludes:

"By such conduct it is estopped from setting up in this suit any claim or right under its notice to redeem. *Clift v. Frenche*, 83 N. J. Eq. 437; *Nugent v. Hayes*, 120 Atl. 38. Defendant contends complainant should have made a tender \* \* \*. Defendant stated it would accept nothing less than the total sum demanded, and therefore complainant is excused from making an actual tender. *Thorne v. Mosher*, 20 N. J. Eq. 257; *Trenton v. Lawlor*, 74 N. J. Eq. 828; 71 Atl. 234; 74 Atl. 668. The filing of the Bill is sufficient tender of payment."

\* \* \* \* \*

"Complainant did call on collector and endeavored to ascertain from that official how much he was required to pay to redeem the property from tax sales. The collector declined to inform him or to accept any money from him \* \* \*. Complainant was entitled to the information he sought from the collec-

tor, and, failing to obtain it, he was practically refused the right to redeem, and it would have been idle for complainant to tender the collector any sum of money after the collector had declined to deal with complainant. *Mitch v. Riverside*, 86 N. J. L. 604, 609."

*Gonzales v. Harrington*, 2 Misc. 316; 126 Atl. 40;

See same case in 126 Atl. 38.

The most cursory examination of the authorities last cited will demonstrate that our courts and the courts of sister states have not hesitated to grant the right of redemption to an owner where the time limited in the notice to redeem had expired.

#### POINT IV.

**The decree of redemption is based on evidence as well as stipulations in the cause and was rightly made with reference to the certificates from which redemption was made before final decree.**

It is not accurate to say that there were a number of tax sale certificates disposed of "outside" of the case.

It will appear by the stipulation (Case, p. 17) that when the hearing opened before Vice-Chancellor FALLON, the appellant expressed his intention to permit redemption of the parcels of land known as 861-3 and 901-7 Pennington Street, which are clearly referred to in the bill of complaint in Paragraph 1 (Case, p. 2) clearly demonstrating that these lots were part of the lands the complainant sought to redeem by his bill.

The dispute arose over the fact that in computing the amount to be paid the tax sale purchaser included interest for certificates covering these par-

cels, which certificates were made to the tax sale purchaser without interest and this amount was allowed by the Vice-Chancellor in the Final Decree after the Master had ascertained it. (See Decree, Case, pp. 25-26.)

Under these circumstances it is difficult to see how it can be successfully contended that there was nothing evidential before the Court on which to found its decree. The settlement was between Schaffer and Shearer, not "someone altogether outside of the case." (See Stipulation, Case, pp. 17-18.) The amount to be computed on redemption was arrived at by a Master of the Court whose report was approved and its result incorporated in the Final Decree (Case, p. 25). While the printed case does not show it, it is a fact which cannot be contradicted that the appellant had notice of the hearing before the Master at which he might have cross examined and adduced such proofs as he saw fit. This is all that is required and it is so held in the case cited by appellant of *Borough of Chatham v. Board*, 8 Ad. Rep. 514; 152 Atl. 11. The decree in this respect is not defective.

#### SUMMARY.

It is respectfully urged that the decree below should be affirmed because it is demonstrated by the evidence that the complainant made an effort to redeem which the appellant frustrated; that the appellant's tax title was not perfected and that because of the conduct of the appellant and the defects in his tax sale proceedings, the Court rightly concluded that the complainant was entitled to redeem and permitted him to do so accordingly.

Respectfully submitted,

ADOLF L. ENGELKE,  
*Solicitor for and of Counsel*  
*with Complainant-Appellee.*

