

Court of Errors and Appeals New Jersey.

Between

William Bogert,
Appellant,
and
The City of Elizabeth,
Appellee.

On Appeal.

Andrew Dutcher, Solicitor of Appellant.
Robert E. Chetwood, Solicitor of Appellee.

To the Honorable the Chancellor of the State¹⁰ of New Jersey.

In Chancery, complaining, your orator, William Bogert, of
of the city of Elizabeth, in the county of Union, in said State,
showeth :

1. That your orator is the owner in fee of all those two certain
lots or tracts of land and premises situate, lying, and being in
the city of Elizabeth, aforesaid, which are thus described to
wit :

The First Lot.—Beginning in the westerly line of Grier ave-
nue, at a point therein distant southerly one hundred and thirty²⁰
feet from the corner formed by the intersection of said line of
Grier avenue with the south line of Grove street ; thence south-

erly along the side of Grier avenue sixty feet ; thence westerly, at right angles thereto, two hundred feet ; thence northerly, parallel with the first course, forty feet ; thence easterly, parallel with the second course, fifty feet ; thence northerly, parallel with first course, twenty feet ; and thence easterly, parallel with the second course, one hundred and fifty feet, to said line of Grier avenue and place of beginning.

10 *The Second Lot.*—Beginning in the west line of Grier avenue, at a point therein seventy-five feet southerly along the same from its intersection with the south line of Garden street ; thence running westerly, at right angles to said avenue, one hundred and fifty feet ; thence southerly, parallel with said avenue, fifty feet ; thence westerly, parallel with the first course, fifty feet ; thence southerly, parallel with said avenue, one hundred feet ; thence easterly, parallel with the third course, fifty feet ; thence southerly, parallel with said avenue, fifty feet ; thence easterly, parallel with the first course, one hundred and fifty feet, to said line of Grier avenue ; thence northerly, along the same two hundred feet, to the place of beginning.

20 2. That in and by section 92, article III, of a public act of the Legislature of New Jersey, entitled : “ An act to revise and amend the charter of the city of Elizabeth,” approved March 4, 1863, it was enacted, that it should be lawful for the City Council of the city of Elizabeth, whenever in their opinion the public good might require it, by ordinance to order and cause any street or section of a street to be graded, gravelled, paved, flagged, macadamized or otherwise improved and regulated in such a manner as they might deem advisable, under the supervision and direction of the Street Commissioner or street commissioners, at the expense of the owners of lands and real estate on the line
30 of said street or section of a street so improved.

3. That in and by the one hundred twenty-third section of said act it was enacted, that all contracts for doing work or furnishing materials for any improvement provided under that act, exceeding in amount one hundred dollars, should be advertised for three weeks in a newspaper printed, published or circu-

lating in said city, and should at all times be given to the lowest bidder, he or they giving ample and satisfactory security for doing the same according to contract.

4. That in and by the one hundred and fifth section of said act it was enacted, that the whole amount of the costs and expenses of regulating, grading and paving any street or section of a street, or grading, gravelling, flagging, macademizing, or otherwise improving any street or section of a street, should be assessed upon the owners of lands and real estate upon the line of said street or section of a street so improved; and whenever 10 such improvement should have been made under the provisions of that act, the City Council should ascertain the whole amount of costs and expenses of such improvement in any street or section of a street, and should cause to be made a just and equitable assessment thereof upon the owners of lands and real estate on the line of said street or section of a street by the City Surveyor, which should be and remain a lien thereon from the time when said improvement should have been made—which date of attachment of such lien was afterwards, by section 6 of an act of the Legislature of said State, entitled: "Supplement to an act 20 entitled, An act to revise and amend the charter of the city of Elizabeth," which supplement was approved April 1st, 1869—changed, so that such assessment should be a lien on the lands and real estate, whereon the same is assessed from the day the same is ratified by the City Council and not before; and should continue and remain a lien thereon until the said assessment, with the interest and expenses accruing thereon, should be paid or the amount thereof discharged by the sale of said real estate by the city.

5. That in and by the said act entitled, "An act to revise 30 and amend the charter of the city of Elizabeth," approved March 4, 1863, it was among other things enacted, that whenever any assessment should be ratified by the City Council, a certificate thereof should be delivered to the City Treasurer, who upon receipt thereof should among other duties, give notice in a newspaper, printed and published, or circulating in the said city, which notice should be published for three weeks succes-

sively, stating in general terms the streets or sections of streets comprised in such assessment, and requiring the owners of lands and real estate assessed to pay the amount to him with interest, as in said act provided, within sixty days from the first publication of the notice, or within the said time deliver to him a bond, entered into by said owner or owners to said city, conditioned for the payment of such assessment in five years from the date thereof, by paying twenty per centum of the amount of such assessment in each and every year, with interest as aforesaid; and that if such assessment should not be paid, or such bond should not be delivered within the time appointed in said notice, the City Council of said city might order and direct the City Treasurer to collect such assessment or amount by public sale at auction of the lands and real estate whereon such assessment was imposed or might be a lien; and that whenever the City Council should so order and direct the City Treasurer to collect any such assessment, it should be the duty of the said treasurer (he first giving notice by publication as aforesaid for twenty days, that unless said assessment should be paid at his office within twenty days after the first publication of said notice, he would proceed to collect the same by public sale according to law) to collect such unpaid assessment by public sale at auction, of the lands and real estate whereon such assessment was imposed or might be a lien. And that public notice of the time and place of sale should be given by said treasurer, and published as in said act provided, and that if any assessment remain unpaid on the day specified in such notice, the City Treasurer should proceed to sell by public auction at the time and place appointed therein, the lands and real estate on which such assessment should have been imposed, or might be a lien for the lowest term of years, but in no case exceeding fifty years, for which any person would take the same and pay the amount of such assessment with the interest thereon, and all costs, fees, charges and expenses; and that such lands and real estate as should not be bid for when offered for sale, should be struck off to the city for the term of fifty years, and that a certificate of the sale of each lot, tract or parcel of land and real estate sold as aforesaid, should be made by the treasurer and delivered to the

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purchaser, which certificate should contain a description of the property and the term for which it was sold, and state the particular assessment, the amount thereof with interest and expenses for which the sale was made, and the time when the right to redeem will expire; and that the treasurer should enter and record in his office, his proceedings upon such sales and all sales made and certificates granted by him, and all redemptions of property sold by him. And that every certificate of sale should be presumptive evidence of the facts stated therein and should be recorded in the office of the City Clerk and should constitute a lien upon the lands and premises therein described after the same should have been so recorded; and that if the city became the purchaser of any lands and real estate upon any such sale, the certificate of sale should be assignable and all the provisions of that act in relation to such sale should apply to the city as to any other purchaser; and also, that the owner, mortgagee, or any person or persons having legal or equitable interest in any lands or real estate sold as aforesaid, might redeem the same at any time within two years from the time of sale, by paying to the City Treasurer for the use of the purchaser, the purchase money together with any other tax or assessment chargeable thereon, and which the purchaser might have paid; and any sum of money expended in any improvement made by order of the City Council, with interest at the rate of fifteen per cent. per annum. And if any lands and real estate so sold should not be redeemed, as by that act provided the City Council should execute to the purchaser, his legal representatives or assigns, a declaration of sale under the common seal, signed by the Mayor and attested by the City Clerk, containing a description of the premises, the fact of assessment, advertisement and sale, the date of sale and the period for which the premises were sold, which declaration shall be recorded in the office of the County Clerk. And it is further provided in and by said act, that such declaration of sale shall be presumptive evidence in all courts and places that such sale and proceedings were regularly made and had according to the provisions of that act; and such purchaser or purchasers and his and their legal representatives, shall by virtue thereof lawfully hold and enjoy such land and real estate,

with the rents and issues thereof, for his and their own proper use against the owner or owners thereof, and all persons claiming under him or them, until the term shall be completed and ended for which the purchaser or purchasers may have agreed to take the same.

6. That on the tenth day of March, in the year eighteen hundred and sixty-nine, the City Council of the said city of Elizabeth, did by ordinance passed and approved on that day, order and cause Grier avenue in said city, from South street to the
10 road leading from the Edgar turnpike to Williamson street, to be paved with a patented wooden pavement, for which letters patent had before that time been granted by the United States. The said Council having previously determined that the public good required such improvement, and having given notice as required by the act aforesaid of their intention to cause such improvement to be made.

7. That in pursuance of such determination and ordinance, a contract in writing was on or about the eighteenth day of
20 August, in the same year, made and entered into by and between the city of Elizabeth and the American Nicolson Pavement Company, whereby it was stipulated and agreed between the said contracting parties, that the said American Nicolson Pavement Company, should and would lay the said patented wooden pavement upon the section of Grier avenue mentioned in said ordinance, and that the said company should be paid therefor, the sum of four dollars and fifty cents for each and every square yard of pavement laid under said contract. And the said The American Nicolson Pavement Company, in pursuance of the said contract, did lay the said patented pavement
40 upon the said section of said avenue.

8. That afterwards, to wit: on or about the eighth day of March, in the year eighteen hundred and seventy, an assessment of the whole amount of the costs and expenses of the said paving of said section of said avenue was made by the City Surveyor of said city upon the owners of the lands and real estate on the line of said section of said avenue, which as-

assessment was on the eighteenth day of March, in the same year, ratified by the City Council, and thereupon as alleged by said city, became and still remains according to the terms of the Acts above mentioned, a lien upon said lands and real estate.

9. That in and by the said assessment, there was charged to and assessed upon the lands belonging to your orator, and described in the first section of this bill, which lands are upon the line of that part of Grier avenue in which said pavement was laid, the sum of thirty-two hundred and forty-two dollars and ninety-two cents, (\$3242.92) of which sum seven hundred and forty-eight dollars and thirty-six cents is assessed upon the first lot, and the sum of twenty-four hundred and ninety-four dollars and fifty-six cents, is assessed upon the *second* lot described in said section.

10. That the amounts so assessed upon the said lands of your orator, have not nor has any part thereof been paid, because your orator has been and is advised that the said assessment is illegal and unjust. And that on or about the fourteenth day of November, in the year eighteen hundred and seventy-two, in pursuance of the provisions of said Act to revise and amend the charter of the city of Elizabeth, the Comptroller of the said city, who by a further supplement to the Charter of said city, passed April fourth, eighteen hundred and seventy two, was directed to perform all the duties concerning the collection of assessments and the sale of lands and real estate for the same, proceeded to sell the said lands of your orator for non-payment of said assessment, and at such sale the said lands were struck off to the said city for the term of fifty years, and that the said Comptroller has made or will make, according to the provisions of said Act, a certificate or certificates of such sale to the said city.

11. And your orator further shows that the aforesaid ordinance, ordering and causing the said patented pavement to be laid upon the said section of said avenue, was not introduced, passed or approved upon, or in consequence of any petition for the same by the owners of one-half of the property, in

running feet along the line of said section of said avenue ; and that no petition or application was ever made to the City Council for the said paving by such owners.

12. That the exclusive right to make, construct, use and lay the said patented pavement, in the said city, was before and at the time of the passage and approval of the said ordinance, and thereafter and at the time of the making of the aforesaid contract, and afterwards whilst the said contract was being performed, held and owned, or controlled by the company that
 10 obtained and executed the said contract, and received the price for the said paving ; so that there could be and was no competition for the said contract. And that there was no such advertisement as the law required for competitive biddings for the contract for said work, and that there was no lowest bidder for the said work, and that the said contract was not given to the lowest bidder as required by the Act above mentioned.

13. That the said contract for paving the said section of said avenue with said pavement, was made at a grossly extravagant price, which was far beyond the value of the work
 20 done and materials furnished, and far above the usual charge for such work in other places, and that the said contract was improvidently made by the City Council, and was, as your orator is informed and believes to be true, obtained by the said company by unfair and unjust means, and particularly by means of secret agreements or understandings between said company, by its agents or officers or some one or more of them, and some of the owners of land fronting on the said avenue, whereby it was agreed or understood between them that such
 30 owners should, though they might be assessed as others, actually pay for said pavement a less rate per yard than their neighbors, or that a portion of the amount that might be assessed to them or upon their lands, or some equivalent therefor, would be paid or given to them by said company, or its officers or agents, or some person for them.

14. That by another Act of the Legislature of this State, approved April 2, 1869, entitled, "Supplement to an Act

entitled, An Act for the better security of titles to land sold by Sheriffs, or other officers, approved, March twenty-fifth eighteen hundred and sixty-four," it was enacted that the provisions of the Act to which the same is a supplement, (which act provides among other things, that the conveyance of any land or real estate sold by any Sheriff or other officer, and the record thereof or a certified copy of such record, shall be good and sufficient prima facie evidence of the truth of the recital in the said deed or conveyance contained,) shall apply also to all deeds, declarations of sale, and conveyances duly acknowledged or proved theretofore or thereafter, made by or by authority of any public or municipal authority, authorized or empowered under or by virtue of any law of the State, to make and execute, or to direct or procure the making and execution of any deed, declaration of sale, or conveyance, and the proceedings upon which such deeds, declarations of sale, or conveyances are founded, shall not be subject to be questioned collaterally, but may be at any time reviewed by certiorari or other proper proceeding in the Supreme or Circuit Courts. 20

15. That by an Act entitled, "Supplement to an Act entitled, An Act to revise and amend the Charter of the City of Elizabeth, approved, March third, eighteen hundred and sixty-three," which supplement was approved, March seventeenth, eighteen hundred and seventy, the right given by the Act in the preceding section of this bill mentioned, to the remedy by certiorari at any time, in lieu of the common law right to dispute the validity of invalid deeds, when sued upon was taken away; and it was by the said supplement to the said charter, among other things, enacted, that no writ of certiorari should be allowed or issue, to remove any assessment made upon the owner or owners of lands and real estate for any work or improvement made or to be made, unless the same should be applied for within sixty days after the confirmation of such assessment by the City Council of said city; which term of sixty days would in all cases expire before sale of any lands or real estate for non-payment of assessments could, under the 30

provisions of said charter, be made by the municipal authorities of said city, and therefore no certiorari can be brought to review the proceedings of the municipal authorities of the said city of Elizabeth upon which any deeds, declarations of sale, or conveyances, as aforesaid, are founded. And it was further enacted in and by said last mentioned supplement, that all acts and parts of acts inconsistent therewith be, and the same were thereby repealed; whereby, as your orator avers, the said act, approved April 2d, 1869 mentioned in the preceding section of this bill, was repealed, so far as the same might apply to the city of Elizabeth and proceedings of the municipal authorities of said city.

16. And your orator charges and insists, that the aforesaid ordinance and contract, and the said assessment upon his lands and real estate, and the said sale of his lands and real estate for the non-payment of the said assessment, are, and each of them is, illegal and void.

And the said city of Elizabeth claims and insists, that the said ordinance, contract, assessment and sale, and all the proceedings relating thereto are, and each of them is, legal and valid; and that by virtue of the said sale the title of your orator to the said lands and real estate has been, or can be legally transferred to the said city, and can be assigned by the said city to any other person; and that at the expiration of two years from the date of sale a valid declaration of sale, or conveyance of the said lands and premises, can be made by the said city to itself, or to any other person who may then hold a certificate of sale for the same—by virtue of which declaration of sale, the said city or person shall lawfully hold and enjoy such lands and real estate, with the rents and issues thereof, against your orator and all persons claiming under him, until the term of fifty years, for which said lands were sold, shall be completed and ended, as provided in said charter of said city.

17. And your orator further shows, that the said city proposes and intends to have such declaration of sale or conveyance made, and to take summary proceedings for the ejection of

your orator from his said lands and premises, under and by virtue of the provisions of an act entitled, "A further supplement to an act entitled, an act to revise and amend the charter of the city of Elizabeth," approved March 4th, eighteen hundred and sixty-three and the several supplements thereto, approved March 12th, eighteen hundred and seventy-four; by which it was enacted, that it shall be the duty of a Justice of the Supreme Court of this State, upon receiving the affidavit of the Mayor and Comptroller of the said city, that certain described property in said city had been sold for default in payment of taxes or assessments, and that the time allowed by law for redemption of the same has expired, and where peaceable possession is refused, to issue a writ of assistance, (on thirty days' notice to the party in possession of such application,) directing the Sheriff of the county of Union to put the purchaser of such property at such tax or assessment sale, or his assigns, in immediate possession thereof.

18: And your orator further charges and insists, that the said assessment and sale are clouds upon his title to his lands and premises above-mentioned, and avers that his said title is now greatly disparaged by said sale thereof; and he fears and apprehends that his said title will be still further and irreparably damaged and imperilled by a declaration of sale, which as he verily believes and fears the said city will execute and deliver, or retain, as above set forth, unless this Honorable Court shall adjudge and decree the said assessment and sale to be void. And that as the recitals in the declarations of sale made by municipal authority, are by the act above mentioned made prima facie evidence of the truth thereof, the burden of proof will be thrown upon your orator to rebut and disprove the same, when such declaration of sale shall be made and legal proceedings be taken thereon to enforce the same; and that the party claiming or to claim title under or by virtue of the said sale, may by delaying proceedings to perfect or enforce the same, greatly embarrass your orator in any efforts to rebut or disprove such recitals in any declaration of sale, or certificate of sale or conveyance, had or to be had or obtained by virtue of the said sale; and your orator claims and insists, that he is entitled in equity to have his

said title established and quieted as against the said invalid and unjust claim of title, made and set up under the said sale.

19. And your orator further charges and insists, that the said assessment, made and imposed upon his property as aforesaid, was not and is not an assessment for benefits derived or supposed to be derived by him or by his said property from the laying of the said pavement, but that the said pavement was laid chiefly for, and does enure to the benefit of the public at large and the said city of Elizabeth, while the whole cost thereof is im-
 10 posed by the said assessment upon a few persons, the owners of a small strip of land adjacent to and on either side of the section of the avenue in which said pavement was laid, and who receive but a small part of the benefits, if any, arising from the said work, the principal part of the benefit of which is received and enjoyed by the public and city aforesaid.

And your orator avers, that the said assessment upon his property was not and is not for the amount of any ascertained benefit conferred upon or derived by his said property by reason of said work, and that no investigation or inquiry was ever made
 20 by said city or its municipal authorities, or any public officer, or otherwise, into or as to the amount of such benefit to his said lands, for the purpose of making or levying the said assessment, or for the purpose of making *a just and equitable assessment* of the costs and expenses of said paving, as required by the aforesaid charter of said city.

And your orator further charges, that by the aforesaid sale and confiscation of his said lands, under the false pretext of an assessment for benefits received, the provision of the constitution of the State of New Jersey—that private property shall not be
 30 taken for public use without just compensation—has been violated, and that said sale and confiscation are therefore void.

In tender consideration whereof, and inasmuch as your orator is remediless in the courts of law, and can only have adequate relief in a court of equity ; and to the end—

1. That the city of Elizabeth, the defendant in this suit, may according to law, full, true, perfect and distinct answer make to each and all of the matters aforesaid, and that as fully and particularly as if the same were here again repeated, and the said defendant thereto interrogated paragraph by paragraph.
2. That your orator's title to his said lands may be quieted.
3. That the aforesaid assessment upon his said lands may be adjudged and decreed to be illegal and void.
4. That the aforesaid sale of his said lands for the non-¹⁰ payment of said assessment may be likewise adjudged and decreed to be illegal and void.
5. That your orator may have such other and further relief as the nature of his case requires, and as may be agreeable to equity.

May it please your Honor, the premises considered, to grant unto your orator the State's writ of subpoena, issuing out of and under the seal of this Court, to be directed to the said the city of Elizabeth, commanding it at a certain day and under certain penalty, therein to be expressed, to be and appear before your²⁰ Honor in this Court, then and there to answer the premises in manner aforesaid, and to stand to, abide by, and perform such order and decree as your Honor shall make therein.

ISAAC S. TAYLOR,
Solicitor, and of Counsel with Complainant.

To this bill of complaint the defendants filed a general demurrer.

The cause was heard before the Vice Chancellor on bill and demurrer, and the following opinion was delivered therein :

William Bogert, <i>vs.</i> The City of Elizabeth.

10 Mr. I. S. Taylor and Mr. McCarter for Complainant.
 Mr. Williamson for defendant.

The Vice Chancellor.

This cause was argued upon Bill and General Demurrer. In support of the demurrer the defendant's counsel insisted that the question presented was *res adjudicata*, and relied upon the recently decided case of *Dusenberry vs. the City of Newark*, as substantially identical with the present one, and necessarily governing it. Upon hearing the opinion of the Chancellor in that case read by Counsel at the argument, my impression was
 20 quite clear that it covered the present controversy, and further consideration has confirmed that impression. I shall therefore advise that the demurrer be sustained.

In *Dusenberry vs. Newark*, an assessment for street improvements was alleged to be illegal and void in contravention of the complainant's constitutional rights. The City was about to execute a declaration of sale for the complainant's lands so assessed. He had lost his remedy by *certiorari* because the limited time had expired. He asked relief in equity because at law in an action on the declaration of sale that instrument would be conclusive as to the legality of the proceeding on which it was founded. He sought to have the making and delivery of the instrument enjoined. On the case thus alleged, the complainants bill was dismissed. The principal was that as general rule
 30 equity will not interfere to restrain the collection of a tax which is illegal or void, merely because of its illegality, but there must be some special circumstances attending the injury threatened, to bring the case within some recognized head of equity jurisdiction, otherwise the person aggrieved will be left to his remedy

at Law. Reference is made in support of this ruling to *Morris Canal & Banking Company vs. Jersey City*. 1 Beas. 252, and *Liebstein vs. Newark*, 9 C. E. G. 200. I am unable to distinguish the adjudged cause from the present one so as to bring one within the jurisdiction of equity and not the other. In each the declaration of sale sought to be prevented or set aside is charged to be founded on an illegal and void assessment. In each the assessment was reviewable at law for a limited time after confirmation. And in each the review was omitted to be instituted by the party assessed, so that the legal remedy is alleged to be lost or made quate. In the present case the time limited for certiorari is much shorter than the time allowed in the adjudged case, and by a recent supplement to the Charter of Elizabeth, provision is made for a summary mode of ejection under a declaration of sale which does not exist under the law applicable to the city of Newark. But I cannot see that either of these circumstances creates any equity sufficient to confer jurisdiction. The doctrine is that this Court will not assume to set aside titles founded on tax or assessment sales, simply because the taxes or assessments have been illegally or unconstitutionally imposed. 20

The jurisdiction to declare such illegality or unconstitutional character, and to annul the title sought to be derived from the sales, belongs to the Court of Law, and when recourse to those Courts is omitted to be made by the party aggrieved, either by his neglect or by choice, there exists no equitable element on which this Court can give relief.

I will advise as above.

Afterwards the following decree was made by the Chancellor.

It is therefore on this 20th day of March, A. D. 1875, ordered, adjudged and decreed that the complainants said bill be and 30 the same is hereby dismissed with costs.

IN CHANCERY OF NEW JERSEY.

Between

William Bogert,

*Complainant,**and*

The City of Elizabeth,

*Defendant.**On Bill &c.
Appeal.*

The complainant hereby appeals from so much of the final
decree made in this Court in the above stated cause, as dis-
10 misses the complainant's bill, filed in said cause, to the Court
of Appeals in the last resort in all causes of law.

ANDREW DUTCHER,

Solicitor, and of Counsel with Complainant.

Dated, November 15th, 1875.

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

ANDREW DUTCHER,

Of Counsel with Complainant.

COURT OF ERRORS AND APPEALS. NEW JERSEY.

Between

William Bogert,
Appellant,
and
 The City of Elizabeth,
Appellee.

On Bill &c.
Petition of
Appeal.

To the Honorable, the Court of Appeals in the last resort in all causes of law :

The humble petition of William Bogert, the appellant in the above stated cause, respectfully shows, that your petitioner finds himself aggrieved by a final decree made in the Court of Chancery by his Honor, Theodore Runyon, Chancellor of New Jersey, bearing date the twentieth day of March, in the year eighteen hundred and seventy-five, wherein the said William Bogert was complainant, and the city of Elizabeth defendant, in this respect, to-wit : That the said decree adjudges that the said complainant's bill of complaint be dismissed. And your petitioner humbly appeals from that part of the said decree of the Chancellor which decrees as aforesaid, upon the ground that the same is erroneous, for that the said complainant had a good cause of action against the defendant, and was and is entitled to the relief prayed for in his said bill of complaint, and that the demurrer filed thereto ought to have been overruled. Your petitioner therefore prays that the said decree of the said Chancellor may be, in the particulars aforesaid, reversed, set aside, and for nothing holden. And that your petitioner may have such relief in the premises as to this Honorable Court shall seem meet.

ANDREW DUTCHER,

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Sol. of and of Counsel with Appellant.

Dated Nov. 16th, 1875.

COURT OF ERRORS AND APPEALS OF THE
STATE OF NEW JERSEY.

Between

William Bogert,

Appellant

and

The City of Elizabeth,

Respondent.

*On Bill &c.
Answer to Peti-
tion of Appeal.*

The Answer of the City of Elizabeth to the petition of
10 appeal of the said William Bogert :

This respondent not confessing or acknowledging all or any of the matters or things to be true in the said petition of appeal contained and set forth, for answer thereto says, that it believes it to be true that such decree as is complained of in certain particulars by the appellant, was made in the Court of Chancery [by the Honorable Theodore Runyon, Chancellor of the State of New Jersey, but as to the substance and contents thereof, this respondent humbly craves leave to refer thereto when the same shall be produced.

20 And this respondent is advised and believes that the said decree, in the respects complained of by the said appellant, in his petition of appeal, to-wit, that the said decree adjudges that the said appellant's bill of complaint be dismissed is agreeable to equity, and it therefore humbly prays that the same may, in that respect be affirmed, and that the said petition of appeal may be dismissed by this Honorable Court, with costs to be adjudged to this respondent.

ROB'T E. CHETWOOD.

*Solicitor, and of Counsel for the City of Elizabeth,
Respondent.*

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