

NEW JERSEY COURT OF ERRORS AND
APPEALS.

DANIEL B. FRAZIER Co., a corporation of
New Jersey,
Prosecutor-Appellant,

v.

TOWNSHIP OF LONG BEACH, *et als.,*
Defendants-Respondents.

IN CERTIORARI.

ON APPEAL.

(Five Cases.)

BRIEF FOR PROSECUTOR.

FACTS.

This is an application to review the validity of a sale for taxes of lands of the prosecutor located in the Borough of Long Beach.

The sale was held November 19, 1928, for taxes for the year 1927, and the Borough was the purchaser.

Four bills in Chancery were filed by the Borough on or about September 15th, 1931, and the fifth bill was filed on or about January 4, 1932. The fifth suit involves substantially more land and more money than the other four suits combined. The defendant in the Court of Chancery filed answers within time, denying the validity of the sale and setting up that the sale was ineffective, invalid and void. This was followed by application to Justice Bodine in the Supreme Court for writs of certiorari. The writs in the first four cases were granted January 15, 1932, and were returnable February 11th. In the last case, the writ was granted January 22nd, and was returnable February 11th. On application of the defendants, and upon consent, the return day was extended to February 15th, 1932. Thereupon, notice was given by the defendants of an application to Justice Bodine for the vacation of the allocatur upon the grounds (1) that the prosecutor was in laches; (2) that the tax sale proceeding which was attacked by the prosecutor was, in fact, valid;

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and (3) that the affidavit filed did not justify the issuance of the writ.

Without an order for the purpose, but upon notice, the defendants took depositions which were used at the time mentioned in the notice of application to vacate the allocatur. These depositions are printed in the State of the Case.

Pursuant to application of the defendants, Justice Bodine entered an order vacating the allocatur, upon which appeal was taken to this court. In the meanwhile, because of a reservation in the rule vacating the allocatur, application was made to Part No. 2 of the Supreme Court for the renewal of the writ, but that application was denied, because of the pending appeal.

An opinion was thereafter filed by Justice Bodine in the Supreme Court.

The procedure with respect to the foreclosure and to the issuance of the writ of certiorari in a case of this sort is to a large extent affected by statutes, to which reference will be made in the argument.

The references to the facts will be divided according to the points under which the questions involved will be argued.

[The page references are to the State of the Case in the case marked No. 1 (12 36/100). The testimony is printed there, but was taken in all five cases as one.]

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1. FACTS AS TO INTEREST RATE.

The notice of the sale states that the lands and premises will be sold for the purpose of making the amount of the tax liens with interest and costs. Following which was a statement of the amount of the taxes, with interest to July 1, 1928. The interest as shown is more than seven per centum per annum and less than eight per centum per annum. The testimony of the Township officials was that it was the intention to charge interest at the rate of eight per centum per annum. So that, if the calculation does not come out correctly the difference was due to error in calculation (pp. 43, 44, 45), although Mr. Ewart (p. 45) says the calculation to July 1 was correct according to his computation.

The Collector testified that he figured eight per cent because it was the custom and that he never gave a thought to the absence of a resolution fixing the rate of interest on delinquent taxes (pp. 43 and 44).

2. FACTS AS TO SUFFICIENCY OF DESCRIPTION.

The notice of sale contains the minimum of description. The five properties in question were described in the notice as follows:

George W. Evenson, 12 36-100 acres South of Harvey Cedars, 1927.

Daniel B. Frazier Co. South of Harvey Ce-

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dars, formerly R. R. property 18 35-100 A., 1927.

Daniel B. Frazier Co. 177 82-100 acres Sea Breeze tract, adjoining Surf City, 1927.

Daniel B. Frazier Co. 486.01 acres Between Harvey Cedars and Barnegat City 1 house, 1927.

Daniel B. Frazier 24 52-100 acres Formerly Cassidy Est. 1927.

The Collector says that in making up the notice of sale he made no effort to get a more accurate description of the lands to be sold (p. 43).

3. FACTS AS TO LIST OR RECORD OF SALE.

The 1918 Tax Sale Act (P. L., p. 883, Ch. 237), provides, in place of the records required under the former Act, for a permanent record known as a "list." This term has a particular or special meaning under the tax law, just as the word "duplicate" has. The references in the statute to this list will be referred to in the argument on this point.

It appears from the testimony of the Collector, that there never was such a list, nor any record of the sale. There were and are no affidavits of mailing, posting nor advertising in the Borough records and no proof of these things except as testimony was offered in this case (pp. 37 to 42). The Borough probably relies on the following:

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1. The notice of sale (Exhibit D6) referred to in the testimony as a "list" (pp. 30 and 31).

2. A modification of this notice with certain inserts called "Result of Tax Sale" (Exhibit D7) (pp. 34-35).

3. The certificates of sale.

4. Notations made on D6 at the time of the sale (pp. 30 and 31).

5. Notes on the tax duplicate (pp. 39, 46 to 56) principally in lead pencil.

There had been other lead pencil entries on the tax duplicate which had been erased (pp. 54-55). The only entry in the duplicate with respect to the 177 82-100 acre property claimed to relate to the sale in question was the words "To Township" in lead pencil without date (p. 52). The same thing is true of the 486.01 acre tract and the 24.52 acre tract (pp. 53 and 54).

6. Testimony of regularity to supply the absence of a record.

None of these things constitute the list or record contemplated by the statute. There was nothing more.

ARGUMENT.

The argument will be presented under the following heads:

1. The sale was invalid because it was for a sum which included interest not authorized by law.

2. The sale was invalid because the description was insufficient to identify the land sold, or to notify the public of what was to be sold, or to enable a purchaser to procure a good title.

3. The sale was invalid because of the absence of a legal record of the proceedings leading up to the sale or of the sale itself.

We will also refer to the following points:

4. Section 53 does not require the prosecutor to pay the tax as a condition precedent to success in this proceeding.

5. The procedure outlined by statute where the invalidity of a tax sale is set up in answer to a foreclosure bill.

6. The writ in this case is not barred by time in any event, nor by the 1925 statute.

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7. Appeal to this Court is the proper practice in a case such as this.

8. Effect of promises of payment.

1. THE SALE WAS INVALID BECAUSE IT WAS FOR A SUM WHICH INCLUDED INTEREST NOT AUTHORIZED BY LAW.

“Interest does not inhere in a tax as a legal incident.”

Town of Belvidere v. Warren R. R. Co., 34 N. J. L. 193, at p. 199 (Supreme Court, per Beasley, C. J.).

In *Camden v. Allen*, 26 N. J. L. 398, Chief Justice Green in the Supreme Court, said:

“A debt universally bears interest from the time it is due. A tax never carries interest. No instance, it is believed, can be found since the formation of the government where a claim for interest on taxes has been made or enforced.”

In *Brennert v. Farrier*, 47 N. J. L. 75, there had been an assessment for benefits. The pertinent statute required notice to be given of the assessment and provided that after the lapse of sixty days, interest at twelve per cent could be collected. There had been a delay in confirmation and, therefore, a delay in giving the notice. The municipality claimed that it was entitled to interest on the assessment for the interval at the rate of seven per cent. It was

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held that no interest could be collected except upon the terms fixed in the statute.

In *Lehigh Valley v. Jersey City*, 93 N. J. L. 284, the 1903 Tax Act was under consideration. That statute provided that the rate should be seven per cent or "such higher rate not exceeding in the whole twelve per centum per annum as the governing body of the taxing district may fix." The governing body never fixed any higher rate of interest on taxes. For some reason which does not appear in the opinion the collector demanded ten per cent interest.

It was held that as the municipality had never fixed any higher rate than seven per cent, no more than that could be collected (Supreme Court, per Justice Trenchard).

In *Baker v. East Orange*, 95 N. J. L. 365, it was said (Supreme Court, per Justice Black):

"A tax, in its essential characteristics, is not a debt nor in the nature of a debt. A tax is an impost levied by authority of government. Taxes are, in legal contemplation, neither debts, nor contractual obligations, but are, in the strictest sense of the word, exactions."

The statute relating to interest on delinquent taxes, applicable to this case is Section 603 of the Revised Tax Act of 1918 (P. L. 1918, p. 847, Ch. 236).

This section reads as follows:

"603. The governing body of each municipality shall have power to fix by resolution the rate of discount to be allowed for the payment of

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taxes or assessments previous to the date on which the same would become delinquent, which rate of discount shall not exceed six per centum per annum, and shall be allowed only in case of payment on or before the thirtieth day previous to the date on which the said taxes or assessments would become delinquent; and also the rate of interest to be charged for the non-payment of taxes or assessments on or before the date when the same would become delinquent, which rate for non-payment as aforesaid shall not exceed the rate of nine per centum per annum, nor be less than seven per centum per annum."

This statute differs from the 1903 Act referred to in the Lehigh Valley case, *supra*, in that under the 1903 Act, it was provided that the rate should be seven per cent unless the municipality should fix a higher rate. Under the act here involved the matter of discount for prepayment and interest for delinquency are put upon the same basis. The municipality may by resolution fix a rate of discount for prepayment, subject to a specified limit, and may likewise fix a rate of interest for non-payment. They shall not fix a rate less than seven nor more than nine per cent.

Under this statute, the municipality has no right to charge interest unless it has adopted a resolution fixing the rate. A taxpayer would have just as much right to say to a municipality that he would insist upon a discount for prepayment, even if there

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were no resolution authorizing a discount, as the municipality has to charge interest in the absence of a resolution.

A taxpayer requesting a discount, would be answered that there was no resolution, and the Frazier Company, the taxpayer here, has the right to say to the Borough that when it sells its lands for taxes, plus eight per cent interest, it has sold for an unlawful exaction.

In the case of *Rellstab v. Belmar*, 58 N. J. L. 489, there had been a sale for taxes and twelve per cent interest. Six per cent was the lawful rate. It was said, that "When part of a tax is illegal, all proceedings to collect it must be void, as it is impossible to separate what is legal from what is illegal." The sale was, therefore, set aside.

In *Hopper v. Malleson*, 16 N. J. E. 383, Chancellor Green said that as the tax warrant recited as due, an excessive amount, there was a clear excess of authority and that the warrant was null and void (p. 385.)

In *Caulfield v. Jersey City*, 11 M. R. 573, it seems to have been admitted that the sale was made for excessive interest. The sale was set aside.

In *Lehigh Valley v. Jersey City* (*supra*), the city contended that the taxpayer should be denied relief because of "a lack of diligence on the part of relator and its predecessor in title to the disadvantage of the city." The Court said (per Justice Trenchard):

"We are unable to perceive how a land owner by simply permitting taxes to accumulate can

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be deprived of his rights, nor how delay in payments can authorize the addition of an unauthorized penalty."

In the case of *Caulfield v. Jersey City* (*supra*), the city contended that before attacking a sale for excessive interest the purchaser must tender tax and lawful interest. This contention was held to be unsound.

It should be noted that there is no contention nor pretense that there ever was a resolution fixing the rate under the 1918 Act. The burden of justifying the exaction of interest was on the Borough and they have made no attempt to show authority (see *Lehigh Valley v. Jersey City*, 93 L. 284 at 285). The absence of such a resolution has been conceded throughout this litigation.

In *Mitsch v. Riverside*, 86 N. J. L. 603, it was held that where the facts necessary to show the validity of the tax sale do not appear by the proceedings returned with the writ, they must be shown by the recitals in the certificate of sale or by proof *aliunde*.

2. THE SALE WAS INVALID BECAUSE THE DESCRIPTION WAS INSUFFICIENT TO IDENTIFY THE LAND SOLD, OR TO NOTIFY THE PUBLIC OF WHAT WAS TO BE SOLD, OR TO ENABLE A PURCHASER TO PROCURE A GOOD TITLE.

The Tax Act (Ch. 236, P. L. 1918), provides (Sec. 401), that the assessor shall assess each parcel, and

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set down "*the description and area of each parcel sufficient to ascertain its location and extent,*" etc.

The Tax Sale Act (Ch. 237, P. L. 1918), provides in short as follows (with respect to description):

Section 16 provides for the enforcement of the lien of delinquent taxes in the manner set forth in the act.

Section 17 provides that the collector shall make a list of the lands subject to sale, describing the same according to the last tax duplicate, "*amplifying the description if necessary to better identify the parcel.*"

Section 18 provides for notice of sale stating the description as contained in the list.

Sections 28 and 29 provide for the certificate which shall include a description of the land "*Followed by amplified description if desired.*"

Section 30A provides for description in accordance with assessment map, if any, and that the collector may use a description to meet apportionment, and may consolidate a description in the case of contiguous parcels *in the same block.*

Section 36 provides that the certificate of sale shall be presumptive evidence of the purchaser's title to the land therein described.

Section 52 provides that

"No sale shall be set aside because of insufficient description in the original entry of the lien, or in the list made up for the sale * * * if it shall appear by other legal evidence that the land sold was, in fact, that assessed, and that the sale was made pursuant to law."

The sections of this act clearly contemplate that the description of the land shall, in fact, describe it. The reason for this is plain. Not only is the owner to be notified of the sale, but the sale is to be a public auction, bidders are to be invited, competition is contemplated. How could any one bid for any one of these properties (with the possible exception of the two corner lots), with any conception of what he was bidding on. It may be that the owner is supposed to know what he owns and also what taxes he owes. If that were all that the law requires, there might be no ground for complaint. But the law clearly contemplates more than a notice to the owner. It is intended that the sale, and advertisement shall be public. A notice which does not identify and describe the land, is, so far as all but the owner is concerned, no notice at all.

Section 52, it will be noted, does not cover the case of an insufficient description in the notice of sale or in the certificate. But even if it did, the curative provision is only applicable if it shall appear by other legal evidence that the land sold was, in fact, that assessed and that the sale was made pursuant to law.

Just how it could be proven by "other legal evidence" that the land sold was, in fact, that assessed might be a difficult problem. But it is not present here, as no attempt was made by the Borough to introduce such proof.

And when the act refers in this clause to a sale "made pursuant to law," it must mean "otherwise pursuant to law," and as the notice of sale is equally

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deficient in the description as the original entry, and as there is no list, it would be impossible for the Borough to claim compliance with this clause.

In *Brooks v. Township of Union*, 68 N. J. L. 133, a similar provision of the then applicable Tax Act was relied on by the municipality. But the Court said (p. 136, per Justice Hendrickson), that the defects disclosed were more fundamental in character and were not within the statute referred to.

In *Bounds v. Chester Township*, 89 N. J. L. 375, the Court said (per Justice Swayze), speaking of the provision that no sale should be set aside because of failure to record the sale, etc., if it should appear by other legal evidence that the land sold was, in fact, that assessed and that the sale was made pursuant to law, that these facts were not shown and, therefore, the sale was set aside.

In *Waterman v. Shrewsbury*, 83 L. 286, the sale was set aside for insufficient description. It would seem that the description in the case now before the Court is at least as inadequate as in that case. The principle applied was as stated in *Warshung v. Hunt*, 47 L. 256, that the description in the advertisement of sale should be such as to warn the owner for what property he is assessed (*sic*) and such as to secure a fair sale by showing to purchasers what property is to be sold.

Application of this text to the present case would result in setting aside the sale.

3. THE SALE WAS INVALID BECAUSE OF
THE ABSENCE OF A LEGAL RECORD OF
THE PROCEEDINGS LEADING UP TO
THE SALE OR OF THE SALE ITSELF.

The Tax Sale Act of 1918 (Ch. 237), simplified the keeping of records of the proceedings leading up to the sale and of the sale.

The sale record, consists of the "list" referred to in the act and the papers to be kept therewith.

Section 17 of the act provides that the collector shall make a list of the lands subject to sale, describing them as has been already mentioned. All unpaid items shall be entered thereon, so that such list shall be a complete statement of all municipal charges against such property existing on the first day of July, together with all interest and costs computed to such first day of July.

Section 17A (P. L. 1922, p. 207), provides for the case of installments of assessments not yet due.

Sec. 18 provides that "such list shall be bound in book form as a permanent record of said office," and provides for the notice following the list.

Section 20 provides that where the owner's name appears on the list and his address is known, a notice shall be mailed to the owner.

Section 21 provides that if there is an adjournment it is to be noted on the list.

Section 23 provides that

"at or before the time advertised for sale, said officer shall attach to said list or section there-

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of a copy of the notice of sale, with affidavits of the advertisement, posting and mailing thereof."

Section 26 provides that

"as each sale is concluded, said officer shall enter on his list the word 'sold,' the date of sale, the name and address of the purchaser, the items of cost and interest since said first day of July, and the total for which the sale is made and the rate of redemption."

Section 28 provides for a form of certificate, and statements to be contained therein "all as contained in said list."

These sections make it clear that the "list" is of the utmost importance. The sale is based upon it and there is no other record of the sale except the certificate. And the certificate itself is supposed to be based upon the list.

It would seem to be unnecessary to enter into a detailed statement of defects in records which have been held in other cases to invalidate sales.

The principle involved is that the power to sell is a naked power, and the validity of the title derived from such a sale depends upon a strict compliance with the directions of the statute. The purchaser must show affirmatively that everything has been done which the statute makes essential to the due execution of the power.

Mitsch v. Riverside, 86 N. J. L. 603 (Court of Errors and Appeals).

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In this case the Court of Errors held that failure to file proof of publication, posting and mailing constituted "fatal" error. Justice Swayze, speaking for the Court said:

"The defects are not merely of formal or technical procedure; they go to the substantial merits."

In *Landis v. Vineland*, 61 N. J. L. 424, Justice Dixon said:

"Under our decisions this right of redemption need not be exercised unless it can be shown that the steps leading up to the sale have been taken in strict accordance with law. One of the objects for which the record of tax sales is required is that persons interested in the property may be apprised of their situation. If this record does not disclose the requisite proceedings, these persons need not exercise their right of redemption."

The sale was held invalid for failure to make the return in time.

See also:

Lippincott v. Pensauken, 62 N. J. L. 177;
Bounds v. Chester Township, 89 N. J. L.
375.

The municipality relies upon

1. The notice of sale (Exhibit D6). This is required by the statute above and beyond the list rec-

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ord. The notice of sale was not intended as the list and clearly could not, under the statute, take the place of the list.

2. Memoranda on a copy of the notice of sale (Exhibit D6). This sheet of paper containing rough memoranda cannot seriously be regarded as the statutory list. It differs from the notice of sale merely in the addition of certain memoranda.

3. The tax sale certificate like the notice of sale is a separate, independent paper required by the statute in addition to the list. It is not and cannot be, under the statute, a substitute for the list.

4. The notes on the duplicate that the lands were sold for taxes likewise is not what the statute contemplates. The notes may be an attempt to comply with Section 27 of the Tax Sale Act requiring an entry to be made on the duplicate. In any event it is something additional to the list, and not a substitute for it.

5. The real reliance of the Borough will no doubt be placed upon the testimony offered as a substitute for the record. The attachment to the list of the proof of mailing, posting and advertising is, as was said in the Mitsch case, more than formal. Those proofs and the other records in the list are, within the obvious contemplation of the Act, the record of the sale. Can the validity of this, or any other sale, be left to the memory, or continued life, of municipal officials? Can the failure to make a record be

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cured by evidence taken in such a suit as this? We believe that under the principles stated in the Mitsch case and the Landis case (*supra*) this cannot be done.

To uphold this tax sale would be to legalize the utter disregard of the provisions of the Act designed to secure a permanent record of proceedings leading up to tax sales and of the sales themselves and would, in effect, be equivalent to a repeal of all those sections of the Act which relate to the list and to the keeping of permanent records.

One of the matters upon which the Court below evidently placed considerable emphasis in its action was the failure of Frazier to pay the taxes after his promises to do so. The evidence shows that these promises were made in good faith; that it was contemplated that certain banks were to take assignments of these tax sale certificates and that an examination of the Township books was requested for the purpose of determining whether the sale was legal and proper (pp. 76, 77, 78).

It is submitted that no bank or other person could be reasonably expected to take assignments of tax sale certificates involving an investment in excess of \$50,000 where the records required by the statute respecting tax sales were entirely missing. Under such circumstances Frazier cannot very well be charged with bad faith. Rather, it would seem to us to be proper to say that the Township had itself made it impossible for Frazier to raise the money to satisfy the municipality's claims.

The Court below held that there had been "sub-

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stantial compliance" with the law respecting records and that the irregularities were fanciful.

It is submitted that an entire absence of records, involving, as it must, resort to oral proofs, cannot constitute substantial compliance with the law. To hold otherwise is to repeal the statute. And the irregularities here in question are at least as glaring as those involved in the cases cited.

4. SECTION 53 DOES NOT REQUIRE THE PROSECUTOR TO PAY THE TAX AS A CONDITION PRECEDENT TO SUCCESS IN THIS PROCEEDING.

This section applies only where the property was purchased at a tax sale by someone other than the municipality. The statute was probably designed to meet a situation such as existed in *Tooker v. Roe*, 44 N. J. L. 591, where a purchaser acquiring an invalid title was said to be without remedy.

In *Caulfield v. Jersey City*, 1 M. R. 573, the sale under consideration was made in 1920. The city purchased and, as we have seen, the purchaser was not required to tender the amount due as a condition to setting aside the sale.

5. THE PROCEDURE OUTLINED BY STATUTE
WHERE THE INVALIDITY OF A TAX
SALE IS SET UP IN ANSWER TO A FORE-
CLOSURE BILL.

P. L. 1925, Chap. 202, provides that in a proceeding to foreclose a tax sale certificate, the validity of the sale shall be presumed unless invalidity be set up by answer; that the filing of such answer shall stay the Chancery proceedings for four months, and that if a writ be allowed the Chancery proceedings shall be stayed until the writ is discharged; that if a writ be not obtained in four months the answer in Chancery should be stricken out; and that no writ of certiorari shall be issued after the expiration of four months from the filing of an answer denying the validity of the tax sale.

An amendment to the Certiorari Act (P. L. 1925, Chap. 21) provides that the 18th months' limitation on certiorari shall not apply to any proceeding taken after the sale by the purchaser to perfect the title. This obviously refers to a suit by a purchaser to foreclose.

These proceedings were all instituted within the four months. In the case involving the largest tract of land (486.01 acres), and considerably more money than the rest of the cases put together, the bill was not filed until January 4, 1932, and the allocatur was vacated February 15, 1932.

The opinion of the Supreme Court refers to the application for certiorari as tardy. Certainly this

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shows considerable dispatch. The four months' time did not commence to run until answer was due.

After all, the statute gives four months, and it seems to us that any application within the four months must be in time.

6. THE WRIT IN THIS CASE IS NOT BARRED BY TIME IN ANY EVENT, NOR BY THE 1925 STATUTE.

In *Bounds v. Chester Township*, 89 N. J. L. 376, Justice Swayze, speaking for this court, said:

"A sale to enforce a tax where there is no statutory lien would be without authority of law and an attempt to take the taxpayer's property without due process of law, and such a sale could not be made effective by limiting the time within which a certiorari could issue."

See also:

Mitsch v. Riverside, 86 N. J. L. 603, at 610, and cases collected in *Walsh v. Newark*, 78 N. J. L. 168.

And in *Waterman v. Shrewsbury*, 83 N. J. L. 286, at 289, Justice Kalisch says of the statute limiting time in certiorari:

"The statute invoked as a bar is not applicable where no assessment has been laid or proper sale made."

And in *Caulfield v. Jersey City*, 1 M. R. 573, where the defect was sale for excessive interest, this Court said:

“We have examined the contention of the City that the writ was barred by lapse of time, but in view of the fact that the sale was made for a lien invalid in law, find no merit in it.”

Without reviewing our points here, we believe it sufficient to call attention to the fact that the sale was for a sum not a lien, and invalid in law, to wit, interest at the rate of eight per cent, and that where the collector sells in disregard of the statute in matters of substance and not of form only, he is acting without legal justification and commits an unconstitutional usurpation with respect to the taxpayers' property.

To construe the 1925 statute (Chap. 202) as barring this application would be contrary to both the State and Federal Constitutions.

7. APPEAL TO THIS COURT IS THE PROPER PRACTICE IN A CASE SUCH AS THIS.

In the case of *Woglom v. Perth Amboy*, 80 N. J. L. 469, the Supreme Court had vacated the allocatur upon a writ of certiorari. It was there said:

“The dismissal of a writ of certiorari, ordered by the Supreme Court upon a final hearing of the merits, is reviewable. In the present case, the Supreme Court had before it the mate-

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rials necessary for the decision of the legal questions raised by the prosecutors in certiorari, and, in fact, decided those questions.”

The language quoted applies with equal truth to the present (Frazier) case. The order of Justice Bodine, made February 15, 1932, recites: “The Court having considered the depositions and evidence returned in support of the motion and having heard the arguments of counsel, and being of the opinion that the allocatur should be vacated,” it is ordered, &c. The difference between what was done in this case and the usual practice is that here the matter was heard before return to the writ, the return day being extended to the same day as the hearing on the motion to vacate.

Certainly a prosecutor in certiorari should not lose the right to a review of the action of the Supreme Court because instead of the single Justice hearing the matter, after the return, under the statute, the return day is extended, and the hearing is had before the return.

Part No. 2 of the Supreme Court denied, by order dated March 2, 1932, a motion to review the writ, because of the fact that this appeal was pending and deprived it of jurisdiction. If the matter was one in which no appeal could be taken, this action would have been different. The Supreme Court has, it seems to us, by this action, determined in effect that the proper course for the prosecutor was that which it took.

It is to be borne in mind that the dismissal of

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the writ by Justice Bodine was not because of any matter resting in discretion or because of laches in the application for the writ, but was based upon the merits of the case.

Under the circumstances of this case the doctrine of *Key v. Paul*, 61 N. J. L. 133, and kindred cases, such as *Tweddell v. South Orange*, 95 N. J. L. 327, does not apply.

We think the case in principle is within the rule of *Dubelheiss v. West Hoboken*, 81 N. J. L. 98, and *Hanford v. Duchastel*, 87 N. J. L. 205, of which *Colucci v. National Equitable Investment Co.*, 3 M. R. 639, is a recent example.

There can be no question that the application for the writs in the first instance was to Justice Bodine as a single Justice. But when the writ was issued it was issued by the Court. It was signed by the clerk in the name of the Chief Justice, was sealed with the seal of the court by the clerk, and was returnable before the Court.

Under the case of *Winegrath v. Fairview*, 77 N. J. L. 448, review of an order vacating an allocatur cannot be had in the Supreme Court. And we contend that under the case of *Woglum v. Perth Amboy*, *supra*, such an order is reviewable here.

The order in question was entered February 15, 1932, appeal was taken within ten days, as apparently required by statute (P. L. 1913, p. 622, Ch. 304).

Seasonable application was also made to the Supreme Court for a renewal. If appeal to this court is not the appropriate practice, then, there being

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no laches in the previous application to Part No. 2 of the Supreme Court, the prosecutor would be entitled to make application there, if here dismissed for this reason, and this litigation thus be unduly prolonged.

8. EFFECT OF PROMISES OF PAYMENT.

Considerable, perhaps controlling effect, was given by the Court below to the fact that Frazier, although repeatedly promising payment, had never done so.

The only witness on this point was McLaughlin, the Chairman of the Township Committee. Mr. McLaughlin is a member of the bar practicing in Philadelphia. He testified (pp. 69-70) that in the fall of 1930 he conferred with Frazier regarding this tax sale, at which time Frazier asked for more time within which to pay; that in December, 1930, Frazier promised to pay in April, 1931 (pp. 70-72); that in April of 1931 he had a conference with Frazier, gave statements of the amount due to representatives of various banks (pp. 76-78), who, it was anticipated, would take assignments of the certificates (p. 82), which led to an investigation of the legality of the sale (p. 82), and the taxes were not paid nor the certificates purchased.

After April, 1931, the delay in foreclosing was apparently voluntary on the part of the Township or its solicitor (pp. 84-85).

There is no evidence whatever that Frazier ever

evaded tax obligations, as stated in the opinion of the Supreme Court, or that his (Frazier) statements regarding help from banks (referred to in the opinion of the lower Court) were not true, or that his promises were not made in good faith. The clear inference is that if the Township had had a record of its sale and of the proceedings respecting the sale, and had had a right to charge interest, the transaction as promised by Frazier would have been consummated. The interest alone on the taxes due the Township for the period in question exceeds \$12,000.00, and there is no resolution to support the charge.

But it is submitted that Frazier's right to defend against this sale and foreclosure cannot be barred by the matters suggested in the Supreme Court.

In the case of *Lehigh Valley v. Jersey City*, 93 N. J. L. 284, the City seems to have argued that unless objection were made at an early date the taxpayer would be denied relief for "lack of diligence." But as Justice Trenchard there said:

"We are unable to perceive how a land owner by simply permitting taxes to accumulate can be deprived of his right, nor how delay in payments can authorize the addition of an unauthorized penalty."

The discussions between McLaughlin and Frazier never got down to the interest rate. How could Frazier's promises to pay the tax put him in a worse position than if he had flatly disclaimed an intention to pay? Whether this sale is good or

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bad, the lien for the taxes remains, and will remain until paid.

There is no claim by the Township that Frazier is receiving income from these properties and not paying taxes. If that were the case, there might be some reflection upon Frazier's good faith. There is nothing whatever in this record carrying the slightest suggestion of bad faith.

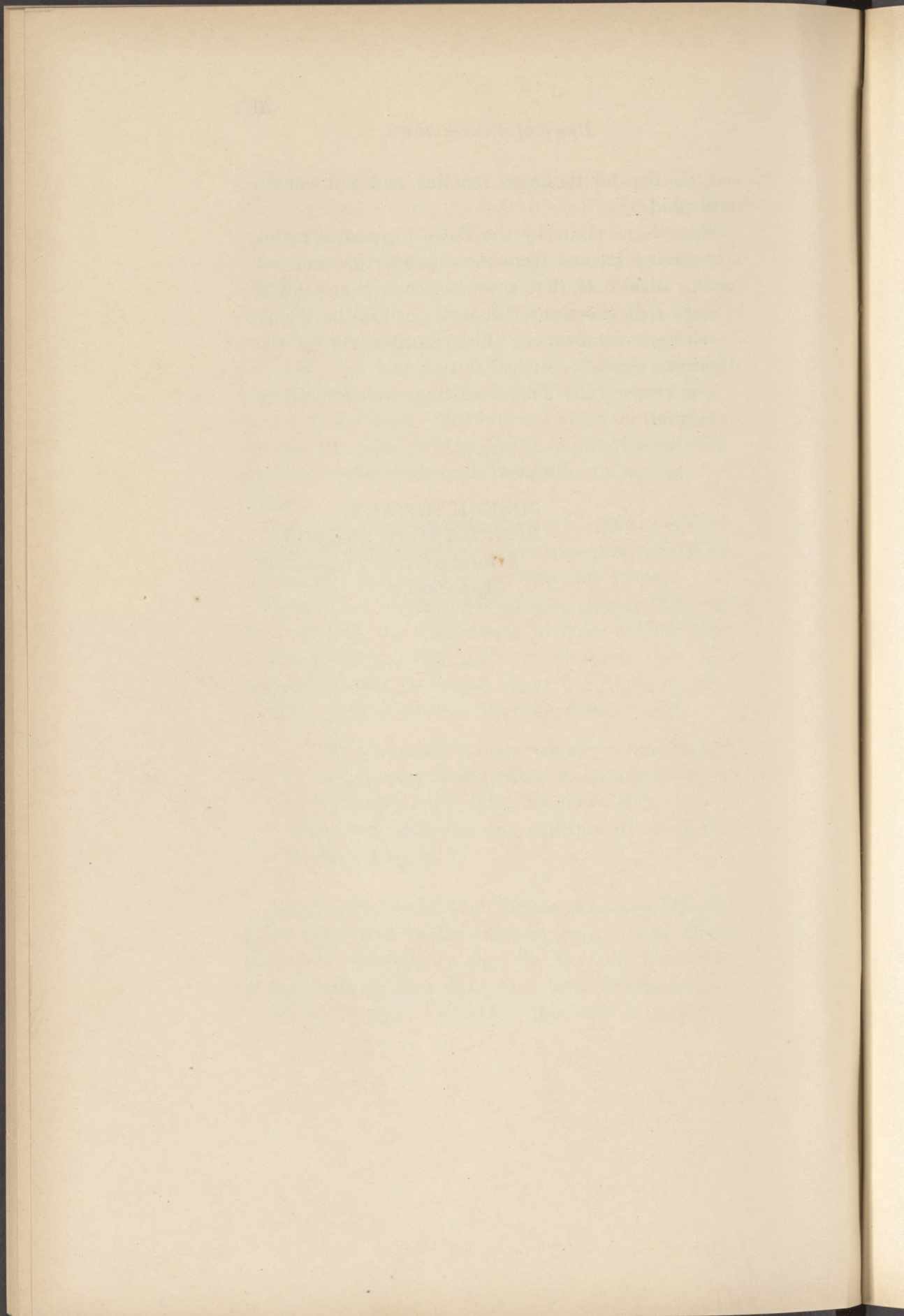
It is respectfully submitted that there should be a reversal.

Respectfully submitted,

JOSEPH H. CARR,

BERNHARD G. LUETHY,

*Attorneys for Prosecutor-
Appellant.*



NEW JERSEY COURT OF ERRORS AND
APPEALS.

DANIEL B. FRAZIER Co., a corporation of New Jersey,
Prosecutor-Appellant,

v.

TOWNSHIP OF LONG BEACH, in the County of Ocean,
a municipal corporation of the State of New
Jersey; H. EARLE McCONNELL, Collector of
Taxes of the Township of Long Beach; and
AUGUSTUS L. KEIL, Township Clerk of the Town-
ship of Long Beach,

Defendants-Respondents.

IN CERTIORARI.

ON APPEAL.

(Five Cases.)

BRIEF FOR DEFENDANTS-RESPONDENTS.

I.

PREFATORY STATEMENT.

This is one of fifteen (15) appeals appearing upon the "List of Causes" for the October, 1932, Term of this Court (Nos. 41 to 45, incl.; 192 to 195, incl.; 267 to 271, incl., and 293), prosecuted by Daniel B. Frazier Co. against the Township of Long Beach arising out of the following situation:

On November 19, 1928, the Collector of Taxes of Long Beach Township sold to the Township for unpaid taxes of 1927 five separate tracts of land owned by Frazier Co., and issued to the Township five (5) separate certificates of sale therefor (Case 28-29). Thereafter, there accumulated on these Certificates of Tax Sale not only the unpaid taxes for 1927 but also for 1928, 1929, 1930 and 1931 (Case 70-71), to an aggregate amount approximating \$65,000 (Case 79).

Frazier Company made numerous promises to pay these delinquent taxes (Case 69-76), but failed to keep any of its promises and in September, 1931, Bills in Chancery were filed to foreclose four (4) of the certificates and on January 9, 1932, Bill was filed to foreclose the fifth certificate (Appellant's Brief, page 2).

Frazier Company filed answers to each of the five (5) suits attacking the validity of the sale and of the proceedings to sell (but not the assessments nor the tax); upon *ex parte* affidavits without notice obtained

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five writs of certiorari (one in each suit), to review the validity of the tax sales (Case, pp. 1-12 and appellant's Brief, p. 2); but upon notice and after hearing orders were made by Justice Bodine vacating the allocaturs to each of the five (5) writs (Case 86-87).

Appellant thereupon appealed to this Court from each of the five orders vacating the allocaturs and filed the notices (Case 92).

Appellant thereafter applied to Part II of the Supreme Court on Notice (Case 89), to secure writs of certiorari but the Supreme Court denied the application (Case 91). No appeal has been taken from the orders entered as the result of the application to Part II of the Supreme Court.

Thereafter, on motion, those portions of the appellant's answers in the Chancery foreclosure suits which attacked the validity of the tax sales were stricken out under the procedure outlined in Chap. 202, P. L. 1925. From each of these five (5) orders in Chancery the appellant (Frazier Co.), appealed to this Court (Cases Nos. 192-195 and 268 on List of Causes).

On June 30, 1932, final hearings were had in the Chancery suits and interlocutory decrees entered in each suit on July 11, 1932, fixing the amount due for taxes, interest and costs and fixing the time within which Frazier Co., might redeem by paying the amounts found due. From each of these five (5) interlocutory decrees the Appellant (Frazier Co.), has appealed to this Court (Case Nos. 267, 269, 270, 271 and 293 on the List of Causes).

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These particular appeals with which this Brief is concerned are from the orders made by Justice Bodine (Case 86), sitting as a single Justice under the Rules (Rule 170). No appeals were taken from the orders made by Part II of the Supreme Court (Case 90).

The same questions are involved in each of the five appeals from the orders by Justice Bodine; only one set of depositions was taken (and appear only in the State of the Case in case No. 1), and the references to the case in this brief relate to the State of the Case in Case No. 1.

Following the lead of counsel for prosecutor-appellant, only one set of briefs is submitted for all five cases.

II.

FACTS.

The tax sale was held on November 19, 1928.

Five parcels of land were sold and five separate tax sale certificates were given. No other bidders appeared at the sale and each of said parcels of land was struck off and sold to the defendant, Township of Long Beach, for redemption at eight per cent (Case 29).

Prosecutor was the owner of five tracts of land, all situate in the Township of Long Beach and described in the tax duplicate as follows:

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George W. Evenson, 12.36 Acres, South of Harvey Cedars;

Daniel B. Frazier Co., South of Harvey Cedars, formerly R. R. property, 18.35 acres;

Daniel B. Frazier Co., 177.82 acres, Seabreeze Tract, adjoining Surf City;

Daniel B. Frazier Co., 486.01 acres, between Harvey Cedars and Barnegat City, 1 house;

Daniel B. Frazier, 24.52 acres, formerly Cassidy Estate.

These lands were assessed to the prosecutor for the year 1927. Subsequent to July 1, 1928, the taxes assessed against the various parcels not having been paid, the Collector of Taxes of Long Beach Township took steps to enforce payment by sale. The sale was held on November 19, 1928, and the property bought in by the Township of Long Beach, as aforesaid.

The Township of Long Beach continued to hold the five certificates of tax sale until September of 1931. During that time, considerable effort was made by the officials of the Township to collect some part of the moneys due under the tax sale certificates and to collect the subsequent taxes accrued (Case 69-78). As stated in the opinion filed in this matter by Justice Bodine (State of Case, page 96), the prosecutor-company persistently and continuously evaded the payment of the tax obligations. In September of 1931, all negotiations having failed, five suits were instituted in the Court of Chancery to foreclose each of the five certificates of tax sale.

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After service was made of subpoena, answers were filed by the prosecutor-company to each of the five suits in which attack was made upon the validity and legality of the tax sale proceedings and of the sale. The statute of 1925, Chapter 202, to which more complete reference will be made hereafter, provides that a writ of certiorari must be obtained within four months next after the filing of such an answer. On January 15, 1932, an *ex parte* application was made by prosecutor to Justice Bodine and five writs of certiorari were obtained. Subsequently, the return day of each of said writs of certiorari was extended upon application by the defendants. Notice was then given by the defendants; depositions were taken; and, upon application to Justice Bodine, each of the allocaturs to the five writs of certiorari were vacated (Case 86). Justice Bodine filed his opinion on March 28, 1932 (Case 97).

The State of the Case filed in these matters contains a copy of a notice of an application to Part 2 of the Supreme Court to review the writs of certiorari (Case 88), together with copy of order made by Part 2 of the Supreme Court dismissing the application (Case 90). This, we feel, is no part of the State of the Case in this matter inasmuch as it was an application made after the entry of the order appealed from and after the notice of appeal was filed.

So that the facts in this matter may be properly before the Court, we call attention to the following:

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1.

FACTS AS TO INTEREST RATE.

The Collector of Taxes of the Township of Long Beach testified (State of the Case, pages 43, 44 and 45), that interest on delinquent taxes was charged at the rate of eight per cent per annum; that the rate of eight per cent was charged because it had been the custom to so charge; and that the rate of interest for non-payment of taxes was shown upon the tax bills. The testimony of the Collector also developed that the total amount for which each parcel of land was sold included interest computed at 8 per cent up to July 1, 1928, and that the sale did not include any interest for the period between July 1, 1928, and the date of sale on November 19, 1928 (Case 45).

There is no testimony to the effect that a resolution fixing the rate of interest to be charged on delinquent taxes had never been passed by the Township of Long Beach. The Collector, in answer to the question, "You knew there was no resolution of the Township determining the rate of interest on delinquent taxes?" said, "I never gave it a thought" (Case 43).

2.

FACTS RELATING TO DESCRIPTION OF
LANDS SOLD.

As stated before, there were five properties sold and five separate tax sale certificates made. The five properties were described in the tax sale certificates in accordance with the descriptions contained in the tax duplicate, as indicated above (Case 43). It is admitted that no change in the description was made by the Collector in making up the notice of sale.

3.

FACTS RELATING TO RECORD OF AND
PROCEEDINGS OF SALE.

The testimony of the Tax Collector shows conclusively that an original list was prepared by him and turned over to the printer so that the printed notices of sale could be prepared. It also discloses that one copy of these printed notices of sale was used by the Collector during the period between the making up of the original list and the date of sale. On this printed copy of notice, the Collector noted all redemptions made and also indicated the properties that were sold on the date of sale (Case, pp. 30-31, Exhibit D6).

The testimony of the Collector also shows that the tax duplicates for the years subsequent to 1927 were

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marked with the words "To Township" or "Sold to Township," and that actual notice of the sale of these properties was given to the prosecutor-company subsequent to the sale (Case 34, 39, 46-50).

The Collector also testified that he posted copies of the printed notice of sale in seven public places in the Township of Long Beach (Case 32-33); that he mailed printed copies of the notices of sale to every property owner shown on the notice of sale (Case 33-34), including the prosecutor-company; and that the notice of sale was published in a newspaper circulating within the Township limits (Case 29, 30). That the publishing, posting and mailing of copies of the notice of sale was made at least four weeks prior to the actual date of sale. The proof as to publishing is further shown by the testimony of the editor of The Tuckerton Beacon (State of the Case, pages 59, 60, 61). He testified that the notices of sale in question had been published in his paper for four successive weeks immediately before the 19th of November, 1928.

4.

FACTS AS TO PROMISES TO PAY TAXES.

The testimony of Mr. McLaughlin, Chairman of the Township Committee (State of the Case, pp. 72 to 76, incl.), shows that in numerous conferences and correspondence had between Daniel B. Frazier, president of the prosecutor-company, and himself,

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many promises to pay the past due taxes were made and that inability to raise the necessary money was the only reason that the taxes had not been paid.

III.

ARGUMENT.

The brief for the prosecutor is divided under several main headings. Answer will be made to each of the separate arguments of prosecutor under proper titles.

1. THIS APPEAL IS IMPROPER; NO APPEAL WILL LIE FROM AN ORDER OF A SINGLE JUSTICE OF THE SUPREME COURT.

An ex-parte application for writs of certiorari was made by the prosecutor to Supreme Court Justice Bodine on January 15, 1932, and on the same date Justice Bodine allowed the writs. Subsequently, on application by the defendants, the return day of the writs was extended. That this was well within the power of Justice Bodine, sitting as a single justice, is well established. In the case of *Winegrath v. Borough of Fairview*, 77 N. J. L. page 448, at page 450, it was said:

“The statute 5 and 6 W. & M. expressly established the practice of applying for the writ to the justice at chambers, and required him, if he allowed it, to endorse thereon his allowance, to

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which act the term allocatur was applied. It will be perceived, therefore, that the allocatur to the writ is, in effect, but a substitute for the earlier common-law fiat, which, like all orders or rules made by a single justice of the King's Bench, was, until return made to the writ, within the power of the justice granting it to amend, modify or recall."

Rule 170 of the Supreme Court also provides that the Justice allowing a writ of certiorari may make all further orders necessary on it; that he may order that the return day named therein be changed to an earlier or later day, and that he may order a vacation of the allocatur.

The defendants then gave notice to the prosecutor-company of a motion before Justice Bodine to vacate the allocaturs to the five writs of certiorari. Depositions were taken; the matter was argued before Justice Bodine; and orders vacating the allocaturs to the writs were signed. All of this was done and the order by Justice Bodine was made before any return was made to the writs. In other words, the order made by Justice Bodine vacating the allocaturs was made by him as a single Justice.

The rules specify the mode of procedure after refusal of any writ by a single Justice sitting as such. The applicant must then apply to the Supreme Court *in banc* to review the proceedings by the single justice, or, in lieu thereof, applicant may renew his application before the Supreme Court *in banc*.

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Key v. Paul, 61 N. J. L. page 133, and *Tweedell v. South Orange*, 95 N. J. L. page 327, are both authority for the fact that a single Justice of the Supreme Court acts, normally, as a single Justice and not as the Court itself in awarding and determining a rule to show cause why a writ of certiorari should not be allowed. We have shown that Justice Bodine was well within his power in anything that he did prior to the return day of the rule and it is our contention that he acted as a single Justice and not as the Court when he signed the orders vacating the allocaturs.

Prosecutor-appellant admits that his application for the writs of certiorari was made to Justice Bodine sitting as a single Justice (Brief of Appellant, p. 26).

In the case of *Van Hoogenstyn v. D. L. & W. R. R. Co.*, 90 N. J. L. page 189, at page 190, the Court said:

“We hardly need cite authorities for the proposition that this Court cannot directly review the order of a single justice of the Supreme Court, where he sits as such, and not as the court itself. The proper practice is pointed out in *Key v. Paul*, 61 N. J. L. 133. We cannot thus usurp the functions of the Supreme Court.
* * * Only the final decision of that court can be removed into this.”

And then again further on, on the same page:

“Courts of law do not permit the intolerable delay and expense that would arise if interlocu-

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tory appeals were permitted from every order that might be incidental to the progress of the cause. * * * The deprivation of a review does not necessarily follow since there is an appeal from the single justice to the court *in banc* in one of its parts under *Key v. Paul*."

In the instant matters, prosecutor appealed to this Court from the orders of Justice. Subsequent to filing notices of appeal, it appealed from the orders of Justice Bodine to the Supreme Court *in banc* (Part II), in accordance with the practice laid down in *Key v. Paul, supra*. The Supreme Court refused the applications of prosecutor (Case 90) but the prosecutor failed to take any appeal from the order of the Supreme Court.

Prosecutor, it seems to us, has been under a misapprehension as to its rights and the well-established practice. Its proper course upon the entry of orders made by Justice Bodine vacating the allocuturs was to have appealed to or renewed its application before the Court *in banc*. It could then have appealed from the order of the Court *in banc* to this Court. However, by serving and filing its notices of appeal to this Court from the orders by Justice Bodine, the prosecutor itself, by its own actions, lifted the matter into the Court of Errors and Appeals and deprived the Supreme Court (Part II) of further jurisdiction over the controversy.

Prantel v. Junk, 93 N. J. L. 387;

Williams v. White, 98 N. J. L. 140;

Haines, et al. v. Seabrook Farms Co., 99
N. J. L. 273.

2. THE SALE WAS VALID; IT INCLUDED NO SUMS WHICH WERE NOT AUTHORIZED BY LAW.

Prosecutor, in its brief, endeavors to show this Court that the sale was invalid because it included interest charged by the Collector for failure to pay the taxes when due.

We agree with prosecutor in its contention that interest does not inhere in a tax as a legal incident and that some statutory authority must be found before interest may be charged.

Under the Act of 1880 (P. L. 1880, p. 41) relating to taxes and assessments in arrears, it was provided that a municipality can collect interest at a rate not exceeding 12 per cent nor less than 7 per cent. The interest rate was to be determined by the municipalities either by general order or by resolution.

Under that Act, it apparently was not necessary that a resolution be passed in order that the minimum rate of interest could be collected. In the absence of a resolution, the minimum rate of 7 per cent could be charged against delinquent taxes.

In the year 1918, the 1880 Act relating to interest on delinquent taxes was revised. Section 603 of this revision (P. L. 1918, Chapter 236), provides:

“The governing body of each municipality shall have power to fix by resolution * * * the rate of interest to be charged for the non-payment of taxes or assessments on or before the

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date when the same would become delinquent, which rate for non-payment as aforesaid shall not exceed the rate of 9 per centum per annum nor be less than 7 per centum per annum."

It is therefore readily understood that in the absence of any resolution by the governing body, that the minimum rate of 7 per cent is required by the statute to be charged on delinquent taxes. An examination of the notice of sale (Ex. D6) and of the certificate of tax sale (Case 12) discloses the fact that the interest added to the total tax and for which the properties were sold was computed to July 1, 1928, and that no additional interest between July 1, 1928, and the date of sale was charged to the prosecutor-company (Case 45). In figuring the exact rate of interest charged at the time of sale we find that it comes to less than 7 per cent, or less than the minimum rate of interest allowed by the statute. The statute, however, authorizes the charging of interest to the day of sale (Sec. 24, Tax Sale Revision of 1918). Accordingly, it will appear, so far as concerns the interest, that the interest included in the sale was less than the minimum of 7 per cent required by the statute. Where the sale was made for an amount not in excess of the total legally due, mistakes in computing interest will not invalidate the sale.

Martin v. Woodbridge, 90 N. J. L. 414, at 419.

Prosecutor contends that, in the absence of a resolution by the governing body of the municipality, no

interest at all can be charged. We do not agree with this contention. It has not been proven that there never was a resolution adopted by the Township of Long Beach. The Collector of Taxes in his testimony states upon cross-examination that he never thought of a resolution and that he charged interest at the rate of 8 per cent because it had been the custom. We feel that the burden of proof to show that there had never been a resolution adopted by the Township of Long Beach was upon the prosecutor. The prosecutor-company is the moving party in this application and in this appeal and the burden is upon it to prove its case.

In the case of *Campbell v. Township of Teaneck*, 101 N. J. L. 461, a writ of certiorari was sued out to test the validity of the proceedings taken by the defendant in the passage of an ordinance. It was proved that minutes of a certain meeting of the Township Committee did not show a hearing upon the ordinance. Justice Kalisch, at page 465, said:

“Next, it is urged that since the minutes of the township committee do not show that a hearing upon the ordinance, as amended, was given on May 5th, 1925, it must be accepted as a fact that no hearing was given. While it is true that the minutes of May 5th are silent as to whether or not a public hearing was had, the presumption is that the committee did what the law required it to do, in the absence of any proof to the contrary.”

Campbell v. Teaneck, *supra*, is almost identical with the present matter. In that case, the Court

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held that the burden was upon the prosecutor to show that no hearing had been held and raised a presumption to the effect that if a hearing was necessary, then the committee did what the law required it to do. In the instant matters, it has not been definitely shown that no resolution had ever been passed. All of the proofs indicate that such a resolution was on the books of the Township. The Collector of Taxes testifies that he had always charged 8 per cent interest because it was the custom, and the tax bills themselves indicate the rate of interest on delinquent taxes to be 8 per cent.

We, therefore, contend that the present matters come under the rule as laid down in *Campbell v. Teaneck*, and that the prosecutor, in order to succeed, must rebut the presumption that the resolution was, in fact, passed.

3. THE SALE WAS VALID; THE DESCRIPTION WAS SUFFICIENT TO IDENTIFY THE LANDS SOLD.

In the introductory part of this brief, we have given a description of the lands as they were assessed and as they were sold. Each of the descriptions is complete in itself and describes the property as fairly and completely as it is possible under the circumstances. The lands in question are situated on the island of Long Beach, in Ocean County, New Jersey, and consist of long stretches of sand dunes lying between the Atlantic Ocean on the East

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and Barnegat Bay on the West. The deeds by which the prosecutor-company acquired title to these lands contain quite lengthy descriptions with a great many courses. It would be not only impossible but impractical to use a metes and bounds description in the assessment book, in the notice of sale or in the tax sale certificate. The Assessor of the Township is therefore forced to identify the lands as closely as possible by using a description referring either to acreage or to adjoining lands. In the present matters, the Assessor has done both; he has identified the lands by acreage and attempted to identify them by the adjoining properties, and, in one or two instances, he has identified them by the name by which they were known for many years; for instance, "Cassidy Estate."

The prosecutor's brief cites various sections of the statute requiring that the lands be sufficiently described. We do not quarrel with any of the sections of the statute, but we do say that these lands were described sufficiently to identify them to the owners of the property and to identify them to any other persons desiring to bid on them at the sale.

The testimony of Mr. McLaughlin, the chairman of the Township Committee, referred to above, indicates that at numerous conferences had with officials of the prosecutor-company and at numerous appeals taken to the County Board of Taxation, the question as to the sufficiency of the description or the identity of the lands assessed was never raised and it appears to be undisputed that the prosecutor-company never had any doubt as to what lands it

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owned in Long Beach Township and as to what lands were assessed against it.

Even though there may be some question as to the description, and we contend that there is not, it would be cured by Section 52 of the Tax Sale Revision Act of 1918, Chapter 236, which provides:

“No sale shall be set aside because of insufficient description in the original entry of the lien, or in the list made up for sale * * * if it shall appear by other legal evidence that the land sold was in fact that assessed and that the sale was made pursuant to law.”

The testimony of the Collector of Taxes and of the Assessor shows what property was assessed and we will show in this brief that the sale itself was made pursuant to law.

It is also to be noted that Section 52, referred to above, also concerns the description contained in the notice of sale, because, as provided for by the Act, the notice of sale is to be prepared directly from the list made up by the Collector and thus there can be no difference in the descriptions contained in the list and in the notice of sale.

We are inclined to agree with the rulings in the cases of *Brooks v. Township of Union*, 68 N. J. L. 133; *Bounds v. Chester Township*, 89 N. J. L. 375; and *Waterman v. Shrewsbury*, 83 N. J. L. 286. In those cases, the descriptions were unquestionably inadequate, particularly in that they were supposed to describe individual lots on certain streets. In our case, we are not concerned with small 50-foot

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lots; we are concerned with large tracts of acreage and the question of proper identification cannot possibly exist in the mind of anyone at all acquainted with lands on the Island of Long Beach.

4. THE SALE WAS VALID; THE PROCEEDINGS OF SALE COMPLIED WITH THE STATUTE.

Sections 16 to 28, inclusive, of the Tax Sale Revision Act of 1918 provide the method of procedure in conducting a tax sale. Briefly, the statute requires the following:

(a) The making up of a written list containing all necessary information relating to the sale;

(b) The making up of a bound list-book;

(c) The giving and publishing of notice of the sale by advertising, posting and mailing the notices of sale;

(d) The making up of the record for the list-book, including original list, together with affidavits of posting, mailing and publishing;

(e) The conduct of the actual sale;

(f) The preparation and delivery of the certificate of tax sale.

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The proofs in this matter disclose the following:

(a) The original list was made up by the Collector of Taxes and sent to the printer. From this were prepared the printed notices of sale (State of the Case, page 30).

(b) The printed notices of sale prepared from the original list contained the time and place of sale; the description of the property to be sold; the owner's name as contained in the original list and in the tax duplicate, together with the total amount due on each property computed to the first day of July, 1928 (Ex. D6).

(c) The notice of sale was published for four weeks next preceding the date of the sale in the Tuckerton Beacon, a newspaper circulating in the Township of Long Beach. No newspaper was published within the Township limits (Case, 59-61).

(d) The notice of sale was posted in seven public places within the Township four weeks before the sale (Case, 32-33).

(e) The notice of sale was mailed to each property owner, including prosecutor-company, four weeks before the date of sale (Case, 33-34).

(f) At the time of the sale, one of the printed copies of the notice of sale was used by the Collector of Taxes as a list on which was noted all re-

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dempions made and results of the sale (Case, 31—Ex. D6).

(g) At the time of the sale, no other bids having been made, each property was struck off and sold to the Township of Long Beach (Case, 29—Ex. D6).

(h) Subsequent to the tax sale, a certificate was prepared, executed and delivered to the Township of Long Beach (Case, 12, 29).

(i) Notations were made by the Collector of Taxes in the tax duplicates for the years 1927 on, to the effect that these particular properties had been sold to the Township of Long Beach for taxes (Case, 46-50).

It is admitted that the Collector of Taxes did not have a bound list-book in which were kept the original list, and the affidavits of mailing, posting and publishing. The Collector did have and still has the printed copy of notice of sale which he used as his original list (Exhibit D6).

Section 52 of the Tax Sale Revision Act provides as follows:

“No sale shall be set aside * * * because of failure of the Clerk or any municipal officer to record the proceedings relative to the sale if it shall appear by other legal evidence that the land sold was in fact that assessed, and that the sale was made pursuant to law.”

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There is no question but that the lands sold were in fact those assessed and, under Section 52, as above cited, the mere lack of the affidavits of publishing, posting and mailing and the lack of the original list made up by the Collector is not sufficient to invalidate the sale where it shall appear by other legal evidence that the sale was made pursuant to law.

Prosecutor, in its brief, states that Frazier Co. could not have assigned or secured assignments of the tax sale certificates where the records required by the statute respecting tax sales were missing. We can answer this contention by saying that the prosecutor-company could never take advantage of such a failure if the assignment of the certificates was taken by a bank for its benefit.

It is submitted that the substantial compliance by the defendant Township with the provisions of the Tax Sale Revision Act of 1918 brings it within the scope of Section 52 and that, therefore, the proceedings to sell and the sale were valid (Case, 96).

5. THE PROSECUTOR MUST PAY THE TAX
DUE AS A CONDITION PRECEDENT TO
THE SETTING ASIDE OF THE SALE.

Section 53 of the Tax Sale Revision Act of 1918 provides:

“Where the assessment itself is valid and the tax, assessment or other municipal charge, or any part thereof, is justly due, no sale shall be

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set aside, except on condition that the amount due shall be paid to the municipality for the use of the holder of the certificate of sale by the person applying to set it aside."

The validity or legality of the assessments and the tax against prosecutor's lands has never been questioned, either in this or in any other proceeding. Therefore, the instant matters come within the scope of Section 53 of the Act and it is our contention that before the Supreme Court of this State can set the sale aside, it must first require the prosecutor company to pay all the taxes due under the various assessments. Under this rule, we do not see the efficacy of a writ of certiorari except that it may serve to hold up the proceedings in the Court of Chancery under which the various tax sale certificates are now being foreclosed. It is our contention that the applications in the present matters were made primarily for the purpose of delaying the time within which the taxes must be paid and we say that the prosecutor-company will derive no benefit from the allowance of a writ, but that, on the other hand, the defendant Township will suffer considerable hardship through its inability to collect the taxes due.

Prosecutor cites the case of *Caulfield v. Jersey City*, 1 N. J. Misc. 573. The ruling in that case was that the owner did not have to make tender of the tax and interest as a condition precedent to obtaining a writ. That is not the point that we make here. We do not contend that the prosecutor must pay the

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tax before a writ may be issued. We contend that before the sale may be set aside under an argument on the writ that prosecutor must pay the tax due to the defendant Township. The assessments against the prosecutor's properties being valid, Section 53 applies and the granting of a writ of certiorari would not be of benefit to the prosecutor except to postpone and delay the day of reckoning.

6. THE PROCEDURE OUTLINED BY STATUTE WHERE THE INVALIDITY OF A TAX SALE IS SET UP IN ANSWER TO A FORECLOSURE BILL.

Prosecutor correctly states the procedure to be followed upon the filing of an answer in a foreclosure suit which sets up attack upon the proceedings to sell and the sale.

We wish, however, to call attention to the fact that *Section 3 of the Laws of 1925, Chapter 202, page 480*, provides:

"No writ of certiorari shall be allowed in any case where proceedings shall hereafter be instituted in the Court of Chancery to foreclose the right of redemption of any owner, mortgagee or other person having an interest in the lands, after the time in which to plead shall have expired or after the expiration of four months from the filing of an answer * * *."

This section of the statute will be referred to again in this brief.

7. THE WRIT IN THIS CASE IS BARRED BY
STATUTE.

The right to review a tax sale proceeding by certiorari is purely statutory. Under the 1903 Act (P. L. 1903, p. 348), there was a three-year limitation upon the issuance of writs of certiorari for this purpose. By various amendments the limitation was cut down to 18 months and in the year 1925 (P. L. 1925, Chapter 21, page 77), the same limitation of 18 months was continued with a provision to the effect that such limitation should not be applicable where proceedings were taken after the sale, by the purchaser or holder of the tax sale certificate, under any statute of this State to procure a deed or perfect title.

In the same year, a statute was passed (Laws of 1925, Chapter 202, p. 480), which provided, that where foreclosure proceedings were instituted in the Court of Chancery to foreclose any tax sale certificate, the defendant must, in order to question the validity or legality of the tax sale proceedings or sale, raise such question in his answer. The proceedings in the Chancery Court are then stayed for a period of four months during which time the defendant in the Chancery case must obtain a writ of certiorari to review the proceedings. The statute is very definite on this point; namely, that the writ of certiorari must be obtained within the four-months period, and Section 3 of the same Act (*supra*), provides that unless such a writ is obtained within the four-months period, then no writ shall be allowed.

Brief for Defendants-Respondents

That is our position here. Writs were secured by the prosecutor from Justice Bodine but the allocaturs to the writs were vacated before the return day. The effect of the vacation orders was to nullify the original writs and it is as though no writs ever were obtained. Even though this Court may find that Justice Bodine erred in vacating the allocaturs to the writs, yet a decision to that effect cannot give the prosecutor a writ which will come under the provisions of the Statute of 1925.

Prosecutor's brief cites a number of cases in which is stated the rule that the prosecutor is never barred by statute where the lien itself is invalid. In the present matters, there is no question as to the validity of the assessments or the tax and no writs are asked to review them.

The rule in *Caulfield v. Jersey City*, 1 N. J. Misc. 573, has no application here because the validity of the assessment, the tax and the lien of the tax have not been questioned.

8. THE WRIT IS DISCRETIONARY AND
SHOULD NOT BE ALLOWED.

The allowance of a writ of certiorari is wholly discretionary with the Court. This is established in the case of *Loomis v. Union City*, 6 N. J. Misc., p. 330, in which Justice Minturn said:

"A writ of certiorari under any circumstances is a discretionary remedy and where the equities of the case do not warrant it, the Court is not inclined, as a rule, to grant it."

Brief for Defendants-Respondents

In the case of *Nelson v. Town of Kearny*, 4 Misc. 157, it was held:

“In a case where the allowance of a writ would, perhaps, suspend for a considerable period of time the prosecution of a great public work of prime necessity to a large number of persons, the discretion lodged in this Court in the matter of the allowance of a prerogative writ should be sparingly exercised.”

The testimony of Mr. McLaughlin, Chairman of the Township Committee, shows that in numerous conferences and in considerable correspondence had with officials of the prosecutor-company, many promises were made to the effect that the taxes would be paid on certain dates. These conversations and this correspondence continued during practically all of the period prior to the institution of the foreclosure proceedings in Chancery. The foreclosure proceedings were held up from time to time pending new negotiations with the officials of the prosecutor-company for settlement. The question of the validity of the lien or the legality of the sale was never raised by any of the officials of the prosecutor-company; they seemed content with the amount of the tax, the description and identity of the properties, and with the mode of conducting the sale, and their only desire was that additional time be given within which money could be raised to pay the taxes.

The testimony of the Chairman of the Township Committee also shows that taxes due from prosecutor-company to the Township constitute about 65

Brief for Defendants-Respondents

or 70 per cent of all unpaid taxes. The defendant Township is heavily in debt as a direct result of the non-payment of taxes by the prosecutor and it has become almost impossible for the defendant Township to continue to finance itself due to its inability to pay off the obligations incurred as a result of the non-payment of taxes by the prosecutor. It is apparent from the proofs that the probable result of this condition and of the continued refusal of the prosecutor-company to meet its obligations will be that the defendant Township will be forced into a municipal receivership with the attendant distress to its property owners.

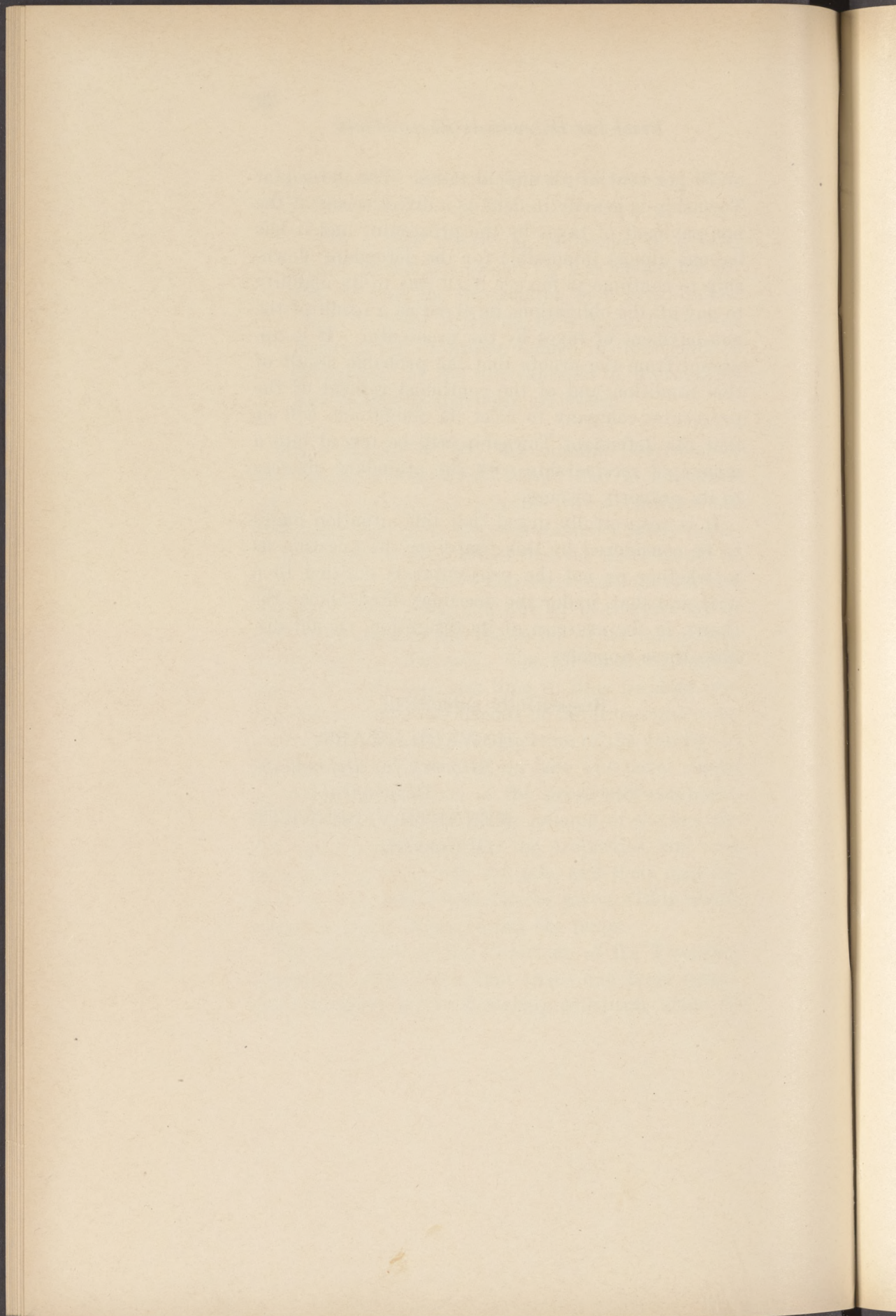
It is respectfully urged that this situation ought to be considered by this Court on the question as to whether or not the prosecutor is entitled to a writ and that, under the decisions cited above, the Court, in the exercise of its discretion, should dismiss these appeals.

Respectfully submitted,

HOWARD EWART,

*Attorney for Defendants-
Respondents.*

KENNETH V. BENNETT,
Of Counsel.



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Case No. 1.

12 36/100

WRIT OF CERTIORARI.

10

New Jersey, to wit:

The State of New Jersey to the Township of Long Beach, in the County of Ocean, a municipal corporation of the
(Seal) *State of New Jersey; H. Earle McConnell, Collector of Taxes of the Township of Long Beach, and Augustus L. Keil, Township Clerk of the Township of Long Beach:*

20

We being willing for certain reasons to be certified of certain proceedings of the Township of Long Beach, relating to supposed sale for unpaid taxes, of certain property of Daniel B. Frazier Co., made on November 19, 1928, and all proceedings relating to the said sale, whether leading up to, or following the same, and all records and papers relating to the said sale, or to the certificate of said sale, recorded in Book 223 of Mortgages, page 82, &c., said 30 property being described therein as "12 36/100 Acres, South of Harvey Cedars, on the tax duplicate of said municipality," and all matters and things touching and concerning the same and leading up to or in any way having to do therewith as fully and entirely as before you they remain, so that

Writ of Certiorari

the validity and legality of the proceedings to sell and of such sale and of such certificate may be reviewed.

We do command you that the aforesaid proceedings, together with all things touching and concerning the same and leading up to or in any way arising therefrom, to our Justices of the Supreme Court of Judicature, at Trenton, on the 4th day of February next, you certify and send, together with this writ, that everything may be done what of right and according to the laws of this State, should be done.

Witness, WILLIAM S. GUMMERE, ESQUIRE, Chief Justice of our Supreme Court at Trenton, this 15th day of January, A. D. nineteen hundred and thirty-two.

20

FRED L. BLOODGOOD,
Clerk.

JOSEPH H. CARR,
Attorney.

[ENDORSED]

30

This writ is allowed; let it be sealed.
By the Court:

Joseph L. Bodine,
J. S. C.
Jany. 15th, 1932.

Affidavit

Case No. 1.

12 36/100

AFFIDAVIT.

NEW JERSEY SUPREME COURT.

10

DANIEL B. FRAZIER Co., a
corporation of New Jer-
sey,

Prosecutor,

v.

TOWNSHIP OF LONG BEACH,
in the County of Ocean,
a municipal corporation
of the State of New Jer-
sey; H. EARLE McCON-
NELL, Collector of Taxes
of the Township of Long
Beach, and AUGUSTUS L.
KEIL, Township Clerk of
the Township of Long
Beach,

Defendants.

On Certiorari.
Affidavit.

20

30

State of New Jersey, }
County of Camden, } ss.

WILLIAM N. MATTIX, being duly sworn according
to law, upon his oath deposes and says that:

Affidavit

1. He is secretary of Daniel B. Frazier Co., a New Jersey corporation, the prosecutor herein, and is the duly authorized agent of the corporation for the purpose of making this affidavit.

2. Said Daniel B. Frazier Co. is the owner of
10 lands in the Township of Long Beach, in the County of Ocean and State of New Jersey, and is a taxpayer therein.

3. Daniel B. Frazier Co. is the owner of a certain tract of land in the Township of Long Beach, County of Ocean and State of New Jersey, conveyed to it by a deed dated August 2, 1926, from George C. Van Hise and Frances S. Van Hise, his wife, recorded September 14, 1926, in the office of the Clerk
20 of Ocean County in Book 709 of Deeds, page 423, and described in said deed as follows:

ALL that certain tract or parcel of land, situate, lying and being in the Township of Long Beach, in the County of Ocean and State of New Jersey,

BEGINNING at a point on the high water
line of the Atlantic Ocean where the same is intersected by the line dividing Long Beach Township and Harvey Cedars Borough; thence
30 running (1) along the aforementioned line dividing Long Beach Township and Harvey Cedars Borough and passing over two monuments marking same and in the southwesterly line of lands now or formerly of John M. Kelley, North fifty-five degrees fifty-seven minutes West two thousand forty-three (2043) feet more

Affidavit

or less to a point in the high water line of Barnegat Bay at Shooters' Point; thence (2) Southwardly following the said high water line of Barnegat Bay, as it runs, to its intersection with the Northeasterly line of lands now or formerly of Joseph W. Yates; thence (3) South fifty-five degrees fifty-seven minutes East in said line of Yates (crossing the former center line of Long Beach Railroad, now abandoned, at a point distant as measured along same South thirty-four degrees four minutes West, seven hundred ninety feet more or less from the intersection thereof with the first course), twelve hundred (1200) feet more or less to the aforesaid high water line of the Atlantic Ocean; and thence (4) Northeastwardly along the same 790 feet more or less to the place of beginning. Containing 23.014 acres be the same more or less. 10 20

The above description is consistent with a survey made by William H. Collisson, Jr., dated February 3, 1926.

EXCEPTING AND RESERVING THERE-
OUT AND THEREFROM a strip of land 60
feet in width extending across the above de-
scribed tract and two strips of land each sev-
enty feet in width extending partly across said
tract, one of them adjoining the said 60 foot 30
strip on the northwesterly side and the other
of them adjoining the said 60 foot strip on
the southeasterly side, for the use of the Long
Beach Railroad for right of way and for sta-
tion grounds for Bays Water Station on said
Railroad, as described in the conveyance thereof

Affidavit

to said Railroad by the Barnegat and Long Beach Improvement Company, Weeks W. Culver and John Cassidy.

4. On or about September 15, 1931, the Township of Long Beach, one of the defendants herein, filed
10 a bill in the Court of Chancery of New Jersey, docket 86-301, for the purpose of foreclosing a tax sale certificate, dated December 24, 1928, recorded in the office of the Clerk of Ocean County on December 29th, 1928, in Book 223 of Mortgages for said county, on page 87, &c.

A copy of the said certificate of sale as the same appears of record is attached hereto and marked "Exhibit A."

20 5. It is claimed in the Chancery suit aforesaid that the lands of prosecutor, above described in paragraph No. 3, are the lands covered by the tax sale certificate referred to in paragraph No. 4 hereof.

30 6. Prosecutor has filed an answer in said Chancery suit setting up that said sale referred to in said certificate was ineffective, invalid and void, and that the certificate of sale sought to be foreclosed was ineffective, invalid and void, and under the terms of an Act of the State of New Jersey, being Chapter 202, Laws of 1925, prosecutor is required on the filing of such answer to proceed in this cause by writ of certiorari to review the legality of the matters set up in the answer to said Chancery suit. Said answer was filed within time, sub-

Affidavit

poenas having been served upon the prosecutor on October 13, 1931.

7. Prosecutor has in its possession what purports to be a copy of the notice of sale referred to in the aforementioned Chancery proceedings, with certain additional matter printed therein. Deponent 10 believes that this notice is a true copy of the notice of sale, with the exception of such additional printed matter. Said copy attached hereto is marked "Exhibit B."

8. The answer filed by the prosecutor set forth the following defenses:

(a) The tax sale attempted to be made on November 19, 1928, and referred to in paragraph 2 of the 20 bill of complaint was ineffective, invalid and void because of the fact that proper notice was not given of said sale and notice such as is required by the statute of the State of New Jersey in such cases made and provided was not given.

(b) The notice of sale given by the Township was defective in that it contained no statement of the year in which the taxes for which sale was to be held became due and payable. Said notice of 30 sale was further defective in that it contained no statement of the rate of interest due on such taxes; said notice was defective in that it erroneously stated the amount of interest due July 1, 1928, upon such taxes and stated the amount of interest at an excessive amount; and said notice was likewise de-

Affidavit

fective in that it did not contain a description of the property to be sold at tax sale sufficient to identify the property proposed to be sold and did not contain a description of the property sufficient to inform the owner thereof of the claim made upon the owner or upon the property of the owner and
10 because said description was not sufficient to notify the members of the public as to what land was offered for sale for non-payment of taxes and that said description was not sufficient to enable a purchaser to procure a title thereby by said description and by reason of all of which said description was not sufficient to procure for the benefit of the owner the competitive bidding to which such owner was entitled, and because of all of which matters said sale was ineffective, invalid and void.

20

(c) Said sale on November 19, 1928, was ineffective, invalid and void because the notice thereof was not set up in five of the most public places in the municipality of Long Beach and a copy of such notice was not published in a newspaper circulating in said municipality once in each of the four calendar weeks preceding the day of the sale.

(d) Said sale on November 19, 1928, was ineffective,
30 tive, invalid and void because there was never made up the list referred to in Sections 17, 18, 23 and 26 of an Act known as the Tax Sale Revision of 1918, being Chapter 237 of the Laws of 1918 and the amendments and supplements thereto, and as otherwise required by the said Act; nor were any of the matters and things required under the terms

Affidavit

of such statute and the amendments and supplements thereto to be done in connection with such list by way of record of such sale ever done or performed.

(e) Such sale on November 19, 1928, was ineffective, invalid and void because of the absence of any record of any nature or kind and the absence of the record required by the said Tax Sale Revision Act, its amendments and supplements, with respect to the proceedings leading up to said sale or the said sale itself or matters transpiring after the sale. 10

(f) Said sale on November 19, 1928, was ineffective, invalid and void because the lands sold at said sale were not described sufficiently to identify the same, nor to inform the owner thereof of the property sold, or to enable the purchaser thereof to procure title thereby by said description and was not sufficient to notify the members of the general public as to what land was offered for sale, and was not sufficient to induce competitive bidding for such premises. 20

(g) Said sale on November 19, 1928, was ineffective, invalid and void because it attempted thereby to sell for taxes for the year 1927 subject to municipal liens accruing after July 1, 1927, whereas, as a matter of fact, the taxes for the year 1927 did not accrue as municipal liens until December 1, 1927, and therefore, the attempt was made to sell for 1927 taxes subject to 1927 taxes. 30

Affidavit

(h) The certificate of sale referred to in paragraph 5 of the bill was ineffective, invalid and void because it does not contain a description of the property purported to be sold thereby sufficient to identify the said property and does not contain a description of the property sufficient to inform the owner thereof that his property was sold for taxes and because said description is not sufficient to enable the purchaser to procure title by said description.

(i) The certificate of sale referred to in paragraph 5 of the bill was ineffective, invalid and void because there is no showing therein or statement therein that there were no other bidders for such property than the Township of Long Beach. Said certificate was ineffective, invalid and void because the same does not set forth the name of the owner of the property proposed to be sold as required by the laws of the State of New Jersey applicable thereto.

(j) The certificate of sale referred to in paragraph 5 of the bill was ineffective, invalid and void because while it therein is stated that said sale was for taxes for the year 1927, it is also therein stated that the said sale is subject to municipal liens accruing after July 1, 1927, and the taxes for the year 1927 did not accrue as municipal liens until December 1, 1927, and said certificate, therefore, purports to sell for 1927 taxes and subject to said taxes.

(k) The certificate of sale referred to in para-

Affidavit

graph 5 of the bill was ineffective, invalid and void because the said sale was invalid for the reasons set forth in paragraphs a to g, inclusive, set forth hereinabove.

9. After the filing of said answer, notice was given to the Township of Long Beach that an application would be made for a bill of particulars, and on November 17th, 1931, an order was made directing the Township of Long Beach to furnish the prosecutor with certain particulars. Bill of particulars was furnished by the Township of Long Beach, but the same did not cover all of the matters called for by the order in the Court of Chancery, and an additional bill of particulars was furnished the prosecutor on December 9th, 1931. In said bill of particulars it is stated that no resolution has been passed by the Township Committee of the Township of Long Beach, fixing the rate of interest to be charged on delinquent or unpaid taxes. 10 20

10. Deponent is advised that the defenses interposed are sound in law and believes same can be substantiated by the evidence, but the evidence necessary to be produced, to a large extent, is under the control of the Township of Long Beach, and, therefore, the prosecutor cannot attach hereto affidavits of persons familiar with all of the facts as to the situation and will have to rely upon the examination of witnesses under subpoena in proceedings taken herein. 30

11. Daniel B. Frazier Co. prays that a writ of certiorari may be allowed to review the validity of

Affidavit

the aforementioned sale and of the certificate issued thereunder and of the proceedings to sell such lands, and also all matters and things touching and concerning the same and leading up to and in any way arising therefrom.

WILLIAM N. MATTIX.

10

Sworn and subscribed before me this 11th day of December, A. D. 1931.

EARLE V. WESCOTT.

Notary Public of N. J.

EXHIBIT "A."

20

H. Earle McConnell, Coll.

To

Twp. of Long Beach

30

I, H. EARLE McCONNELL, Collector of Taxes of the Township of Long Beach, in the County of Ocean, State of New Jersey, do hereby certify that at a sale at public auction for unpaid municipal liens, duly held by me on November 19, 1928, pursuant to the provisions of an act of the Legislature of the State of New Jersey, entitled, "An Act concerning unpaid taxes, assessments and other municipal charges on real property, and providing for the collection thereof, by the creation and enforcement of liens thereon (Revision of 1918)" and the acts supplementary thereto and amendatory thereof,

Affidavit

I sold, in fee, to the Township of Long Beach, for \$415.67, the lands in said municipality described as;

24 52/100 Acres formerly Cassidy Est., on the tax duplicate of said municipality and assessed thereon to Daniel B. Frazier, as owner.

THE AMOUNT of sale was made up of the following items:

Taxes, 1927	\$389.32
Interest	22.93
Costs	3.42

10

Total	\$415.67
-------	----------

SAID sale is subject to redemption on repayment of the amount of the sale, together with interest thereon at the rate of EIGHT per centum per annum from the date of sale, and the costs incurred by the purchaser. Said sale is subject only to municipal liens accruing after July 1, 1927. 20

THE right to redeem will expire in SIX MONTHS after the service of notice to redeem, except that the right to redeem shall in all cases extend for TWO YEARS from the date of sale.

WITNESS my hand and seal this 24th day of December, nineteen hundred and twenty-eight.

H. EARLE McCONNELL (L.S.)
Collector of Taxes of the Town-
ship of Long Beach.

30

WITNESS:
Edwin G. Scovel

Affidavit

STATE OF NEW JERSEY }
COUNTY OF CAMDEN }^{ss}

BE IT REMEMBERED, that on this 24th day of December, 1928, before me, a *a* Master in Chancery of New Jersey, personally appeared H. 10 EARLE McConnell, Collector of Taxes of the Township of Long Beach, in the County of Ocean and State of New Jersey, whom I am satisfied is the person named in and who executed the above certificate of tax sale; 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 deed, for the uses and purposes therein expressed.

Edwin G. Scovel

20

A Master in Chancery of
New Jersey

Received and Recorded December 20, 1928 9.15
A. M.

John A. Ernst, Clerk

STATE OF NEW JERSEY }
COUNTY OF OCEAN }^{ss}

30

I, JOHN A. ERNST, Clerk of the said County of Ocean, do hereby certify that the foregoing is a true, full and correct copy of a certain CERTIFICATE OF TAX SALE, recorded in my office in Book No. 223 of Mortgages, page No. 87 &c.

Affidavit

(SEAL) IN TESTIMONY WHEREOF, I have
hereunto set my hand and affixed the
official seal of said County at Toms
River, New Jersey, this Eleventh day
of July, A. D., 1931.

John A. Ernst

County Clerk of Ocean County 10

By: LeRoy Grant

Deputy Clerk

Official

D 6

SALE OF LAND IN THE TOWNSHIP OF LONG BEACH OCEAN COUNTY, NEW JERSEY

PUBLIC NOTICE IS HEREBY GIVEN that the subscriber, Collector of Taxes of the Township of Long Beach, Ocean County, New Jersey, pursuant to the statute, will on

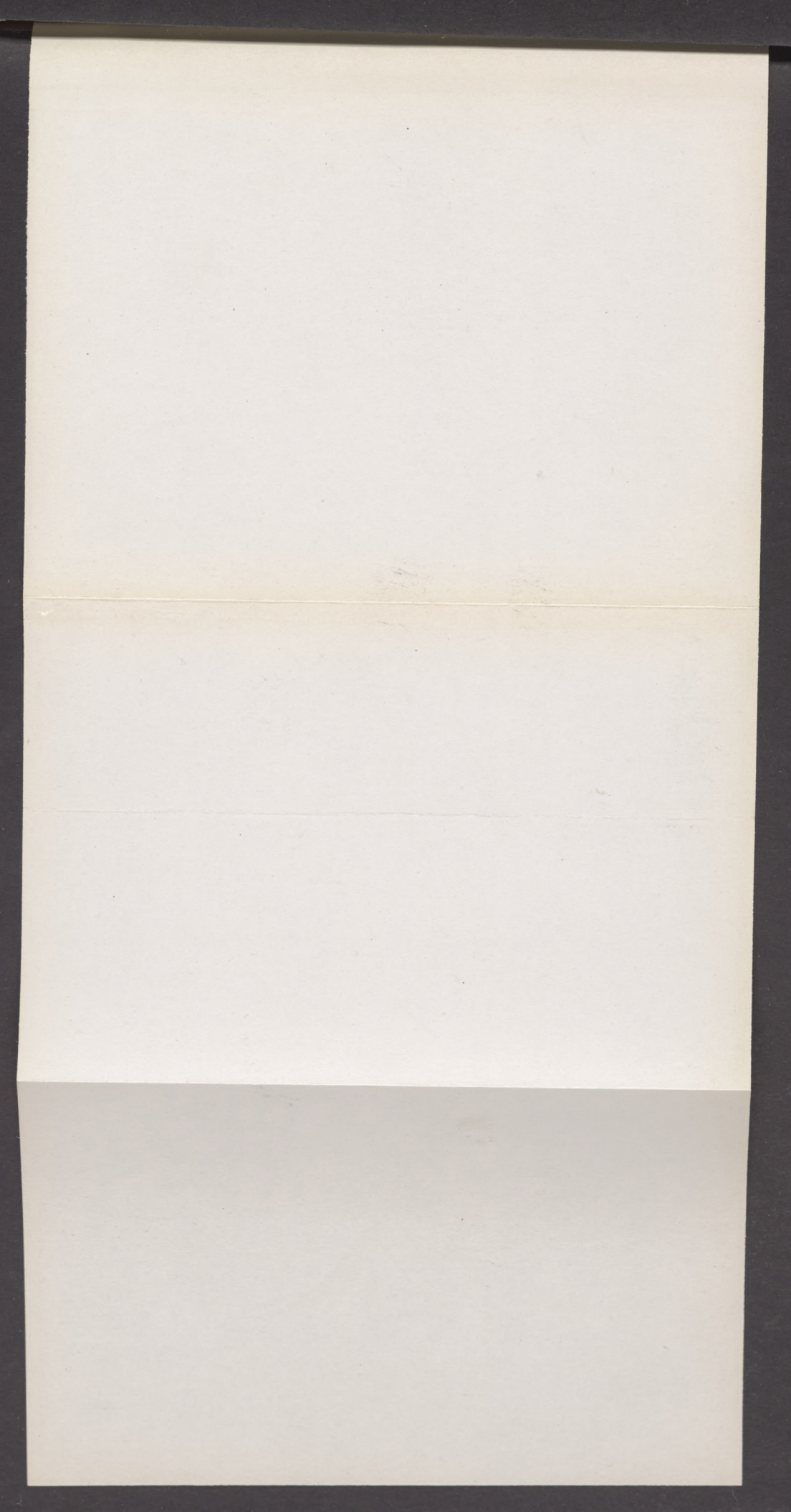
MONDAY, NOVEMBER 19, 1928

at the hour of 1 o'clock p. m., at the Township Hall, 16th Street and the Boulevard, at North Beach Haven in said Township, expose to public sale and sell to such person or persons as will purchase the same, subject to redemption at the lowest rate of interest or at the highest premium without interest, and pay the tax liens thereon including interest and costs, each of the parcels of lands in the Township of Long Beach, together with the tenements and hereditaments thereunto belonging, as described below.

No lands will be sold subject to redemption at a rate of interest higher than eight per centum per annum. Payment for lands purchased must be made before the conclusion of the sale or the lands will be immediately resold. The parcels of lands and real estate to be sold; the names of the persons against whom the same are assessed as owners; and the amount of the delinquent taxes, together with interest to July 1, 1928, and costs thereon, are as follows:

	Tax.	Int.	Cost	Total	
<i>Bid.</i> <i>10/31/28.</i> Lo-Rae Clayton, 10 Acres					
Part of McKinney tract-south of Paahala, 1927	\$165.25	\$10.91	\$3.42	\$199.58	<i>Bid-off</i>
T George W. Evenson, 12 36-100 acres South of Harvey Cedars, 1927	105.86	6.23	3.42	115.51	
T Daniel B. Frazier Co. South of Harvey Cedars, formerly R. R. property 18 35-100 A., 1927	95.27	5.61	3.42	104.30	
T Daniel B. Frazier Co. 177 82-100 acres Sea Breeze tract, adjoining Surf City, 1927	2823.40	166.27	3.42	2993.09	
T Daniel B. Frazier Co. 486.01 acres Between Harvey Cedars and Barnegat City 1 house, 1927	7743.90	456.03	3.42	8203.35	
T Daniel B. Frazier 24 52-100 acres Formerly Cassidy Est., 1927	389.32	22.93	3.42	415.67	
<i>Bid.</i> <i>10/30/28.</i> Brant Beach Realty Co.—Brant Beach Block 7, lots 59-60, 1 house, 1927	99.00	2.01	0.42	99.44	<i>Bid-off.</i>
<i>Bid.</i> <i>11/9/28.</i> Brant Beach Realty Co.—Brant Beach From South line of Hardenberg tract to north line of Beach Haven Crest, Ocean to bay 47 acres, 1927	435.32	34.34	3.42	473.08	
<i>Bid.</i> <i>11/6/28.</i> Brant Beach Realty Co.—Brant Beach West of R. R. from 31st St. to Beardslee ave. 24 39-100 acres 1927	158.78	12.53	3.42	174.73	
<i>Bid.</i> <i>11/18/28.</i> Walter Cullen—Brant Beach Sec. A. A. block I, lot 22, 1927	5.30	.31	3.42	9.03	
<i>Bid.</i> <i>11/19/28.</i> James H. McGregor—Brant Beach Sec. A. blk. 6, lot 23, 1927	6.62	.39	3.42	10.43	
<i>Bid.</i> <i>11/16/28.</i> T Samuel H. Burkhart—Beach Haven Crest Block 26, lots 24-35, 1927	7.94	.47	3.42	11.83	
James McMurray, Inc.—Beach Haven Crest Block 19, lots 15-17-19-20-23-25-26 Block 19, lots 31-32-33-34-35-36 Block 20, lots 1-7-9-11-13-15-19-21-23-25					
Block 20, lots 27-29-34-35-36 Block 26, lots 1-2-3-5-6-7-8-9-10-11 12-13-14-15-16-17-18-19-22-26-28-29-30-31-41					
Block 27, lots 1-2-3-4-9-11-13-15-17-19-21-23-25, 1927	63.52	5.01	3.42	71.95	
<i>Bid.</i> <i>11/19/28.</i> Harry M. Ellis—Beach Haven Crest Block 12, lots 16-18-20-22	25.72	1.51	3.42	30.65	
T Domenico Frederico—Beach Haven Crest Block 9, lots 21-23 and part of 22-24, 1927	23.82	1.40	3.42	28.64	

(1)



	Tax	Int.	Cost	Total
John F. Murray—St. Albans				
Sec. B., Blk. 106, Lot 16, 1927	.67	.05	3.42	4.14
Dr. James G. McCollen—St. Albans				
Sec. A., Blk. 29, Lots 15-17, 1927	1.33	.08	3.42	4.83
Marie F. O'Connor—St. Albans				
Sec. A., Blk. 19, Lot 32, 1927	.67	.05	3.42	4.14
Harry L. Overton—St. Albans				
Sec. A., Blk. 57, Lot 12, 1927	.67	.05	3.42	4.14
W. Scott Prickett—St. Albans				
Sec. A., Blk. 11, Lots 16-18, 1927	1.33	.08	3.42	4.83
Samuel Rawlinson—St. Albans				
Sec. A., Blk. 57, Lots 4-5-7-9-11-13				
Sec. A., Blk. 36, Lots 5-7-9-11, 1927	6.62	.39	3.42	10.43
Dr. Wm. J. Ritter—St. Albans				
Sec. A., Blk. 11, Lots 31-33, 1927	1.33	.08	3.42	4.83
Wm. E. Sainick—St. Albans				
Sec. A., Blk. 16, Lot 29, 1927	.67	.05	3.42	4.14
Herman R. Soder—St. Albans				
Sec. A., Blk. 16, Lot 17, 1927	.67	.05	3.42	4.14
Albert H. Weller—St. Albans				
Sec. A., Blk. 57, Lot 10, 1927	.67	.05	3.42	4.14
St. Albans Improvement Co.—St. Albans				
Sec. A., Blk. 3, Lot 5.				
Sec. A., Blk. 4, Lots 1 to 25, inc.				
Sec. A., Blk. 5, Lots 7-9 to 25 inc., 27.				
Sec. A., Blk. 6, Lots 15-17-18-19-20-22-24				
Sec. A., Blk. 6, Lots 25-26-27				
Sec. A., Blk. 7, Lot 26.				
Sec. A., Blk. 11, Lots 15-17.				
Sec. A., Blk. 13, Lot 29.				
Sec. A., Blk. 14, Lots 17-19-21-23-25.				
Sec. A., Blk. 16, Lots 7-10-11-14-16-31.				
Sec. A., Blk. 19, Lot 39.				
Sec. A., Blk. 20, Lots 10-12-22-23.				
Sec. A., Blk. 23, Lot 29.				
Sec. A., Blk. 24, Lot 26.				
Sec. A., Blk. 29, Lots 6-31-33.				
Sec. A., Blk. 36, Lot 13.				
Sec. A., Blk. 37, Lot 27.				
Sec. A., Blk. 40, Lot 8.				
Sec. A., Blk. 41, Lots 23-25.				
Sec. A., Blk. 42, Lot 29.				
Sec. A., Blk. 45, Lots 22-24.				
Sec. A., Blk. 59, Lots 1-15.				
Sec. A., Blk. 62, Lots 7-8.				
Sec. B., Blk. 34, Lots 5-6-7.				
Sec. B., Blk. 38, Lot 6.				
Sec. B., Blk. 39, Lots 12-21.				
Sec. B., Blk. 40, Lots 6-16.				
Sec. B., Blk. 44, Lots 1-2-16-18-19.				
Sec. B., Blk. 44, Lots 20-21-23-25.				
Sec. B., Blk. 47, Lots 5-14-24.				
Sec. B., Blk. 51, Lots 19-21-23.				
Sec. B., Blk. 52, Lots 8-9-10-11-12-13				
Sec. B., Blk. 52, Lots 14-15-18-20-22.				
Sec. B., Blk. 56, Lots 2-3-5-7-9-11-13-17.				
Sec. B., Blk. 56, Lots 19-21-22-23.				
Sec. B., Blk. 59, Lots 11-12-13-14.				
Sec. B., Blk. 60, Lots 1 to 13 inc., 15.				
Sec. B., Blk. 62, Lots 10-11-12-13-14-16-18.				
Sec. B., Blk. 63, Lots 11-12-20-22-24.				
Sec. B., Blk. 64, Lots 1-2-3-4-5.				
Sec. B., Blk. 66, Lots 6-8-10-12-14-16-18.				
Sec. B., Blk. 66, Lots 20-21-22-23-24-25-26.				
Sec. B., Blk. 67, Lots 1 to 18 inc.				
Sec. B., Blk. 68, Lots 18-19-20-21-22-23.				
Sec. B., Blk. 72, Lots 16-18-22-24-26.				
Sec. B., Blk. 74, Lot 12.				
Sec. B., Blk. 76, Lots 12-14-15-16-17-18-19-20-22				
Sec. B., Blk. 77, Lots 2-10-22.				
Sec. B., Blk. 81, Lots 4 to 16 inc.				
Sec. B., Blk. 82, Lots 1-2-4-5-7-8-9-10.				
Sec. B., Blk. 83, Lots 10-13-15-17.				
Sec. B., Blk. 87, Lots 22.				
Sec. B., Blk. 88, Lots 9-11-12-13-14.				
Sec. B., Blk. 93, Lots 2-10-16-17-19.				
Sec. B., Blk. 94, Lot 8.				
Sec. B., Blk. 99, Lots 6-8.				
Sec. B., Blk. 101, Lots 5-7 to 12 inc.				
Sec. B., Blk. 105, Lots 14-15-16-17-18.				
Sec. B., Blk. 108, Lots 11-13.				
Sec. B., Blk. 116, Lots 2-3-5-7-8-9-10-13.				
Sec. B., Blk. 120, Lots 1 to 11 inc., 13.				
Sec. B., Blk. 130, Lots 15 to 20 inc., 24.				
For the year 1922	85.21	39.00		
For the year 1923	91.33	34.00		
For the year 1924	117.37	35.00		
For the year 1925	145.64	32.00		
For the year 1926	157.02	23.00		
For the year 1927	204.98	14.00	30.00	1008.55

BOUGHT IN BY ELLEN C. FORD—No Interest

315 Spruce St., Philadelphia, Pa.				
John F. Ford—Beach Haven Crest				
Block 11, lot 40, 1927.....	6.62	.39	3.42	10.43

BOUGHT IN BY ANDREW V. HIBBS—8% Interest

Beach Haven Terrace, N. J.				
Joseph Coyle—Beach Haven Terrace				
Tract 1, sec. A., lot 43, 1927	6.62	.39	3.42	10.43
Jessie McElroy—Beach Haven Terrace				
Tract 1, sec. A. lot 32, 1927.....	5.30	.31	3.42	9.03

This sale is made under the provisions of an Act of the Legislature known as the "Tax Sale Revision," being Chapter 237, P. L. 1918, and the several Acts amendatory thereof and supplemental thereto.

Any of the aforesaid parcels of lands and real estate may be redeemed by the owner prior to the sale by payment of the amount due thereon for taxes, interest and costs.

Dated: October 24, 1928.

H. EARLE McCONNELL,
Collector of Taxes of the Township
of Long Beach.

John F. Murray—St. Albans
Sec. B. Bk. 106, Lot 16, 1927
Tax .67
Int. .05
Cost 3.42
Total 4.14

SALE OF LAND

IN THE TOWNSHIP OF LONG BEACH

OCEAN COUNTY, NEW JERSEY

PUBLIC NOTICE IS HEREBY GIVEN that the subscriber, Collector of Taxes of the Township of Long Beach, Ocean County, New Jersey, pursuant to the statute, will on

MONDAY, NOVEMBER 19, 1928

at the hour of 1 o'clock p. m., at the Township Hall, 16th Street and the Boulevard, at North Beach Haven in said Township, expose to public sale and sell to such person or persons as will purchase the same, subject to redemption at the lowest rate of interest or at the highest premium without interest, and pay the tax liens thereon including interest and costs, each of the parcels of lands in the Township of Long Beach, together with the tenements and hereditaments thereunto belonging, as described below.

No lands will be sold subject to redemption at a rate of interest higher than eight per centum per annum. Payment for lands purchased must be made before the conclusion of the sale or the lands will be immediately resold.

The parcels of lands and real estate to be sold; the names of the persons against whom the same are assessed as owners; and the amount of the delinquent taxes, together with interest to July 1, 1928, and costs thereon, are as follows:

—RESULT OF TAX SALE—

BOUGHT IN BY THE TOWNSHIP OF LONG BEACH:—

	Tax.	Int.	Cost	Total
George W. Evenson, 12 36-100 acres				
South of Harvey Cedars, 1927	105.86	6.23	3.42	115.51
Daniel B. Frazier Co.				
South of Harvey Cedars, formerly				
R. R. property 18 35-100 A., 1927	95.27	5.61	3.42	104.30
Daniel B. Frazier Co. 177 82-100 acres				
Sea Breeze tract, adjoining Surf				
City, 1927	2823.40	166.27	3.42	2993.09
Daniel B. Frazier Co. 486.01 acres				
Between Harvey Cedars and Bar-				
negat City 1 house, 1927	7743.90	456.03	3.42	8203.35
Daniel B. Frazier 24 52-100 acres				
Formerly Cassidy Est., 1927	389.32	22.93	3.42	415.67
Samuel H. Burkhart—Beach Haven Crest				
Block 26, lots 24-35, 1927	7.94	.47	3.42	11.83
Domenico Frederico—Beach Haven Crest				
Block 9, lots 21-23 and part of 22-				
24, 1927	23.82	1.40	3.42	28.64
Rev. Francis P. Haltgreve—Beach Haven Crest				
Block 20, lot 6, 1927	3.97	.24	3.42	7.63
J. O. Huber—Beach Haven Crest				
Block 20, lots 31-32-33, 1927	11.91	.70	3.42	16.03
I. Santaro—Beach Haven Crest				
Block 12, lot 6, 1927	6.62	.39	3.42	10.43
Leroy L. Vennell—Beach Haven Crest				
Block 31, lots 7-8, 1927	7.94	.47	3.42	11.83
Ellis L. Goodall—Brighton Beach				
Blk. 447, lots 22-23-24, 1927	15.88	.93	3.42	20.23
Harry F. Reinhardt—Brighton Beach				
Block 437, lots 14-15				
Block 447, lots 4-5, 1927	14.56	.86	3.42	18.84
Wallace Royles—Beach Haven Terrace				
Tract 1, sec. D. lot 53, 1927	3.97	.24	3.42	7.63
Alex. R. Schuler—Beach Haven Terrace				
Tract 2, sec. D. lot 30, 1927	5.30	.31	3.42	9.03
Martin Wida—Beach Haven Terrace				
Tract 1, section A. lots 3-4 1 hotel				
1927	116.44	6.86	3.42	126.72
Spray Beach Hotel Co.—Spray Beach				
Blk. E. lots 2-3, hotel annex and				
public garage, 1927	100.56	5.92	3.42	109.90
Spray Beach Hotel Co.—Spray Beach				
Blk. B. lots 1-2-3-4-5-6-7-8, Hotel				
Store, Poolroom, Apt. House and				
Engine House, 1927	449.88	26.49	3.42	479.79
Spray Beach Hotel Co.—Spray Beach				
Blk. H. lot 18, 1 garage, 1927	26.47	1.54	3.42	31.43
G. Earle Vogels—Spray Beach				
Blk. F. lots 1-2-3 and part of 6,				
1 apartment house, 1927	230.23	13.58	3.42	247.23
James L. Reap Jr.—North Beach Haven				
Block 12, lot 16, 1927	5.50	.31	3.42	9.03
Realty Mart—North Beach Haven				
Block 6, lots 1 to 22 inc., 1927	116.44	6.86	3.42	126.72
Realty Mart—North Beach Haven				
Block F. lots 1 to 20 inc., 1927	105.86	6.23	3.42	115.51
Anthony Murphy—Beach Haven Heights				
Block 20, lots 36-38, 1927	5.30	.31	3.42	9.03
Dr. Mary E. Allen—St. Albans				
Sec. A. blk. 26, lots 1-3, 1927	1.33	.08	3.42	4.83
Albert L. Bemis—St. Albans				
Sec. B. blk. 47, lots 18-20, 1927	1.33	.08	3.42	4.83
Catherine A. Cole—St. Albans				
Sec. A. blk. 44, lot 25, 1927	.67	.05	3.42	4.14
Leora M. Dempsey—St. Albans				
Sec. B., blk. 78, lot 7, 1927	.67	.05	3.42	4.14
Jennie G. Felton—St. Albans				
Sec. B., blk. 40, lot 23, 1927	.67	.05	3.42	4.14
John L. Floyd—St. Albans				
Sec. A. blk. 34, lot 3				
Sec. A. blk. 35, lots 6-7				
Sec. A. blk. 36, lots 3-4, 1927	3.31	.20	3.42	6.93
Jos. S. Jacobowski—St. Albans				
Sec. B. blk. 52, lot 16, 1927	.67	.05	3.42	4.14
Minnie L. Joyce—St. Albans				
Sec. A. blk. 44, lot 6, 1927	.67	.05	3.42	4.14
Chas. N. Lang—St. Albans				
Sec. A. Blk. 12, lot 7, 1927	.67	.05	3.42	4.14
Florence M. Lloyd—St. Albans				
Sec. A., Blk. 44, Lots 1-2, 1927	1.33	.08	3.42	4.83
Walter E. Mallory—St. Albans				
Sec. B., Blk. 44, Lot 15, 1927	.67	.05	3.42	4.14
Dr. John Mellor Est.—St. Albans				
Sec. A., Blk. 61, Lot 7, 1927	.67	.05	3.42	4.14

Order

Case No. 1.

12 36/100

ORDER.

10

NEW JERSEY SUPREME COURT.

DANIEL B. FRAZIER Co., a
corporation of New Jer-
sey,

Prosecutor,

v.

20

TOWNSHIP OF LONG BEACH,
in the County of Ocean,
a municipal corporation
of the State of New Jer-
sey; H. EARLE McCON-
NELL, Collector of Taxes
of the Township of Long
Beach, and AUGUSTUS L.
KEIL, Township Clerk of
the Township of Long
Beach,

Defendants.

On Certiorari.
Order.

30

This matter being opened to the Court by Howard
Ewart, attorney for defendants, and it appearing

Order

that on the 15th day of January, 1932, an allocatur was made to a writ of certiorari in the above-entitled matter, which said writ of certiorari was made returnable on the 4th day of February, 1932;

And cause being shown:

10 It is, on this 2nd day of February, 1932, ordered that the return day of the writ of certiorari in this matter be extended to the 15th day of February, 1932.

J. L. BODINE,
Judge, Supreme Court.

I hereby consent to the entry of the above order.

20 JOSEPH H. CARR,
Attorney for Prosecutor.

Notice

Case No. 1.

12 36/100

NOTICE.

NEW JERSEY SUPREME COURT.

10

DANIEL B. FRAZIER Co., a
corporation of New Jer-
sey,

Prosecutor,

v.

TOWNSHIP OF LONG BEACH,
in the County of Ocean,
a municipal corporation
of the State of New Jer-
sey; H. EARLE McCON-
NELL, Collector of Taxes
of the Township of Long
Beach, and AUGUSTUS L.
KEIL, Township Clerk of
the Township of Long
Beach,

Defendants.

On Certiorari.
Notice.

20

30

To Joseph H. Carr, Attorney for Prosecutor:

Sir:

Please take notice that on Monday, the 15th day
of February, 1932, at ten o'clock in the forenoon, or

Notice

as soon thereafter as counsel can be heard thereon,
at the State House in the City of Trenton, I shall
apply to his Honor, Joseph L. Bodine, Justice of
the Supreme Court, for a rule in the above-entitled
cause, vacating the allocatur on the writ of certi-
orari issued in this matter, on the following
10 grounds:

(1) That the prosecutor is in laches.

(2) That the tax sale proceeding, the legality of
which was questioned by the prosecutor, was valid.

(3) That the affidavit filed in this matter, under
which the allocatur to the writ of certiorari was
made, does not disclose reasonable cause for the is-
20 suance of the writ of certiorari.

Dated February 5, 1932.

HOWARD EWART,
Attorney for Defendants.

[ENDORSED]

30

Service of the within Notice is
hereby acknowledged this 6th day of
February, 1932.

Joseph H. Carr,
Attorney for Prosecutor.

Notice of Taking Depositions

Case No. 1.

12 36/100

NOTICE OF TAKING DEPOSITIONS.

NEW JERSEY SUPREME COURT.

10

DANIEL B. FRAZIER Co., a
corporation of New Jer-
sey,

Prosecutor,

v.

TOWNSHIP OF LONG BEACH,
in the County of Ocean,
a municipal corporation
of the State of New Jer-
sey; H. EARLE McCON-
NELL, Collector of Taxes
of the Township of Long
Beach, and AUGUSTUS L.
KEIL, Township Clerk of
the Township of Long
Beach,

Defendants.

On Certiorari.
Notice of Taking
Depositions.

20

30

To Joseph H. Carr, Attorney for Prosecutor:

Sir:

Please take notice that depositions to be read on
the hearing of the motion to vacate the allocatur on

Notice of Taking Depositions

the writ of certiorari issued in this matter will be taken before the Honorable George C. Low, a Supreme Court Commissioner, at his office in the Veeder Building, Main Street, Toms River, New Jersey, on Thursday, the 11th day of February, 1932, at 10:00 o'clock in the forenoon.

10 Dated February 6, 1932.

Yours respectfully,

HOWARD EWART,
Attorney for Defendants.

[ENDORSED]

20

Service of the within Notice is hereby acknowledged this 6th day of February, 1932.

Joseph H. Carr,
Attorney for Prosecutor.

30

Depositions

Case No. 1.

12 36/100

DEPOSITIONS.

10

NEW JERSEY SUPREME COURT.

DANIEL B. FRAZIER Co., a
corporation of New Jersey,

Prosecutor,

v.

20

TOWNSHIP OF LONG BEACH,
IN THE COUNTY OF OCEAN,
a municipal corporation
of the State of New Jersey;
H. EARLE McCONNELL, Collector of Taxes
of the Township of Long Beach;
and AUGUSTUS L. KEIL, Clerk of the Township
of Long Beach,

Defendants.

On Certiorari.
Depositions.

30

Depositions of witnesses taken at the Berry Building,
Toms River, New Jersey, February 11, 1932, at

Stipulation

ten o'clock A. M., before HON. GEORGE C. LOW,
Supreme Court Commissioner, pursuant to notice.

.....
Supreme Court Commissioner.

10

APPEARANCES:

MR. JOSEPH H. CARR, for prosecutor.

MR. HOWARD EWART and MR. KENNETH V. BEN-
NETT, for defendants.

It is stipulated and agreed by and between counsel
that the testimony in this matter be taken steno-
graphically by Elsie Louise Sculthorp, a stenogra-
20 pher designated by Supreme Court Commissioner
George C. Low; that the signatures of the witnesses
be waived and that the evidence taken in the one
cause shall be considered as if taken in all five
causes, subject to the objection interposed by the
prosecutor that depositions cannot properly be taken
under the notice served on the prosecutor for use on
the motion to vacate the allocatur to the writs of cer-
tiorari issued in the five pending matters in the
30 New Jersey Supreme Court, all entitled as above,
and subject to the further objection that on the argu-
ment of the motion to vacate the allocatur deposi-
tions cannot be used.

It is further stipulated that the defendants are
not bound by this stipulation to concede the validity
of any of these objections.

H. Earle McConnell—Direct

State of New Jersey, }
County of Ocean. } ss.

ELSIE LOUISE SCULTHORP, being duly sworn on her oath deposes and says that she will truly take and transcribe the testimony of the witnesses about 10 to be given in the above entitled cause.

ELSIE LOUISE SCULTHORP.

Sworn and subscribed before me this 11th day of February, A. D. 1932.

Supreme Court Commissioner.

— 20

H. EARLE MCCONNELL, sworn for defendants.

Direct examination.

By Mr. Ewart:

Q. You hold what position in Long Beach Township?

30

A. Collector and treasurer.

Mr. Carr: I want to renew the objection expressed and contained in the stipulation and to save repetition you will understand that all of the testimony is subject to that objection.

Mr. Ewart: It is understood that the evidence taken and to be taken is subject to your objection, without renewing that objection to every question that is asked.

- Q. How long have you held that position?
10 A. Since January 1st, 1913.
Q. Continuously?
A. Continuously.
Q. You held a tax sale in 1928?
A. Yes, sir.
Q. Upon what date?
A. On November 19th, 1928.
Q. And where was it held?
A. At the Township Hall, North Beach Haven.
Q. For what was the sale held?
20 A. For delinquent taxes for 1927.
Q. Upon lands located where?
A. In Long Beach Township.
Q. Were there included in the sale any of the
lands of Daniel B. Frazier Co.?
A. Yes, sir.
Q. How many different tracts?
A. Three tracts assessed in the name of Daniel
B. Frazier Co., one tract in the name of Daniel B.
Frazier and one tract in the name of Evanson.
30 Q. Why do you mention the Evanson tract?
A. It was assessed in his name.
Q. Whose name?
A. Evanson's name.
Q. Why do you mention it in connection with the
Frazier lands?

H. Earle McConnell—Direct

A. Because afterwards Frazier bought it and it was afterwards assessed in Frazier's name.

Q. At this sale on November 19, 1928, to whom did you sell the three tracts assessed in the name of Daniel B. Frazier Company, one in the name of Daniel B. Frazier and one in the name of Evanson?

A. To the Township of Long Beach. 10

Q. Were there any other bidders for the lands?

A. No.

Q. Were certificates of tax sale ever issued to the Township?

A. They were.

Q. Can you produce them?

Mr. Ewart: I offer in evidence five certificates of tax sale, issued by H. Earle McConnell, Collector of Taxes of the Township of Long Beach to the Town- 20
ship of Long Beach, covering the lands in question, each of which is dated December 24, 1928, and each of which was recorded in the Ocean County Clerk's Office at Toms River, New Jersey, on the 29th of December, 1928, in mortgage book 223, at pages 82, 87, 88, 90 and 91 respectively.

(Marked Exhibits D1, D2, D3, D4 and D5.)

Q. Was this tax sale advertised prior to Novem- 30
ber, 1928?

A. Yes, sir.

Q. Where was it advertised?

A. Tuckerton Beacon.

Q. Published where?

A. Tuckerton, New Jersey.

Q. Does that paper circulate in the Township of Long Beach?

A. It does.

Q. Was there any newspaper published in the Township of Long Beach at that time?

A. No.

10 Q. Do you know for how long the advertisement was published prior to the sale?

A. Four times.

Q. How often is that newspaper published?

A. Once a week.

Q. It was published for four weeks?

A. Yes.

Q. Which four weeks?

A. Four weeks prior to the sale.

20 Mr. Carr: I object that this witness is incompetent to testify as to the time or dates of publication. You should have the newspaper man here for that, shouldn't you?

Mr. Ewart: Yes.

Q. Did you make up any list of the lands to be sold?

A. I did.

30 Q. What did you do with the list?

A. I sent it to the paper to be published.

Q. And did you afterwards receive any copies of the list, printed copies?

A. I did.

Q. I hand you a paper purporting to be a copy of the list of lands to be sold together with notice

H. Earle McConnell—Direct

of the time and place of the sale and ask you if that is the notice published?

A. That is the notice, yes, sir.

Q. The notice consists of four printed sheets. Is that a true copy of the same list you made up?

A. Yes.

Q. I notice in addition to the printing contained 10 in the notice that there are certain longhand notations on it. By whom were those notations made?

A. I made them.

Q. They indicate what?

A. They indicate the properties redeemed after the first publication and before the sale.

Q. But the printed portion of the list, as I understand it, is an exact copy of the list made up by you?

A. Yes.

20

Mr. Ewart: I would like to offer this in evidence.

(Marked Exhibit D6.)

Q. I notice on the sale notice, D6, that you also have a long hand notation in front of a certain property of Frazier. What does that indicate?

A. Sold to the Township.

Q. That was a notation made by you at the time? 30

A. I kept that all through the publication and made notes on it.

Q. This Exhibit D6, I notice, contains what purports to be the name of the owner, description of lands, amount of taxes, amount of interest, amount of costs and the total; that is correct, is it not?

A. Yes, sir.

Q. From where did you obtain the description of the lands included in this notice of sale?

A. From the tax duplicate.

Q. From the tax duplicate?

A. Yes, sir.

10 Q. For what year?

A. 1927.

Q. And are the descriptions contained in the notice of sale, insofar as they concern the Frazier lands, the same as are contained in the tax duplicate?

A. They are.

Q. You know that?

A. I do.

Q. You have compared them?

20 A. I have.

Q. And the sales were for delinquent taxes for

A. 1927.

Q. Prior to the sale did you post any notices of sale?

A. Yes, sir.

Q. What kind of notices?

A. That notice, the same kind of notice as that is.

30 Q. The same as Exhibit D6?

A. Yes.

Q. Where did you post them?

A. I posted one at the Town Hall, railroad station at Spray Beach, one at the railroad station at Beach Haven Terrace, one at the railroad station in Brant Beach. I also posted one on the boulevard

H. Earle McConnell—Direct

just south of the Beach Haven borough line and one down near the Beach Haven Inlet, on the boulevard.

Q. That is seven, all told?

A. Yes. I posted another one on the boulevard just north of Surf City; that is seven.

Mr. Carr: Did you do the posting personally? 10

A. I did.

Mr. Ewart:

Q. When did you post these notices?

A. On or about the 27th of October, 1928.

Q. You mentioned seven different places where you posted these notices. How many of those places are in the Township? 20

A. They are all in the Township of Long Beach.

Q. You refer to Spray Beach and other places; are they in the Township of Long Beach?

A. Yes, all of them.

Q. They are just names of local places in the Township?

A. Yes.

Q. Did you mail out any notices of this sale?

A. I did.

Q. To whom did you mail notices? 30

A. To all of the persons on the sales list.

Q. And do you know to what addresses you mailed them?

A. To the addresses given in the duplicate.

Q. The 1927 tax duplicate?

A. Yes.

Q. And when did you mail the notices?

A. On or about the 27th of October, 1928.

Q. In postage prepaid wrappers, I assume?

A. Yes.

Q. After this sale, held on November 19, 1928, what did you do, if anything, with respect to notifying the Frazier Company as to the lands that had been sold?

A. I had a copy of the sales list, the names that had been paid, printed and called it the "Result of Sale," marked it "Result of Sale."

Q. I show you a photostatic copy of printed paper called Result of Sale in the Township of Long Beach, Monday, November 19, 1928. Is that a correct copy of the result of the sale just referred to by you in your testimony?

20 A. It looks like it.

Mr. Ewart: I offer it in evidence.

(Marked Exhibit D7.)

Q. After this sale on November 19, 1928, and the delivery of the certificates of tax sale to the Township on December, 1928, did you ever mail out any tax bills to Frazier & Company after that date?

30 A. Yes, I did.

Q. When?

A. 1928, 1929 and 1930, I think.

Q. Was there any notation on your tax bills with respect to the sale?

A. I made a notation that the property had been sold for taxes.

H. Earle McConnell—Direct

Q. Where did you make that notation?

A. Right under the description of the property.

Q. On the tax bill itself?

A. On the tax bill itself.

Q. And you say you did mail such a notice to the Frazier Company?

A. Yes.

10

Q. Where did you mail the notice to?

A. Bailey Building.

Q. That is their address?

A. Yes.

Q. You are acquainted with Mr. Frazier, are you not? Have you met him?

A. I think I have met him.

Q. Are you acquainted with Mr. Mattix, the secretary of the Frazier Company?

A. Yes.

20

Q. Did either Mr. Frazier or Mr. Mattix or anyone else representing Frazier & Company ever make any protest or objection to you concerning the sale you had held in November, 1928?

A. Not to my recollection.

Q. You say that you have met Mr. Mattix?

A. Yes.

Q. Did you ever discuss taxes with him, or were taxes ever discussed in his presence?

A. I don't remember that I have.

30

Q. When was it you met Mr. Mattix, before or after this sale?

A. I met him when he came to the house to redeem a former sale one time.

Q. That was before the 1928 sale?

A. Oh, yes.

Q. Have you met him since the sale of 1928?

A. Yes, I have.

Q. What was the occasion of that meeting?

A. It seems to me that I met him at the Engle-side Hotel on the porch one evening.

Q. Was there any discussion about taxes at that
10 time?

A. Not that I remember.

Cross-examination.

By Mr. Carr:

Q. You made the statement that the reason the
Evanson property was listed under Frazier's name
was because Frazier bought it?

20 A. Yes.

Q. Was that bought after the tax sale or prior?

A. After the tax sale.

Q. I show you a deed, George W. Evanson and
wife to Daniel B. Frazier Company, dated April
26, 1926, recorded in the Ocean County Clerk's office
on May 4th, 1926, Book 690, page 173, and ask you
if by looking at that deed you can refresh your recol-
lection as to whether or not that deed is prior to
the 1927 taxes and prior to this sale?

30 A. I only know from what I see on my duplicate,
I don't know anything about deeds.

Q. When you say that Frazier afterwards bought
it, you don't mean to say it was after the sale?

A. I don't know anything about that. When was
it recorded?

Q. 1926. It is recited in one of your bills, as a

H. Earle McConnell—Cross

matter of fact. So far as you know, Mr. McConnell, this conveyance of Evanson to Frazier was at the time shown by this deed, 1926?

A. So far as I know, yes.

Q. Now, this notice, Exhibit D6, that you spoke of as the list of the properties to be sold. Is that the only list you ever had? 10

A. Except the one I made up in longhand.

Q. Then, you did, as I understand it, make up this list in longhand, this notice of sale of the lands to be made in November, 1928, and in that notation you included the names of the various properties which it was proposed to sell for non-payment of taxes, is that correct?

A. Yes, sir.

Q. The notice which was made up and sent to the newspaper is the notice, D6, which you have 20 identified?

A. Yes, sir.

Q. Now, did you ever have any other list of delinquent taxes other than this notice of sale, D6?

A. No.

Mr. Ewart: You intend to refer to the original of which D6 is a copy? He has already testified in answer to your question, and mine too, that D6 was made up by the printer copying from the original longhand list. 30

Mr. Carr: When I speak of whether or not you had any other list I mean any list other than the notice of sale which you first made up in longhand

and which was afterwards put into print by the printer?

A. No.

Q. I am correct, am I not, in understanding that there was never any list made up as provided by
10 the tax sale revision of 1918?

Mr. Ewart: I object to that because it calls for a conclusion on the law which the witness is probably not competent to answer. I think your question should be confined to what existed in fact.

A. I am not familiar with the law.

Q. You have a list book?

A. Not at that time, I have now.

20 Q. Since when have you had a list book?

A. Last year.

Q. What time last year?

A. I couldn't tell you.

Q. After the institution of these proceedings for the foreclosure of these tax liens?

A. I couldn't answer that at all.

Q. I call your attention to the fact that four of these bills in Chancery for the foreclosure of tax liens were filed on or about September 15, 1931.

30 Bearing that date in mind, was your list book made up before or after that date?

A. I didn't make up the list book.

Q. When did you first have the list book?

A. Last year.

Q. What time last year?

A. I don't know.

H. Earle McConnell—Cross

Q. You didn't make up the list book?

A. I haven't any made up.

Q. You say you have one but it hasn't been made up?

A. Yes.

Q. Have you it with you?

A. No.

Q. What distinction are you drawing between having a book and having it made up?

A. I haven't had a tax sale since to put in it.

Q. At the present time you have a book, a list book, but it has no entries in it, is that it?

A. Yes.

Q. What time you purchased or acquired the book you are not able to say?

A. No.

Q. What record do you have, Mr. McConnell, of the sale and the proceedings relative to the sale?

A. Exhibit D6.

Q. You have no other record?

A. I have the record of the result of the sale.

Q. You mean Exhibit D7, this printed notice that was sent out?

A. Yes.

Q. You have no other record than that?

A. That's all except what is noted on the duplicate, I have noted what was sold.

Q. That record is simply "Sold for taxes for the year 1927," is that right?

A. Yes.

Q. Other than what you have stated you have no record of the sale nor of the proceedings prior to

10

30

the sale or leading up to the sale, other than what you have mentioned?

A. I mentioned that, didn't I, D6?

Q. You have no record of the proceedings subsequent to the sale other than D6 and D7 and the entries on your tax duplicate?

10 A. No.

Q. Have you in your Township records any proof of the publication of notice of sale in the newspaper?

A. No.

Q. Have you in the Township records any proof of the mailing of the notices of sale as you have stated that you mailed it?

A. No.

20 Q. Have you in the Township records any proof of the posting of notices of the sale as you have stated you posted them?

A. No.

Q. How do you know, Mr. McConnell, that you posted these notices on the 27th day of October, 1928?

A. On or about the 27th day of October.

Q. How do you know that?

A. Because I always do that.

Q. Do what?

A. Mail them out after the sale is published.

30 Q. I am not asking you about the mailing. How do you know that you posted them?

A. I always do that.

Q. What do you mean by that?

A. I always post them at least—I always post at least five notices.

H. Earle McConnell—Cross

Q. How many tax sales have you made since 1913 when you first became Collector?

A. I have had a tax sale every year up to the sale of 1928.

Q. You have had no sale since the sale now in controversy?

A. Yes, a sale for 1928.

10

Q. In 1929?

A. Yes.

Q. No sale since?

A. No.

Q. You first became Collector in 1913?

A. Yes.

Q. And made a sale in 1913?

A. Yes, I think I did.

Q. Every year thereafter?

A. Yes.

20

Q. What day, in the years from 1913 down to the year 1929, did you post your notices of sale?

A. I couldn't tell you the exact day.

Q. What day did you publish them?

A. I couldn't tell you that either unless I went over the records.

Q. What records would you look at?

A. The same as the result of tax sale.

Q. You have such a record for each of the years?

A. Yes.

30

Q. Does that show when you posted the notices?

A. No, sir.

Q. How can you tell by looking at the copy of that notice when you posted the notices?

A. I can't, the exact day.

Q. Well, how can you tell at all?

A. Because I know I did.

Q. You know you did, but how do you know you did? You are depending solely on your memory, are you not?

A. I am.

Q. To refresh your memory you would look at
10 the notation of the sales from year to year, is that correct?

A. Yes.

Q. And seeing that there was to have been a sale at a certain time and knowing that notices should have been posted at a certain time, you are satisfied to say that you did post them, is that what you mean?

A. Yes, I always did.

Q. You are satisfied to say that you always posted
20 the notices in time?

A. I am.

Q. Although you have nothing but your memory to rely upon?

A. Memory and conscience.

Q. How do you know that you posted these notices in 1918 in these seven places you named?

A. It is my regular routine to post them there every year, with the exception of that one up the beach, the one above Surf City.

30 Q. That was the only year that one was posted there?

A. Yes, the only year I remember that I posted one there.

Q. Prior to sending this notice of sale to the printer did you make any effort to get a more accurate description of the lands to be sold?

A. No, I took the description from the duplicate.

Q. You did not inquire of anyone as to a more complete or definite description?

A. No.

Q. You were content to take the description as it appeared on your duplicate?

A. I was.

10

Q. This notice of sale does not state what rate of interest was the basis for the figuring of interest shown in the notice. Will you state at what rate interest was figured as shown in the notice?

A. Eight per cent.

Q. Why did you figure it at eight per cent?

A. It was the custom.

Q. You knew there was no resolution of the Township determining the rate of interest on delinquent taxes?

20

Mr. Ewart: I object to the question on the ground that the statute itself fixes it, or did at that time fix the rate of interest on certificates of tax sale at eight per cent where there were no other bidders and the property was bought in by the taxing district.

Mr. Carr: I am asking him about the rate of interest figured on the delinquent taxes prior to the sale. You knew there was no resolution, did you not? 30

A. I never gave it a thought.

Q. Did you always charge eight per cent in the Township on delinquent taxes?

A. If I remember, in former years it was twelve per cent that was charged, and that was changed to eight, I believe by the Legislature, but I am not sure.

Q. But it was the custom to figure eight per cent interest on these bills?

10 A. Yes.

Q. And from what date did you figure eight per cent interest on the taxes?

A. June 1st.

Q. As to all?

A. All, I guess.

Q. Please state definitely whether or not you did figure interest on all of the taxes from June 1st of the year in which the taxes were payable, or whether you figured interest as to half of the taxes from

20 June 1st and half as to some other date?

A. Half June 1st and half December 1st.

Q. Down to what date did you figure interest?

A. To the date of sale.

Q. November 19th, 1928, is that right?

A. Correct.

Q. I call your attention to the fact that your notice of sale says the amount due together with interest to July 1st, 1928, is as follows, and so forth. Having refreshed your memory by looking at the notice,

30 will you state down to what date you figured interest?

A. What is to become of the interest from July 1st to the date of sale?

Q. Then the date shown in the notice as of which you figured interest was not correct?

A. It was not?

H. Earle McConnell—Cross

Q. That is your statement, that it was not correct?

A. No, I am asking you.

Q. You have said, Mr. McConnell, that you figured interest down to the date of the sale. I call your attention to the fact that the notice of sale says that interest was figured to July 1st, 1928, which is four months or more prior to the sale. Now I ask you, 10 having these dates in your mind to say whether or not your present testimony is correct or whether the notice is correct?

A. In that case I guess I am wrong.

Q. You mean to say the notice is correct?

A. I should think so.

Q. Are you willing to say that the advertisement of sale is correct?

A. Yes.

Q. Or do you want an opportunity to verify the 20 figures?

A. No.

Q. You are willing to say that the notice of sale is correct?

A. Yes.

Q. I am perfectly willing that you should check those figures if you wish before you commit yourself on your answer.

Mr. Ewart: May I say that I have figured out 30 his statement—that it is figured to July 1st is correct according to my computation.

Re-direct examination.

By Mr. Ewart:

Q. Mr. McConnell, in speaking of what records you have of the sale you mentioned Exhibits D6 and
10 D7, notice of sale and result of sale. You mentioned also a notation made on your tax duplicate.

A. Yes.

Q. What is the notation you made in your tax duplicate? You may refer to the duplicate.

A. "To township for taxes, 11/19/28" and there is another entry in lead pencil "To Township, 11/19/28."

Q. In whose handwriting are those notations?

A. In mine.

20 Q. And they appear on the 1927 tax duplicate on the same line upon which the assessment against Frazier Company appears, do they?

A. They do.

Q. And that is the record on the duplicate to which you refer?

A. Yes. Here is one, 18.35 acres south of Harvey Cedars, formerly R. R. property.

Q. Can you refer to the other Frazier assessments for that year on the duplicate?

30 A. Yes.

Q. Referring to the 1927 assessment, against Frazier & Company for the Sea Breeze Tract adjoining Surf City containing 177.82 acres, what notation appears on that line?

A. "Township for taxes."

Q. And what other notation?

H. Earle McConnell—Re-direct

A. "11/13/26 redeemed from this sale, 11/13/26."

Q. Your last notation referred to what sale?

A. A former sale of the same tract.

Q. Referring to the Frazier lands assessed in 1927 and appearing on the duplicate as George W. Evan-
son 12.36 acres, south of Harvey Cedars, do you have
any notation for that? 10

A. "To Township for taxes, 11/19/28."

Q. And in whose handwriting is that notation?

A. Mine.

Q. Referring to the assessment against Frazier &
Company for the tract of 486.01 between Harvey
Cedars and Barnegat City, also containing one
house, you have a notation on that?

A. "To Township for taxes, 12/24/23."

Q. That refers to the date of a former sale, does
it? 20

A. Apparently.

Q. Referring back for a moment to the record on
the duplicate with regard to the George W. Evan-
son tract isn't there another notation in your handwrit-
ing on the tax duplicate besides those that you gave
a moment ago?

A. Yes.

Q. What is that?

A. "To township."

Q. In your handwriting? 30

A. Yes.

Q. What is the date?

A. "3/22/28."

Q. Is that notation in your handwriting?

A. Yes.

Q. What do the dates mean you refer to?

A. The date I sent them a delinquent bill.

Q. Prior to the sale?

A. Yes.

Q. On November 19th?

A. Yes.

Q. What does this notation "To township" mean?

10

Mr. Carr: I object to that, the entries speak for themselves.

A. It means to the township.

Q. When was that made?

A. Right after the sale.

Q. Referring back again to the tax duplicate for 1927 and to the tract assessed against Frazier & Company and described on the duplicate as the Sea Breeze tract adjoining Surf City, is there not an additional notation on the tax duplicate besides those you gave before, and if so, what is that notation?

20

A. "To township."

Q. In whose handwriting is that?

A. Mine.

Q. What does that mean?

Mr. Carr: I object on the ground that the record
30 speaks for itself.

A. It means it was sold to the Township.

Q. When was it made?

A. Right after the tax sale.

Q. Which tax sale?

A. Of November 19, 1928.

H. Earle McConnell—Re-direct

Q. Referring again to the 1927 tax duplicate and the assessment against Daniel B. Frazier Company of lands described as being between Harvey Cedars and Barnegat City, including one house, is there an additional notation on the tax duplicate respecting that property in addition to what you gave heretofore?

10

A. Yes.

Q. What is that?

A. "To township."

Q. In whose handwriting?

A. Mine.

Mr. Carr: I object on the ground that it speaks for itself.

Q. When was it made?

20

A. Right after the tax sale.

Q. Which tax sale?

A. November 19, 1928.

Q. Referring again to the 1927 tax duplicate and the assessment against Daniel B. Frazier Company on lands described as being between Harvey Cedars and Barnegat City, including one house, is there an additional notation on the tax duplicate respecting that property in addition to what you gave heretofore?

30

A. Yes, sir.

Q. What is that?

A. "To Township."

Q. In whose handwriting?

A. Mine.

Q. When was it made?

A. Right after the tax sale of November 19, 1928.

Q. Again referring to the 1927 tax duplicate and to the assessment against Daniel B. Frazier Company on lands described as the Cassidy Estate, is there an additional notation also with respect to that given before?

10 A. Yes.

Q. What notation is that?

A. "To township."

Q. In whose handwriting?

A. Mine.

Q. When was it made?

A. Right after the sale of November 19, 1928.

Q. In addition to Exhibits D6 and D7, and in addition to your memoranda made on the tax duplicate did you not also have a record of tax sales
20 in the form of the original certificates of tax sale which were recorded and returned to you?

A. Yes.

Q. As I understand it, what you failed to do was to make an affidavit at the time the notices were posted, you failed to make an affidavit at the time you mailed the notices and you failed to secure an affidavit from the publisher at the time of publishing showing just what publication was made, didn't
you?

30

Mr. Carr: I object to Mr. Ewart's asking the witness as to what it was he neglected to do.

A. I did.

Re-cross examination.

By Mr. Carr:

Q. Referring to your tax duplicate, the five properties involved in this proceeding appear on the duplicate on two pages, both numbered 1, in the 1927 10 tax duplicate, is that correct?

A. Yes.

Q. The first one listed is the property assessed in the name of Evanson, described as south of Harvey Cedars and specifying the number of acres, which is reduced from 19.77 to 12.36, is it not?

A. I don't know about the 77, but it has been changed.

Q. From 19 and a fraction to 12.36?

20

A. Correct.

Q. On the tax duplicate sheet numbered 1 is this statement, in ink: "To township for taxes, 11/-19/28," that is correct, isn't it?

A. Yes.

Q. On the right-hand sheet there is in lead pencil a notation "To township" that is correct, isn't it?

A. Yes.

Q. And the entry to which Mr. Ewart directed your attention as supplementing the first entry with respect to that entry is in lead pencil, is that right? 30

A. You mean this one? Yes.

Q. The next one shown here of these five properties is the property described as south of Harvey Cedars, formerly railroad property. That bears on the left sheet numbered 1 a statement in your hand-

writing "To Township for taxes, 11/19/28," is that right?

A. Yes.

Q. On the right sheet the entry to which Mr. Ewart directed your attention reads, "To township, 11/19/28," is not in your handwriting, is it?

10 A. Yes.

Q. In lead pencil?

A. Yes.

Q. The third of these properties appearing in this sheet, described as Sea Breeze tract, adjoining Surf City, contains a change in acreage from 196.20 to 177.82, is that right?

A. Correct.

Q. The entry with respect to that property on that sheet which reads "Township for Taxes" followed
20 by the ink figures "11/13/1926 redeemed from this sale" was not made by you, was it?

A. The "redeemed from this sale" was made by me but the rubber stamp, "Township for taxes" and the figures are the assessor's.

Q. Am I correct in understanding that the entry "Township for Taxes" with a rubber stamp followed by the figures 11/13/1926 should be read together?

A. I should say so.

30 Q. And the entry "Township for Taxes" refers to a prior sale from which the property was redeemed?

A. So far as I know it does.

Q. Now then, on the right sheet numbered 1 opposite this particular property are the words "To township." That is correct?

H. Earle McConnell—Re-cross

A. Yes.

Q. In your handwriting?

A. Yes.

Q. In lead pencil?

A. Yes.

Q. The fourth of these properties described as between Harvey Cedars and Barnegat City, one house, 10 as underneath it the rubber stamp "Township for taxes" followed by the date 12/24/23. Does that entry refer to a prior sale?

A. As far as I know it does.

Q. It does not refer to the 1928 sale?

A. No, it does not.

Q. There is no question about it, is there?

A. No, but I wouldn't like to say about the date unless I could look it up.

Q. Well, it does not refer to the 1928 sale, does 20 it?

A. No, it does not.

Q. On the right hand sheet numbered 1 the words "To township" appear. They are in lead pencil.

A. Yes.

Q. In your handwriting?

A. Yes.

Q. On the same property the acreage has been changed from 497.46 to 486.01, has it not?

A. Yes.

30

Q. The last entries on that sheet relating to a description of the property formerly the Cassidy Estate, contain no entry respecting a sale except on the right side where the words "To township" appear?

A. Yes.

Q. Those words are in lead pencil and in your handwriting?

A. Yes.

Q. The description of that particular property has been changed, has it not, from 34 acres to 24.52?

A. Yes, sir.

10 Q. The four changes which appear on that sheet with respect to area, were they made before or after this tax sale?

A. Before.

Mr. Ewart: Assuming you do not desire to confuse the witness, the items on D6 show each change that you have referred to. He has advertised the smaller number of acres in each case.

20 Mr. Carr: Mr. McConnell, I ask you to look at the sheet containing the lead pencil entries and ask you if there have not been, heretofore, writings there which have been erased?

Mr. Ewart: In which case?

A. Yes.

30 Mr. Carr: And these erasures appear as to the Sea Breeze Tract and as to the property described as being between Harvey Cedars and Barnegat City, one house?

A. Yes.

Q. Are there any other erasures there on that page, Mr. McConnell?

A. There are there.

Q. The witness is referring to the extreme right margin of the sheet. Mr. McConnell, you have looked at this with me and I ask you whether or not it is not a fact that what has apparently been erased in each instance with respect to these properties is the words "To township" and on the outer margin 10 the word "Township."

A. It looks like it to me, yes.

Q. The prior tax sales to which we refer were represented, were they not, by two certificates of tax sale, which I hand to you for your examination.

A. As far as I remember.

Q. Taking first the Sea Breeze tract which is marked on your duplicate as having been sold for taxes 11/13/26, I call your attention to a certificate bearing date Dec. 27, 1926, reciting this sale on No- 20 vember 13, 1926, and in which it states over your signature as collector that you sold to the Township of Long Beach lands in certain municipalities described as 151 acres north of 45th Street, to Surf City line and ask you whether or not that is not the same property as the property involved in the present tax sale and described as Sea Breeze Tract?

A. I don't think so. I would have to look on the duplicate for that.

Q. That certificate of tax sale has been cancelled, 30 has it not?

A. Yes.

Q. I would like to have this certificate marked P1 for identification.

Q. The second of these two certificates that I refer to, and call your attention to the fact that they

refer to a sale held November 24, 1923, wherein you, over your signature as collector, certify that the lands in certain municipalities described as 500 acres, one house, between Harvey Cedars and Barnegat City, were sold for taxes, and I ask you if that is not the property shown as being between Harvey
10 Cedars and Barnegat City, one house, and whether that sale represented by that certificate is not the sale which is noted on your book as property sold to the township for taxes December 24, 1923? Notice the difference in dates, you have November in one and December in the other. Can you answer that question?

A. I cannot.

Q. I call your attention, Mr. McConnell, to the fact that the certificate last referred to gives the
20 date of sale as 11/24/23, whereas the entry in your tax duplicate gives the date of sale as 12/24/23.

A. I often find mistakes in the duplicates in reference to dates, so I wouldn't like to say until I had looked on my tax sale list that governs that certificate.

Q. I would like to have this second certificate marked P2 for identification.

Re-direct examination.

30

By Mr. Ewart:

Q. Mr. Carr in his cross-examination called your attention to the fact that on the 1927 duplicate the Frazier lands assessed to Evanson shows the acreage changed from 19 and a fraction to 12.36 acres

H. Earle McConnell—Re-direct

and likewise shows a change of the acreage in the tract described as the Sea Breeze tract from 196.20 acres to 177.82 acres, and also shows a change in the acreage of the tract between Harvey Cedars and Barnegat City, containing one house, from 497.46 to 486.01 and a change in the tract assessed as the Cassidy tract from 34 acres to 24.52 acres. Now, 10 calling your attention to Exhibit D6, when you advertised this property for sale, you showed in your advertisement of sale, did you not, the corrections made as to the acreage in these tracts?

A. Yes, sir.

Q. In other words, you sold for the smaller acreage in each case as indicated on the duplicate?

A. Yes.

Q. Do you know how that change happened to be made? 20

A. Yes.

Q. Who made the change in the figures on the duplicate?

A. I did.

Q. They are in your handwriting?

A. Yes.

Q. Why did you make the changes?

A. By order of the County Tax Board.

Mr. Carr: I object to that and ask that it be 30 stricken out. The way to prove that is by the County Board and not by this witness.

Mr. Ewart: This is the 1927 duplicate to which you are referring?

A. It is.

Q. The changes were made in your handwriting?

A. Yes.

Q. By order of the County Tax Board?

A. Yes, sir.

Q. As the result of an appeal?

10

Mr. Carr: Objected to. The records of the Board are the only proper evidence. This witness is not competent to prove any records of this kind.

A. Yes, so far as I know.

Re-cross examination.

By Mr. Carr:

20

Q. Did you ever see an order of the County Board directing those changes to be made?

A. Yes, sir.

Q. You saw that paper?

A. Yes.

Q. Where is it?

A. I have got it.

Q. You have a copy of that order?

A. I have, yes.

30 Q. Were you present at the hearing?

A. No.

Q. You don't know what transpired at the hearing?

A. No.

George Willits Parker—Direct

GEORGE WILLITS PARKER, sworn for defendants.

Direct examination.

By Mr. Ewart:

10

Q. Mr. Parker, you reside in Tuckerton?

A. Yes, sir.

Q. You are the owner and editor of the Tuckerton Beacon?

A. Yes, sir.

Q. That is a weekly newspaper published at Tuckerton?

A. Yes.

Q. On what day is it published?

A. Every Thursday.

20

Q. Was it published in 1928?

A. Yes.

Q. As a weekly newspaper?

A. Yes, sir.

Q. Reference has been made here to a certain tax sale held by the Township of Long Beach on November 19, 1928. Do you know whether or not that sale was advertised in the Tuckerton Beacon?

A. It was.

Q. You have examined your files?

30

A. Yes.

Q. On what date or dates was that sale advertised?

A. May I refer to the affidavit?

Q. Yes.

A. On October 25th, November 1st, November 8th and November 15th.

Q. And the date of the sale referred to therein is —

A. November 19, 1928.

10 Q. I show you Exhibit D6 and will ask you whether or not the printed portion of that exhibit is a copy of the advertisement as it appeared in the Tuckerton Beacon?

A. I should say yes.

Cross-examination.

By Mr. Carr:

20 Q. Mr. Parker, do you have here copies of each notice published in your paper on these four dates?

A. Yes.

Q. In saying that Exhibit D6, in so far as you know, is a copy of the advertisement published in your paper, you say that without having carefully examined each of the notices?

A. Yes, I would have to read proof with someone for that.

Q. You haven't done that?

A. No.

30 Q. It may be that certain of the names contained in the original notice of which D6 is a copy were taken from subsequent advertisements, while the advertisement was running in your paper?

A. I should say no, there was no change.

Q. The copies you have brought with you here, the

George Willits Parker—Re-direct

six or seven printed copies of this advertisement, were they taken from the same issue of the paper?

A. No, from the four issues.

Q. Which issues?

A. I could not say offhand.

Re-direct examination.

10

By Mr. Ewart:

Q. You say that these advertisements were clipped from four separate issues?

A. Yes, sir.

Q. You are sure it was advertised the four times?

A. Yes, sir.

Q. Does the Tuckerton Beacon circulate in the Township of Long Beach?

20

A. Yes.

Q. Did it circulate in that Township in 1928?

A. Yes.

Q. I understand you to say that Exhibit D6, so far as your examination shows, is a true copy of the original notice of sale, first published in the Tuckerton Beacon on October 25th?

A. I should say it was.

Q. Publication was continued on October 25th, November 1st, 8th and 15th?

30

A. Yes.

Q. Continued without change?

A. Yes, I should say there was no change. In our record as entered in the ledger, there is no change in the number of lines and if any items had been removed it would have been smaller.

CHARLES H. ECKMAN, sworn for defendants.

Direct examination.

By Mr. Ewart:

10

Q. You are assessor of the Township of Long Beach?

A. Yes.

Q. For how many years?

A. Fourteen.

Q. You are acquainted with these five tracts of land assessed to Frazier & Company?

A. I am.

Q. Have you been upon the lands?

20

A. I have.

Q. Has any question ever been raised by Frazier & Company, or by any officer or representative of that company, concerning the identity of the lands which were assessed?

A. You mean the location?

Q. Yes, was there ever any confusion, so far as you ever heard, as to what lands you were assessing?

A. I never heard anything, no.

Q. Have you ever talked to Daniel B. Frazier?

30

A. Yes.

Q. What position does he hold with the company?

A. President.

Q. When did you have a talk with Mr. Frazier?

A. In the summer of 1929 he came to my house at Spray Beach and asked me if I was going to raise

the assessment for that year and I told him no, I was going to leave it as it was.

Q. Was anything said at this conference about the tax sales that had been held?

A. Nothing at all.

Q. Anything said about the amount of taxes that was owed by the Frazier Company at that time? 10

A. Nothing at all.

Q. Was anything said by Mr. Frazier concerning the identity or location of the lands that were assessed?

A. No, nothing at all. There was an appeal about the acreage.

Q. The amount of the land was in question?

A. Yes.

Q. But was anything ever said by Mr. Frazier to you indicating that any uncertainty or confusion existed as to what lands were being assessed? 20

A. Not a word.

Q. Did you ever talk to Mr. Frazier on any other occasion?

A. I think that was the only time. I have talked to Mr. Mattix several times.

Q. What position does he hold in the company?

A. Secretary.

Q. Have you ever talked to him about the tax sales that had been held? 30

A. No, I have just met him at the appeals, that's all.

Q. Did you ever talk to him about the amount of taxes that the Frazier Company owed?

A. No.

Q. Or ask him when they were going to be paid?

A. No, I have never had any conversations in that respect.

Q. Did Mr. Mattix ever raise any question about the identity or location of lands that were being assessed?

A. Not to me.

10 Q. Or concerning the descriptions used in making the assessments?

A. None whatever.

Q. You said that appeals were taken?

A. Yes, sir.

Q. To the County Tax Board?

A. Yes.

20 Q. Reference has been made here to a change in acreage of, I think, four of the tracts of Frazier lands appearing on the 1927 duplicate. Corrections were made which appeared to lessen the acreage in each case. Have you any personal knowledge with respect to that?

Mr. Carr: That is objected to as immaterial and irrelevant.

30 A. There is always more or less change through erosion of the sea, sometimes more, sometimes less. Sometimes the properties are wiped out altogether and then the Township has a survey made, but this particular time they appealed to the County Board on the acreage and immediately the Township Committee put an engineer——

Mr. Carr: I object to that as absolutely imma-

Charles H. Eckman—Direct

terial and irrelevant. This witness can't speak for the engineer. His testimony is hearsay.

Mr. Ewart: You were assessor at that time?

A. I was.

10

Q. Who attended the hearings before the County Tax Board at the appeals?

A. I did.

Q. Did someone attend for the Frazier Company?

A. Yes, Mr. Mattix was there.

Q. As a result of those proceedings do you say that the Township caused a survey to be made by the Township Engineer?

Mr. Carr: Objected to.

20

A. Correct.

Q. Was the result of that survey reported to you as the Assessor of the Township?

A. I had a copy of it from the engineer and immediately changed my records and we made out new tax bills for that year.

Q. Reducing the acreage?

A. Reducing the acreage.

30

Q. In accordance with the engineer's figures?

A. Yes.

Q. For the year 1927?

A. Yes.

Q. One Frazier tract of land was assessed to Mr. Evanson. Who assessed it to Evanson?

Mr. Carr: There is no question but that this tract was assessed to Evanson instead of Frazier.

Mr. Ewart: It is admitted to be a part of the Frazier lands?

10 Mr. Carr: Yes.

Mr. Ewart: Why did you assess that in the name of Evanson?

A. Because I didn't receive the abstract in time to get it on the duplicate in the name of Frazier.

Q. You make your assessments for 1927 as of what date?

A. As of October 1st, 1926.

20 Q. What abstract do you refer to?

A. The abstract from Evanson to Frazier.

Q. The abstract of a deed recorded in the County Clerk's Office, which the County Clerk sends to you as Assessor?

A. That's right.

Q. You didn't receive that abstract in time to change the 1927 duplicate?

A. That's right.

30 Q. Did it appear in the name of Frazier there after?

A. Yes, I changed it the minute I received notice of it.

Q. Subsequent to the 1927 assessment, for which a sale was afterwards held, do you know whether or not any appeals were taken by Frazier & Company on any or all of the five tracts of land in question?

Charles H. Eckman—Direct

Mr. Carr: I want to register an objection that the only way to prove that is by the records of the County Board. This witness is incompetent.

Q. You were at these appeals?

A. Yes, I was.

Q. Was there one appeal or more than one? 10

Mr. Carr: Objected to.

A. He took two different appeals, you can only appeal for one year at a time.

Q. There was more than one set of appeals. Which particular tracts, if you know, did he appeal on?

A. On all five.

Q. On all five, you say?

A. Yes. 20

Q. Were you present at the time the appeals were heard?

A. Yes, I was.

Q. Did you give evidence in the case?

A. I did.

Q. Mr. Mattix was there for the Company and gave evidence?

A. Yes.

Q. The appeals concerned what point? 30

Mr. Carr: Objected to for the same reason.

A. They appealed the amount, the valuation of the acreage.

Mr. Carr: It was the acreage, wasn't it?

A. Only that one.

Mr. Ewart: When was that?

A. 1927.

10 Mr. Ewart: In these appeals to the County Tax Board subsequent to 1927, and you have already said you were present at those appeals, was any objection made by anyone from Frazier Company as to the description by which you were assessing the lands?

A. None whatever.

20

HENRY B. McLAUGHLIN, sworn for defendants.

Direct examination.

By Mr. Bennett:

Q. Where do you reside, Mr. McLaughlin?

A. Brant Beach, N. J.

Q. You are Chairman of the Township Committee
30 of Long Beach Township?

A. I am.

Q. You have been Chairman of that Committee and on that Committee altogether for how long?

A. For about fifteen years, I do not know the exact time.

Q. Are you familiar with the properties situated

Henry B. McLaughlin—Direct

in Long Beach Township and assessed to Daniel B. Frazier Co.?

A. Yes.

Q. Have you been on any of the property?

A. I have been on some of the property, not on all of them. I have been on the Main Road that goes through the various properties. 10

Q. Do you know whether or not any of the assessments made against these properties subsequent to the assessment for 1927 have been appealed to the Tax Board of Ocean County?

A. Yes, I do.

Q. Were you present at any of the hearings?

A. No, I was not.

Q. Have you ever had any conferences or conversations with Mr. Frazier or with any officer or representative of the Daniel B. Frazier Company with reference to the payment of taxes on these particular properties? 20

Mr. Carr: Objected to on the ground that it is incompetent, immaterial and irrelevant.

A. I have.

Q. Could you tell me when you had the first conference with any representative of this company and with whom that conference was had? 30

A. I should say in the fall of 1930, I had a conference with Mr. Frazier, my first conference with him, at Mr. Frazier's request.

Q. Was that the first conference you ever had with him subsequent to the tax sale in 1928?

A. Well, that is the first one that I recollect.

Q. Did you ever have any conference with Mr. Frazier prior to the sale for taxes in 1928?

A. No, I did not.

Q. Can you tell us what transpired at the first conference that you had with Mr. Frazier in 1930?

A. At the first conference the question was—

10

Mr. Carr: I renew my objection.

A. —on Mr. Frazier's part, to have us give him more time within which to pay his taxes, or redeem the properties.

Q. What taxes were they?

A. Taxes in connection with this tax sale of 1928. Mr. Frazier's conversation with me was upon the question of the impending foreclosure proceedings on the 1928 tax certificates.

20

Q. Did these conferences that you had with Mr. Frazier include any reference to the payment of taxes, not only for the year 1927 but for the years 1928, 1929 and 1930?

A. Oh, yes.

Q. Was any arrangement ever made between Mr. Frazier and yourself relative to the actual payment of any part of these taxes?

A. Yes, there was.

30

Q. When was that arrangement made?

A. In the latter part of December, 1930.

Q. Prior to that time had you had any conference with Mr. Frazier about the payment of taxes?

A. Yes, we had had a number of interviews concerning the payment of taxes.

Henry B. McLaughlin—Direct

Q. Was any result ever obtained from any of these conferences?

A. No result except that Mr. Frazier told me that his company would be able to pay those taxes in April, 1931, and that if we could forego any further proceedings until that time they could pay all of the Township taxes. 10

Q. Was this after or before foreclosure proceedings were instituted?

A. I think they were started.

Q. Do you know when the matter was turned over to the Township Solicitor for action?

A. It was in, I should say, I think it was in the fall of 1930 that we turned them over to you, and then we had these conferences with Mr. Frazier and I don't think we proceeded until some time the latter part of 1930, but I am not sure. 20

Q. You just stated that this particular conference was with Mr. Frazier in December, 1930, and that the matters were turned over to the solicitor for foreclosure in the fall of 1930. Can you tell us whether or not you had any conferences with Mr. Frazier relative to the payment of these taxes prior to the time that the matters were turned over to the solicitor?

A. Oh, yes, I know, it was all prior to the time they were turned over to the solicitor. 30

Q. How many conferences did you have with him?

A. We had three, to the best of my recollection, formal conferences made by appointment by Mr. Frazier with me.

Q. All prior to the time that the matters were turned over to the solicitor?

A. Yes, they were.

Q. Can you tell us, Mr. McLaughlin, what Mr. Frazier said, if anything, at any of these conferences?

10 A. Well, Mr. Frazier was always making a plea to me to have any action to collect these taxes postponed, claiming that if he had more time he would be able to clean up all these taxes affecting himself and the company in our Township.

Q. Did Mr. Frazier ever make any definite promise to pay any portion of these taxes?

A. Yes, he did.

Q. Prior to the turning over of the matters to the solicitor?

20 A. Yes.

Q. Tell us, definitely, what Mr. Frazier said.

A. In the latter part of 1930 we had a conference at the Union League in Philadelphia and at that time Mr. Frazier told me that if he had until about April, 1931, to pay his taxes to Long Beach Township that he could settle the matter at that time. I told him that I would take it up with the Township Committee at the next meeting, which happened to be our organization meeting January 1st, 1931, very
30 shortly after the time of our conference. I took it up with the Township Committee.

Mr. Carr: I object to that as incompetent, irrelevant and immaterial.

Q. As a result of Mr. Frazier's request, what happened?

Henry B. McLaughlin—Direct

A. I was instructed by the Township Committee to advise Mr. Frazier that if he would settle these taxes on April 1st, 1931, the Township Committee would wait that long before instituting foreclosure proceedings.

Q. What happened then, Mr. McLaughlin?

A. Well, I received a letter from Mr. Frazier 10
around the first of January, 1931.

Q. Is this the letter you received, dated December 31, 1930, and reading as follows:

“Daniel B. Frazier Co.

Real Estate

1218 Chestnut Street

Philadelphia, Pa.

Daniel B. Frazier
President

William N. Mattix
Secy. and Treas.

December 31, 1930. 20

Henry B. McLaughlin, Esq.
Counselloer at Law
North American Bldg.
Phila. Pa.

Dear Mr. McLaughlin:—

Referring to our conversation of today and a letter we received from Howard Ewart, Esq., Toms River, in re. foreclosure of tax titles on our Long Beach holdings. It is our intention to pay these taxes by April 1st and we will very greatly appreciate your holding off any proceedings in the matter until that date. 30

Yours very truly,

DANIEL B. FRAZIER CO.

Danl. B. Frazier

President.”

Henry B. McLaughlin—Direct

A. Yes.

Q. You received it by mail?

A. Yes.

Mr. Ewart: I offer it in evidence.

10

(Marked Exhibit D8.)

Q. After you received this letter what did you do?

A. I answered the letter.

Q. Have you a copy of the letter that you wrote?

A. Yes.

Mr. Ewart: I offer this letter in evidence. It is
20 as follows:

“600 North American Bldg.

Philadelphia.

January 2d, 1931.

Law Office

Henry B. McLaughlin.

Daniel B. Frazier Co.,

1218 Chestnut St.

Philadelphia.

Dear Mr. Frazier:

30

At a meeting of the Township Committee of Long Beach Township, N. J., held yesterday, I told the members you had promised that if the Township would forego foreclosure on its claim for taxes against your real estate, you would see that these taxes were paid to the Township by April 1st, 1931.

This morning I received your letter of December

Henry B. McLaughlin—Direct

31st, 1930, confirming our conversation to this effect,
and am forwarding it to the Clerk of the Committee.

Yours very truly,

(S) Henry B. McLaughlin

Chairman.

P. S. Therefore, unless you fail to pay by April 1st,
1931, no proceedings will be started.” 10

(Letter marked Exhibit D9.)

Q. I show you another letter written to you by
Mr. Frazier under date of January 3, 1931. Did you
receive that letter from Mr. Frazier?

A. I did.

Mr. Ewart: I offer this letter in evidence. It
reads as follows:

“Daniel B. Frazier Co.

Real Estate

1218 Chestnut Street

Philadelphia

20

Daniel B. Frazier
President

William N. Mattix
Secy. and Treas.
January 3, 1931.

Henry B. McLaughlin Esq.,
610 North American Bldg.,
Phila. Pa.

Dear Mr. McLaughlin:

We have your favor 2nd inst. and thank you very 30
much indeed for same. We appreciate the kind at-
tention you have given the matter.

Yours very truly,

Daniel B. Frazier Co.

Danl. B. Frazier

President.”

(Letter marked Exhibit D10.)

Q. In these conferences that you had with Mr. Frazier as president of Daniel B. Frazier Co., was any question ever raised by Mr. Frazier to you as to the legality or validity of the tax sale held in 1928
10 for 1927 taxes?

A. Never.

Q. Was any question ever raised by Mr. Frazier to you as to the sufficiency of the description of the properties assessed to the Daniel B. Frazier Co.?

A. Never.

Q. Did Mr. Frazier, at any time, ever tell you that the Daniel B. Frazier Co. was not willing to pay the taxes assessed against it for the years 1927, or from 1927 to 1930?

20 A. Never.

Q. Subsequent to this conference which you had with Mr. Frazier in December, 1930, did you ever have any further conferences with Mr. Frazier or conversations with him relating to the payment of these taxes?

A. I did.

Q. About when was that conference had?

A. On or about April, 1931.

Q. Can you tell us what happened at that conference, what Mr. Frazier said?
30

A. Mr. Frazier expressed regret at his inability to comply with any of his company's promises to pay the taxes in April, 1931, and again asked that I endeavor to have the Township Committee give him more time. He told me of his expectation of funds from a Camden bank with which to liquidate this

Henry B. McLaughlin—Direct

Township indebtedness and said that it would be a very serious hardship to him if we proceeded because he felt that in the very near future he would get this money and that if we took any summary action it might prevent his getting the money.

Q. As a result of this conversation what, if anything, did you do?

10

A. Mr. Frazier told me of the particular bank which he said he had in mind, which was the Camden Safe Deposit & Trust Company. Mr. Tomlinson was the president. He also told me that a Philadelphia bank, the Philadelphia National Bank, I think it was, had some interest in his affairs. Mr. Frazier shortly afterwards, to the best of my recollection as to time, became ill, and I saw Mr. Frazier——

Mr. Carr: Objected to as incompetent, irrelevant 20 and immaterial.

A. Well, as a result of that meeting, Joseph Wayne, Jr., president of the Philadelphia National Bank, and Mr. Tomlinson, president of the Camden bank, I furnished both of them with a statement of all of this indebtedness of the Daniel B. Frazier Co. for taxes, costs, etc., on Long Beach to date.

Q. And that included what period?

A. That included from 1927 all the way down; I 30 don't know what years prior to 1927, but it included 1927 to 1930, all the years intervening.

Q. As a matter of fact, Mr. McLaughlin, this tax sale held in 1928 covered taxes for 1927, did it not?

A. Yes, it did.

Q. After furnishing this statement of the amount

due from Mr. Frazier to Mr. Tomlinson and Mr. Wayne, did you see Mr. Frazier after that?

A. Yes, I did.

Q. Did you have any further conversation with him?

A. Yes.

10 Q. What did Mr. Frazier have to say at that time?

A. Nothing of importance.

Q. Did he make any further promises to pay the taxes due?

A. No, he did not. His particular mission at that time was to endeavor to have me have the Township Committee not appeal the County Board's decision about the 1931 taxes. That was his mission to me at that time.

20 Q. As a matter of fact, Mr. McLaughlin, has there been any part of taxes due the Township paid by the Daniel B. Frazier Company since the sale of 1928?

A. None.

Q. You are Chairman of the Township Committee; are you familiar with the financial condition of the Township?

A. Certainly.

Mr. Carr: I object to that as incompetent, immaterial and irrelevant.

30

Q. Can you tell us just what the financial condition of the Township is at this time?

Mr. Carr: Same objection.

A. The Township owes \$75,000, approximately, to

Henry B. McLaughlin—Direct

the banks on various kinds of notes relating to taxes; it owes about \$27,000 on improvement notes; it owes the School Board \$7,000 and it owes the State and County for taxes for 1931 \$40,000.

Q. To what do you attribute the present financial condition of the Township?

10

Mr. Carr: Same objection.

A. Inability to collect taxes and improvement assessments.

Q. You are familiar, are you not, with the approximate total amount due the Township from Daniel B. Frazier Co.? I mean for taxes?

A. Yes, I am.

Q. Can you tell us the approximate percentage of the total back taxes due from the Daniel B. Frazier Co. to the Township? 20

A. I figure it roughly; about 65 or 70%, I think.

Q. Do you know the approximate amount that Frazier owes?

A. Around \$65,000.

Q. Can you tell us why the Township of Long Beach has got itself into its present financial difficulties?

Mr. Carr: Same objection, incompetent, irrelevant and immaterial. 30

A. The Township's inability to pay its obligations is due to the fact that it cannot collect the obligations due it, namely, taxes and street assessments.

Q. Why hasn't the Township of Long Beach paid the State and county and school tax?

A. Because we haven't been able to collect anything from the persons assessed.

Q. Including the taxes due on the Frazier properties?

10 A. Yes, including all.

Q. What is the situation in regard to the Township of Long Beach with reference to borrowing money from banks?

A. The Township of Long Beach cannot borrow a dollar from any bank.

Q. Are the banks to which the Township owes money, are they requiring any payment on account of the present debts due them from the Township?

A. They are after us all the time and we are making strenuous efforts at their behest, as well as for our own interests, to collect taxes and assessments and reduce our indebtedness.

Q. Is there any provision made in the 1932 budget for payment of any part of the present indebtedness to banks?

A. No.

Q. Have you made any effort to borrow any money from any banks?

A. We have.

30 Q. In connection with the back taxes due the Township?

A. Yes, we have.

Q. What has been the result of those efforts?

A. I can say that we have been unable to borrow any money, although we have tried; our latest on December 5th, 1931, to borrow \$20,000 to take up a

Henry B. McLaughlin—Cross

note which the bank told us they positively would not carry any longer. We have tried the Beach Haven Bank, the Barnegat Bank, 1st National Bank of Toms River —

Q. Have you made application to any banks outside of the State or to brokers?

A. Not formally, no, not within the last few 10 months.

Q. Have you made any inquiries to determine whether or not the Township could borrow any money without making a formal application?

A. We have made efforts with the Penn Trust Company of Philadelphia, where we borrowed some money, but not recently, in an effort to get them to take up a note which was due December 5, 1931; we wanted \$20,000 and they absolutely refused to let us have another cent. 20

Q. Has Daniel B. Frazier Company ever kept one of its promises made by Mr. Frazier as president of that company, to meet any of the taxes due on their properties?

A. Not any made to me as Chairman of the Township Committee, no.

Cross-examination.

By Mr. Carr: 30

Mr. Carr: And the Township has not kept its promises to the banks to which it owes money?

A. That's correct.

Mr. Carr: In the spring of 1931 you had several conferences with Mr. Frazier, and you mentioned the names of two banks, one in Philadelphia and one in Camden; was it not stated to you by Mr. Frazier that it was his expectation that he could get from these two banks the money with which to
10 take an assignment of these tax sales?

A. Yes, he did.

Q. As I understand it, it was his expectation that these two banks, being interested in his affairs, would take over, by assignment, the certificates of tax sale of the municipality so that from that assignment you could get the money that was due you?

A. That is exactly right.

Q. Do you know further that in the effort to carry
20 that out that an examination of the records of the Township was made to determine whether or not the sale as made was legal and proper?

A. I know that I was requested by your office to permit an examination of our books.

Q. Mr. Frazier made the request that our office be permitted to examine the books for the purpose of determining whether or not the sale was in all respects valid?

A. Yes, sure.

30 Q. Such an examination was made, was it not?

A. To the best of my information, it was.

Q. On the second of July, 1931, Mr. Ewart was advised that the legality of the sale could not be approved, is that right? You have been so informed by your attorney?

A. I have not, no.

Henry B. McLaughlin—Cross

Q. You say that you owe banks \$75,000 plus \$27,000, \$102,000. What part of that is tax revenue notes?

A. I should have to get the clerk to answer that, I don't know. Mr. Keil tells me that it is divided between tax title and tax revenue notes, we have no tax anticipation notes, the correct amount is 10 \$74,600 at the present time.

Q. I understand that the \$74,600 that is due the banks is represented by tax lien obligations and by tax revenue notes?

A. That's correct.

Q. No tax anticipation notes?

A. There are none.

Q. Am I correct in assuming that if you were able to collect \$65,000 due you by Mr. Frazier, you 20 would be required to pay that money forthwith on account of your tax liens and tax title notes?

A. I should say that is correct.

Q. What amount of 1931 taxes has not been paid?

A. It is about \$43,000.

Q. What do you owe the State and county?

A. \$40,000.

Q. How much of the 1931 tax is the obligation of Frazier & Company, roughly?

A. Personally, I can't answer that. Mr. Keil says 30 about \$10,400.

Q. A little less than 25%. How long has that money been due the county and State?

A. It was supposed to have been paid in June, 1931. We made a payment on account and this

represents the balance. There is a balance on the first half and the whole of the second half.

Mr. Keil: Yes, but we still owe the \$40,000.

Re-direct examination.

10

By Mr. Bennett:

Q. Mr. McLaughlin, at the time that you furnished the statements of the amounts due to Mr. Tomlinson and Mr. Wayne, the solicitor of the Township was at that time proceeding with the foreclosures under the tax sale certificates?

A. Yes, he was.

20 Q. Had the Township instructed the solicitor to discontinue any further action at that time under the foreclosures?

A. I don't think it had at that time, I am not sure.

Q. To go back, I think you testified before, that the Township had notified its solicitor that it had granted Daniel B. Frazier Co. an extension of time until April 1st, 1931. Was any further extension of time given to Daniel B. Frazier Company after that time?

30 A. No—oh, yes, until about September or October, 1931.

Q. Are you sure about that?

A. Well, we didn't do anything until that time, but I don't know whether there was any formal extension or not, but as a matter of fact, the papers

Henry B. McLaughlin—Re-direct

were in your hands long before suit was begun, but I cannot give the dates.

Q. At the time the statements showing the amounts due were prepared and given by you to Mr. Tomlinson, did you, in connection with that transaction at that time instruct the solicitor to do nothing further on the foreclosures? 10

A. Personally, I don't recollect. I honestly do not recall whether I did or did not.

20

30

Order Vacating Allocatur

Case No. 1.

12 36/100.

10 ORDER VACATING ALLOCATUR.
NEW JERSEY SUPREME COURT.

DANIEL B. FRAZIER Co., a
corporation of New Jer-
sey,

Prosecutor,

v.

20 TOWNSHIP OF LONG BEACH,
in the County of Ocean,
a municipal corporation
of the State of New Jer-
sey; H. EARLE McCON-
NELL, Collector of Taxes
of the Township of Long
Beach, and AUGUSTUS L.
KEIL, Township Clerk of
the Township of Long
30 Beach,

Defendants.

On Certiorari.
Order Vacating
Allocatur.

This matter being opened to the Court by Howard Ewart, attorney for defendants, and Joseph H. Carr,

Order Vacating Allocatur

appearing as attorney for prosecutor, on motion to vacate the allocatur to a writ of certiorari in this cause allowed January 15th, 1932, and returnable February 4th, 1932; and it appearing that by order of this Court made February 2nd, 1932, the return day of the writ of certiorari was extended to February 15th, 1932; and the Court having considered 10 the depositions and evidence returned in support of the motion and having heard the arguments of counsel, and being of the opinion that the allocatur should be returned in support of the motion and having heard the arguments of counsel, and being of the opinion that the allocatur should be vacated;

It is, on this fifteenth day of February, 1932, ordered that the allocatur to the writ of certiorari allowed on January 15th, 1932, be and the same is hereby vacated, without prejudice to a renewal there- 20 of before the Court.

J. L. BODINE,
J. S. C.

Notice

Case No. 1.

12 36/100.

10

NOTICE.

NEW JERSEY SUPREME COURT.

DANIEL B. FRAZIER Co., a
corporation of New Jer-
sey,

Prosecutor,

v.

20

TOWNSHIP OF LONG BEACH,
in the County of Ocean,
a municipal corporation
of the State of New Jer-
sey; H. EARLE MCCON-
NELL, Collector of Taxes
of the Township of Long
Beach, and AUGUSTUS L.
KEIL, Township Clerk of
the Township of Long
Beach,

30

Defendants.

On Certiorari.
Notice.

To Howard Ewart, Esquire, Attorney for Defen-
dants:

Notice

Sir:—

Take notice that I shall apply to part No. 2 of the New Jersey Supreme Court on Wednesday, March 2, 1932, at one o'clock in the afternoon, or as soon as the matter can be heard on that day, at the State House Annex in Trenton, for a rule requiring the defendants above-named to show cause why the writ 10 of certiorari allowed on January 15, 1932, should not be renewed by the said Court, or in the alternative, shall apply for a rule to show cause why a writ of certiorari should not issue to review the matters set forth in the writ of certiorari issued on January 15, 1932.

Respectfully,

JOSEPH H. CARR,

Attorney for Prosecutor.

Dated: Camden, N. J.
February 25, 1932.

20

[ENDORSED]

Service of the within notice is hereby acknowledged this 25th day of February, A. D. 1932.

30

.....,
Attorney for Defendants.

Order

Case No. 1.

12 36/100.

10

ORDER.

NEW JERSEY SUPREME COURT.

DANIEL B. FRAZIER Co., a
corporation of New Jer-
sey,

Prosecutor,

v.

20 TOWNSHIP OF LONG BEACH,
in the County of Ocean,
a municipal corporation
of the State of New Jer-
sey; H. EARLE McCON-
NELL, Collector of Taxes
of the Township of Long
Beach, and AUGUSTUS L.
KEIL, Township Clerk of
the Township of Long
30 Beach,

Defendants.

On Certiorari.
Order.

The prosecutor herein having given notice to the
defendants of an application to be made March 2,

Order

1932, for a rule requiring the defendants to show cause why the writ of certiorari allowed on January 15, 1932, should not be removed, or in the alternative, that the prosecutor would apply for a rule to show cause why a writ of certiorari should not issue to review the matters set forth in the writ of certiorari issued on January 15, 1932; and it appearing to the Court that the order vacating the allocatur on the said writ of certiorari provided that the same was without prejudice to a renewal thereof before the Court, and that an appeal was taken from the order vacating the allocatur, by notice duly filed; and the Court having heard Joseph H. Carr, attorney for the prosecutor, for the motion under the notice aforesaid, and Howard Ewart, for the defendant, opposed; and the Court being of the opinion that in view of the said appeal the Court is without jurisdiction to act upon the motion of March 2, 1932, and is without jurisdiction to grant the relief applied for;

It is, as of March 2, 1932, ordered that the motion of the prosecutor be and the same is hereby denied with costs.

By the Court,

THOMAS W. TRENCHARD,

J. S. C.

Notice of Appeal

Case No. 1.

12 36/100.

NOTICE OF APPEAL.

10

NEW JERSEY SUPREME COURT.

DANIEL B. FRAZIER Co., a
corporation of New Jersey,

Prosecutor,

v.

20 TOWNSHIP OF LONG BEACH,
in the County of Ocean,
a municipal corporation
of the State of New Jersey;
H. EARLE McCONNELL, Collector of Taxes
of the Township of Long Beach,
and AUGUSTUS L. KEIL, Township Clerk of
the Township of Long Beach,

Defendants.

30

On Certiorari.
Notice of Appeal.

To Howard Ewart, Esquire, Attorney for the Defendants, Township of Long Beach; H. Earle McConnell, Collector of Taxes of the Township of Long Beach, and Augustus L. Keil, Township Clerk of the Township of Long Beach:

Notice of Appeal

Sir:

Please take notice that the prosecutor in the above matter hereby appeals to the Court of Errors and Appeals from the whole of the judgment entered in the above-stated cause on the following ground:

1. The Supreme Court erred in its order vacating 10
the allocatur to the writ of certiorari allowed on
January 15, 1932.

Respectfully,
JOSEPH H. CARR,
Attorney for and of Counsel with
Daniel B. Frazier Co.

Dated February 23, 1932.

20

[ENDORSED]

Service of the within notice is hereby
acknowledged this 24th day of Feb-
ruary, A. D. 1932.

Howard Ewart,
Attorney for Township of Long
Beach, H. Earle McConnell, 30
Collector of Taxes of the
Township of Long Beach, and
Augustus L. Keil, Township
Clerk of the Township of Long
Beach.

Grounds of Appeal

Case No. 1.

12 36/100.

GROUNDS OF APPEAL.

10 NEW JERSEY COURT OF ERRORS AND
APPEALS.

DANIEL B. FRAZIER Co., a
corporation of New Jer-
sey,

*Prosecutor-
Appellant,*

v.

20 TOWNSHIP OF LONG BEACH,
in the County of Ocean,
a municipal corporation
of the State of New Jer-
sey; H. EARLE MCCON-
NELL, Collector of Taxes
of the Township of Long
Beach, and AUGUSTUS L.
KEIL, Township Clerk of
the Township of Long
30 Beach,

*Defendants-
Respondents.*

On Certiorari.
On Appeal.
Grounds of Appeal.

The appellant states the following ground of ap-
peal in this cause:

Grounds of Appeal

The Supreme Court erred in giving judgment for the defendants instead of for the prosecutor, and in vacating the allocatur and dismissing the writ of certiorari.

JOSEPH H. CARR,
*Attorney for Prosecutor-
Appellant.*

10

[ENDORSED]

Service of the within grounds of appeal is hereby acknowledged this 9th day of May, A. D. 1932.

Howard Ewart,
Atty. for Defendants-
Respondents.

20

30

Opinion

Case No. 1.

12 36/100.

10

OPINION.

(Filed Mar. 28, 1932.)

NEW JERSEY SUPREME COURT.

20 DANIEL B. FRAZIER Co., a
corporation of New Jer-
sey,

Prosecutor,

v.

TOWNSHIP OF LONG BEACH,
in the County of Ocean,
et als.,

Defendants.

Memorandum.
(not for print in the
official or unofficial
reports)

30

ON MOTION TO VACATE ALLOCATUR.

For the motion, HOWARD EWART.
Contra, JOSEPH H. CARR.

Opinion

BODINE, J.:

For all practical purposes all five cases involving the taxation of lands of the Daniel B. Frazier Company in Long Beach Township, Ocean County, New Jersey, stand on the same footing and are here dealt with.

The Township of Long Beach filed five separate bills in equity to foreclose certain tax sale certificates acquired in December of 1928, covering lands of the prosecutor which had been sold pursuant to law for unpaid taxes. The answers in chancery challenged the validity of the tax sales. Under Chapter 202, Pamphlet Laws of 1925, page 480, the answer will be struck unless the defendant obtains a writ of certiorari to review the validity of the tax sale within four months from the date of the filing of the answer in the chancery proceeding. In order that the defendant should not be deprived of such rights as might exist by the mere passage of time, the application being tardy, and because it was apparent that by reason of the delay a rule to show cause might not be effective, the writ was allowed on *ex parte* affidavits. 10 20

The rights of the municipality to move for the vacation of the allocatur is clear; also the right of the Justice granting the same to vacate the same. Rule 170, of the Supreme Court, *Winegrath v. Fair-* 30
view, 77 N. J. L. 448, where Justice Minturn said:

“The statute 5 and 6 W. & M. expressly established the practice of applying for the writ to the Justice at Chambers, and required him, if he allowed it, to endorse thereon his allowance, to which act the term allocatur was ap-

plied. It will be perceived, therefore, that the allocatur to the writ is, in effect, but a substitute for the earlier common law fiat, which, like all orders or rules made by a single justice of the King's bench, was, until return made to the writ, within the power of the Justice granting it to amend, modify or recall."

10

No return was made to any of the writs and counsel for the defendant asked for further time for this purpose, if the allocatur was not vacated, as he had a right so to do under Rule 170.

The application for the writ of certiorari was predicated upon the following grounds: (1) The tax sale was invalid; (2) The notice of the tax sale was invalid as it contained no statement of the years
20 the taxes became payable for which the sale was being made; (3) The amount of interest stated was excessive; (4) The description was insufficient; (5) The notice of sale was not posted in five of the most public places; (6) No list was made up pursuant to secs. 17, 18, 23 and 26 of Chapter 237 Pamphlet Laws 1918; (7) No record of the sale was made as required by law; (8) The sale was ineffective because the attempt was made to sell for 1927 taxes; (9) The certificate of sale contains no adequate description;
30 (10) The certificate contains no averment that there were no other bidders.

The facts developed by the defendants' depositions indicate that the Daniel B. Frazier Company is a persistent and continuous evader of tax obligations, and that the property in question is sand dunes held for speculative purposes. The assessment of

Opinion

the taxes in question was appealed to the County Board of Taxes and reductions secured.

The tax sale was held November 19, 1928. Previous to the sale, the collector of taxes made up a list in which the lands subject to sale were described according to the description set forth in the 1927 duplicate, together with the name or names of the owners of said premises and the amount of all taxes and assessments which were a lien on July 1, 1928. This list was subsequently turned over to the printer and a notice of sale made up. A copy of this notice of sale was thereafter used by the collector of taxes as his list and on it was noted the record of properties redeemed before or at the sale and the results of the sale itself. The notice of sale was published in the Tuckerton Beacon, a newspaper circulating in the Township of Long Beach, once in each of the four calendar weeks preceding the sale. Copies of the notice of sale were posted in seven public places with the township on or before October 27, 1928, and further copies of the notice of sale were mailed to each of the owners. 10 20

There were no other bidders than the township at the sales in question.

The tax sale certificates were made up for each of the properties sold and delivered to the Township of Long Beach subsequent to the sale and were recorded. Notations to the effect that sale was made to the township were made by the collector on the tax duplicates for 1927, and on the duplicates for 1928, 1929 and 1930. 30

The Tax Sale Revision Act of 1918 provides as follows:

Opinion

10 “No sale of lands for municipal liens heretofore or hereafter made, shall be set aside * * * because of insufficient description in the original entry of the lien, or in the list made up for the sale, or because of a mistake in or omission in the name of the owner, or because of the failure of the clerk or any municipal officer to record the proceedings relative to the sale, if it shall appear by other legal evidence that the land sold was, in fact, that assessed, and that the sale was made pursuant to law. * * *” Com. State. 1924, p. 3538, Secs. 208-44a (56); P. L. 1918, C. 237, p. 898.

20 The proofs show that there was substantial compliance with the legislative requirements in that all acts necessary to be done by the collector of taxes were, in fact, done with the exception of actually making up a complete record of the proceedings. Such substantial compliance brings the proceedings within the terms of the statute and they were in all respects legal and binding on the prosecutor.

30 It was proved and not controverted that the township officers frequently requested the payment of the taxes in question and made known to the prosecutor the embarrassment incident to the delay in payment, because of the inability of the township to meet tax anticipation notes which it had negotiated and which were long over due to the great detriment of banks affording accommodation to the township.

 The delay in resorting to foreclosure proceedings was due to the repeated promises and assurances of the president of the Frazier Company that the taxes

Opinion

would be paid and that accommodation had been secured from out of town banks to refiance the Frazier Company and provide the money needed for settlement of the taxes.

The Frazier Company owes about 65 or 70% of the township's unpaid taxes. The attempt to challenge the validity of the taxes, in the light of the admission of liability frequently made, seems without merit. Having recognized the validity of the obligation and the manner in which the township's right has been asserted it is now too late to assert a right to a discretionary writ to review that which the Frazier Company has conceded imposed a valid and binding obligation upon it which it was more than willing to pay, if like Mr. MacCauber, it could have borrowed the money. 10

The fanciful irregularities suggested in the township proceedings for the collection and sale for taxes seem due to the circumstances that the township is not a large municipality with voluminous records kept by skilled clerks. The essential records were, however, kept. The precise form and style of writing the records is immaterial under the statute above referred to, but at all events since there was an absolute recognition of the obligation and the rights arising from the sale and repeated requests for further time to secure the funds to make the payments due, it would seem that the allocatur was improvidently granted. The power to vacate is clear. 20 30

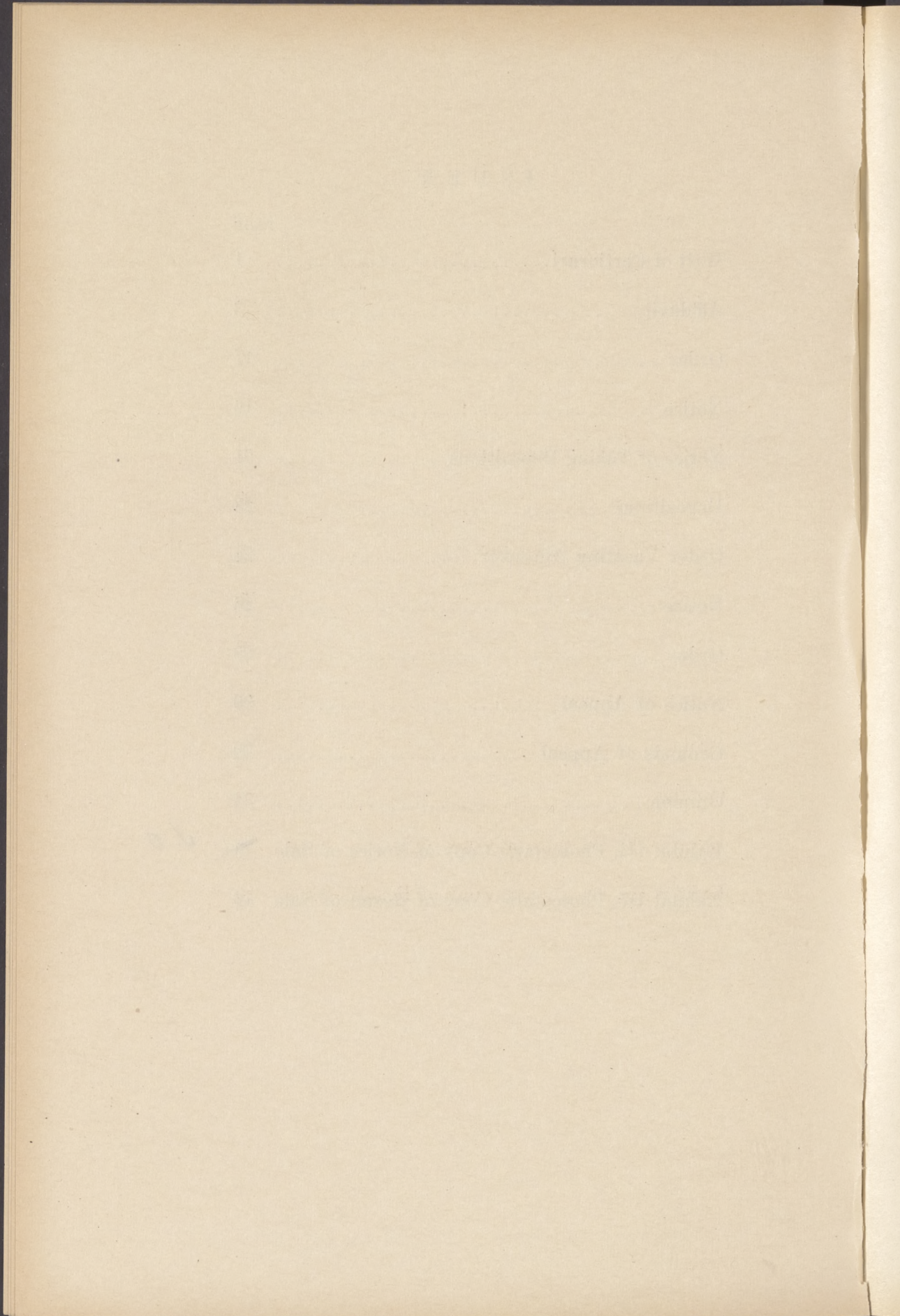
The allocatur is, therefore, vacated with costs.

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40



Case No. 5.

486 01/100

WRIT OF CERTIORARI.

10

NEW JERSEY, TO WIT:

The State of New Jersey to the Township of Long Beach, in the County of Ocean, a municipal corporation of the State of New Jersey; H. Earle McConnell, Collector of Taxes of the Township of Long Beach; and Augustus L. Keil, Township Clerk of the Township of Long Beach.

We being willing for certain reasons to be certified of certain proceedings of the Township of Long Beach, relating to supposed sale for unpaid taxes, of certain property of Daniel B. Frazier Co., made on November 19, 1928, and all proceedings relating to the said sale, whether leading up to, or following the same and all records and papers relating to the said sale, or to the certificate of said sale, recorded in Book 223 of Mortgages, pages 88, *et seq.*, said property being described therein as "BE-TWEEN Harvey Cedars and Barnegat City 1 house, 486.01 A, on the tax duplicate of said municipality" and all matters and things touching and concerning the same and leading up to or in any way having to do herewith as fully and entirely as before you they remain, so that the validity and legality of the pro-

20
30

Writ of Certiorari

ceedings to sell and of such sale and of such certificate may be reviewed.

We do command you that the aforesaid proceedings, together with all things touching and concerning the same and leading up to or in any way arising therefrom, to our Justices of the Supreme Court
 10 of Judicature at Trenton, on the 11th day of February next, you certify and send, together with this writ that everything may be done what, of right and according to the laws of this State, should be done.

Witness, WILLIAM S. GUMMERE, ESQUIRE, Chief Justice of our Supreme Court at Trenton, this 22nd day of January, A. D. nineteen hundred and thirty-two.

FRED L. BLOODGOOD,
Clerk.

20 JOSEPH H. CARR,
Attorney.

[ENDORSED]

This writ is allowed; let it be sealed.

30

By the Court:

J. L. Bodine,

J. S. C.

Jany. 22, 1932.

Affidavit

Case No. 5.

486 01/100

AFFIDAVIT.

NEW JERSEY SUPREME COURT.

10

DANIEL B. FRAZIER Co., a
corporation of New Jersey,

Prosecutor,

v.

TOWNSHIP OF LONG BEACH,
in the County of Ocean,
a municipal corporation
of the State of New Jersey;
H. EARLE McCONNELL, Collector of Taxes
of the Township of Long Beach,
and AUGUSTUS L. KEIL, Township Clerk of
the Township of Long Beach,

Defendants.

On Certiorari.
Affidavit.

20

30

State of New Jersey, }
County of Camden, } ss.

WILLIAM N. MATTIX, being duly sworn according
to law, upon his oath deposes and says that:

Affidavit

1. He is secretary of Daniel B. Frazier Co., a New Jersey corporation, the prosecutor herein, and is the duly authorized agent of the corporation for the purpose of making this affidavit.

10 2. Said Daniel B. Frazier Co. is the owner of lands in the Township of Long Beach, in the County of Ocean and State of New Jersey, and is a taxpayer therein.

3. Daniel B. Frazier Co. is the owner of a certain tract of land in the Township of Long Beach, County of Ocean and State of New Jersey, bounded and described as follows:

20 BEGINNING at the point of intersection of the northerly line of the Borough of Harvey Cedars and the high water line of the Atlantic Ocean and running thence (1) northeasterly along the high water line of said Atlantic Ocean approximately eleven thousand feet to the southerly line of the Borough of Barnegat City thence (2) along the southerly line of the said Borough of Barnegat City, north fifty seven degrees six minutes west seventeen hundred and forty seven feet to the high water line of Barnegat Bay thence (3) southwesterly along
30 the high water line of Barnegat Bay and following the various courses and distances thereof to the point of intersection of the said high water line of Barnegat Bay and the northerly line of the Borough of Harvey Cedars thence (4) along the northerly line of the said Borough of Harvey Cedars south fifty eight

Affidavit

degrees eighteen minutes east thirteen hundred and fifty five feet to the point or place of beginning.

4. On or about January 4, 1932, the Township of Long Beach, one of the defendants herein, filed a bill in the Court of Chancery of New Jersey, docket 10 87-661, for the purpose of foreclosing a tax sale certificate, dated December 24, 1928, recorded in the office of the Clerk of Ocean County on December 29, 1928, in Book 223 of Mortgages, pages 88, *et seq.* A copy of the said certificate of sale as the same appears of record is attached hereto, and marked "Exhibit A."

5. It is claimed in the Chancery suit aforesaid that the lands of prosecutor, above described in para- 20 graph No. 3, are the lands covered by the tax sale certificate referred to in paragraph No. 4 hereof.

6. Prosecutor has filed an answer in said Chancery suit setting up that said sale referred to in said certificate was ineffective, invalid and void, and that the certificate of sale sought to be foreclosed was ineffective, invalid and void, and under the terms of an Act of the State of New Jersey, being Chapter 202, Laws of 1925, prosecutor is required on the 30 filing of such answer to proceed in this cause by writ of certiorari to review the legality of the matters set up in the answer to said Chancery suit. Said answer was filed within time, subpoenas having been served upon the prosecutor on January 13, 1932.

Affidavit

7. Prosecutor has in its possession what purports to be a copy of the notice of sale referred to in the aforementioned Chancery proceedings, with certain additional matter printed therein. Deponent believes that this notice is a true copy of the notice of sale with the exception of such additional printed matter. Said copy attached hereto is marked "Exhibit B."

8. The answer filed by the prosecutor set forth the following defenses:

(a) The tax sale attempted to be made on November 19, 1928, and referred to in paragraph 2 of the bill of complaint was ineffective, invalid and void because of the fact that proper notice was not given of said sale and notice such as is required by the statute of the State of New Jersey, in such cases made and provided, was not given.

(b) The notice of sale given by the Township was defective in that it contained no statement of the year in which the taxes for which sale was to be held became due and payable. Said notice of sale was further defective in that it contained no statement of the rate of interest due on such taxes; said notice was defective in that it erroneously stated the amount of interest due July 1, 1928, upon such taxes and stated the amount of interest at an excessive amount; and said notice was likewise defective in that it did not contain a description of the property to be sold at tax sale sufficient to identify the property proposed to be sold and did not con-

Affidavit

tain a description of the property sufficient to inform the owner thereof of the claim made upon the owner or upon the property of the owner and because said description was not sufficient to notify the members of the public as to what land was offered for sale for non-payment of taxes and that said description was not sufficient to enable a purchaser to procure a title thereby by said description and by reason of all of which said description was not sufficient to procure for the benefit of the owner the competitive bidding to which such owner was entitled, and because of all of which matters said sale was ineffective, invalid and void. 10

(c) Said sale on November 19, 1928, was ineffective, invalid and void because the notice thereof was not set up in five of the most public places in the municipality of Long Beach and a copy of such notice was not published in a newspaper circulating in said municipality once in each of the four calendar weeks preceding the day of the sale. 20

(d) Said sale on November 19, 1928, was ineffective, invalid and void because there was never made up the list referred to in Sections 17, 18, 23 and 26 of an Act known as the Tax Sale Revision of 1918, being Chapter 237 of the Laws of 1918 and the amendments and supplements thereto, and as otherwise required by the said Act; nor were any of the matters and things required under the terms of such statute and the amendments and supplements thereto to be done in connection with such 30

Affidavit

list by way of record of such sale ever done or performed.

(e) Said sale on November 19, 1928, was ineffective, invalid and void because of the absence of any record of any nature or kind and the absence of the
10 record required by the said Tax Sale Revision Act, its amendments and supplements, with respect to the proceedings leading up to said sale or the said sale itself or matters transpiring after the sale.

(f) Said sale on November 19, 1928, was ineffective, invalid and void because the lands sold at said sale were not described sufficiently to identify the same, nor to inform the owner thereof of the prop-
20 erty sold, or to enable the purchaser thereof to procure title thereby by said description and was not sufficient to notify the members of the general public as to what land was offered for sale, and was not sufficient to induce competitive bidding for such premises.

(g) Said sale on November 19, 1928, was ineffective, invalid and void because it attempted thereby to sell for taxes for the year 1927 subject to municipal liens accruing after July 1, 1927, whereas, as
30 a matter of fact, the taxes for the year 1927 did not accrue as municipal liens until December 1, 1927, and, therefore, the attempt was made to sell for 1927 taxes subject to 1927 taxes.

(h) Said sale on November 19, 1928, was ineffective, invalid and void because it was attempted

Affidavit

thereby to sell for taxes with interest at a greater rate than was authorized by law, and that the defendant herein, Township of Long Beach, claims the right to sell for taxes to which 8% interest was added, but this deponent charges that there was never any resolution of the Township of Long Beach fixing 8% as the rate of interest to be paid on delinquent taxes. 10

(i) The certificate of sale referred to in paragraph 5 of the bill was ineffective, invalid and void because it does not contain a description of the property purported to be sold thereby sufficient to identify the said property and does not contain a description of the property sufficient to inform the owner thereof that his property was sold for taxes and because said description is not sufficient to enable the purchaser to procure title by said description. 20

(j) The certificate of sale referred to in paragraph 5 of the bill was ineffective, invalid and void because there is no showing therein or statement therein that there were no other bidders for such property than the Township of Long Beach. Said certificate was ineffective, invalid and void because the same does not set forth the name of the owner of the property proposed to be sold as required by the laws of the State of New Jersey applicable thereto. 30

(k) The certificate of sale referred to in paragraph 5 of the bill was ineffective, invalid and void

Affidavit

because, while it therein is stated that said sale was for taxes for the year 1927, it is also therein stated that the said sale is subject to municipal liens accruing after July 1, 1927, and the taxes for the year 1927 did not accrue as municipal liens until December 1, 1927, and said certificate, therefore, purports to sell for 1927 taxes and subject to said taxes.

(1) The certificate of sale referred to in paragraph 5 of the bill was ineffective, invalid and void because the said sale was invalid for the reasons set forth in paragraphs a to h, inclusive, set forth hereinabove.

9. Deponent is advised that the defenses interposed are sound in law and believes same can be substantiated by the evidence, but the evidence necessary to be produced, to a large extent, is under the control of the Township of Long Beach, and, therefore, the prosecutor cannot attach hereto affidavits of persons familiar with all of the facts as to the situation and will have to rely upon examination of witnesses under subpoena in proceedings taken herein.

10. Daniel B. Frazier Co. prays that a writ of certiorari may be allowed to review the validity of the aforementioned sale and of the certificate issued thereunder and of the proceedings to sell such lands, and also all matters and things touching and con-

Affidavit

cerning the same and leading up to and in any way arising therefrom.

WILLIAM N. MATTIX.

Sworn and subscribed before me this 22nd day of January, A. D. 1932.

EARLE V. WESCOTT, 10
Notary Public of N. J.

“EXHIBIT A.”

H. Earle McConnell, Coll.

To

Twp. of Long Beach

20

I, H. EARLE McCONNELL, Collector of Taxes of the Township of Long Beach, in the County of Ocean, State of New Jersey, do hereby certify, that at a sale at public auction for unpaid municipal liens, duly held by me on November 19, 1928, pursuant to the provisions of an Act of the Legislature of the State of New Jersey, entitled “An Act concerning unpaid taxes, assessments and other municipal charges on real property, and providing for the collection thereof by the creation and enforcement 30 of liens thereon (Revision of 1918),” and the acts supplementary thereto and amendatory thereof, I sold, in fee, to the Township of Long Beach, for \$8,203.35, the lands in said municipality described as:

BETWEEN Harvey Cedars and Barnegat City

Affidavit

1 house, 486.01 A, on the tax duplicate of said municipality and assessed thereon to Daniel B. Frazier Co. as owner.

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

	Taxes, 1927	\$7,743.90
10	Interest	456.03
	Costs	3.42
	Total	\$8,203.35

SAID sale is subject to redemption on repayment of the amount of the sale, together with interest thereon at the rate of eight per centum per annum from the date of sale, and the costs incurred by the purchaser. Said sale is subject only to municipal liens accruing after July 1, 1927.

20 THE right to redeem will expire in SIX MONTHS after the service of notice to redeem except that the right to redeem shall in all cases extend for TWO YEARS from the date of sale.

WITNESS my hand and seal this 24th day of December, nineteen hundred and twenty-eight.

H. Earle McConnell (L.S.)
Collector of Taxes of the
Township of Long Beach.

WITNESS:

30 Edwin G. Scovel

Affidavit

STATE OF NEW JERSEY }
COUNTY OF CAMDEN }SS.

BE IT REMEMBERED, that on this 24th day of December, 1928, before me, a *a* Master in Chancery of New Jersey, personally appeared H. EARLE McCONNELL, Collector of Taxes of the 10 Township of Long Beach, in the County of Ocean and State of New Jersey, who, I am satisfied is the person named in and who executed the above certificate of Tax Sale; 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 deed, for the uses and purposes therein expressed.

Edwin G. Scovel

A Master in Chancery of New Jersey 20

Received and Recorded December 29, 1928: 9:15
A. M.

John A. Ernst, Clerk.

STATE OF NEW JERSEY }
COUNTY OF OCEAN }SS.

30

I, JOHN A. ERNST, Clerk of the said County of Ocean, do hereby certify that the foregoing is a true, full and correct copy of a certain CERTIFICATE OF TAX SALE recorded in my office in Book No. 223 of Mortgages, page No. 88 &c.

14

Affidavit

Seal IN TESTIMONY WHEREOF, I have
hereunto set my hand and affixed the official
sale of said County at Toms River,
New Jersey, this Eleventh day of July,
A. D., 1931.

10

John A. Ernst
County Clerk of Ocean County
By: Le Roy Grant
Deputy Clerk.

20

30

SALE OF LAND

IN THE TOWNSHIP OF LONG BEACH

OCEAN COUNTY, NEW JERSEY

PUBLIC NOTICE IS HEREBY GIVEN that the subscriber, Collector of Taxes of the Township of Long Beach, Ocean County, New Jersey, pursuant to the statute, will on

MONDAY, NOVEMBER 19, 1928

at the hour of 1 o'clock p. m., at the Township Hall, 16th Street and the Boulevard, at North Beach Haven in said Township, expose to public sale and sell to such person or persons as will purchase the same, subject to redemption at the lowest rate of interest or at the highest premium without interest, and pay the tax liens thereon including interest and costs, each of the parcels of lands in the Township of Long Beach, together with the tenements and hereditaments thereunto belonging, as described below.

No lands will be sold subject to redemption at a rate of interest higher than eight per centum per annum. Payment for lands purchased must be made before the conclusion of the sale or the lands will be immediately resold.

The parcels of lands and real estate to be sold; the names of the persons against whom the same are assessed as owners; and the amount of the delinquent taxes, together with interest to July 1, 1928, and costs thereon, are as follows:

—RESULT OF TAX SALE—

BOUGHT IN BY THE TOWNSHIP OF LONG BEACH:—

	Tax.	Int.	Cost	Total
George W. Evenson, 12 36-100 acres South of Harvey Cedars, 1927	105.86	6.23	3.42	115.51
Daniel B. Frazier Co. South of Harvey Cedars, formerly R. R. property 18 35-100 A., 1927	95.27	5.61	3.42	104.30
Daniel B. Frazier Co. 177 82-100 acres Sea Breeze tract, adjoining Surf City, 1927	2823.40	166.27	3.42	2993.09
Daniel B. Frazier Co. 486.01 acres Between Harvey Cedars and Bar- negat City 1 house, 1927	7743.90	456.03	3.42	8203.35
Daniel B. Frazier 24 52-100 acres Formerly Cassidy Est., 1927	389.32	22.93	3.42	415.67
Samuel H. Burkhardt—Beach Haven Crest Block 26, lots 24-35, 1927	7.94	.47	3.42	11.83
Domenico Frederico—Beach Haven Crest Block 9, lots 21-23 and part of 22- 24, 1927	23.82	1.40	3.42	28.64
Rev. Francis P. Haltgreve—Beach Haven Crest Block 20, lot 6, 1927	3.97	.24	3.42	7.63
J O. Huber—Beach Haven Crest Block 20, lots 31-32-33, 1927	11.91	.70	3.42	16.03
I. Santaro—Beach Haven Crest Block 12, lot 6, 1927	6.62	.39	3.42	10.43
Leroy L. Vennell—Beach Haven Crest Block 31, lots 7-8, 1927	7.94	.47	3.42	11.83
Ellis L. Goodall—Brighton Beach Blk. 447, lots 22-23-24, 1927	15.88	.93	3.42	20.23
Harry F. Reinhardt—Brighton Beach Block 437, lots 14-15	14.56	.86	3.42	18.84
Wallace Royles—Beach Haven Terrace Tract 1, sec. D. lot 53, 1927	3.97	.24	3.42	7.63
Alex. R. Schuler—Beach Haven Terrace Tract 2, sec. D. lot 30, 1927	5.30	.31	3.42	9.03
Martin Wida—Beach Haven Terrace Tract 1, section A. lots 3-4 1 hotel 1927	116.44	6.86	3.42	126.72
Spray Beach Hotel Co.—Spray Beach Blk. E. lots 2-3, hotel annex and public garage, 1927	100.56	5.92	3.42	109.90
Spray Beach Hotel Co.—Spray Beach Blk. B. lots 1-2-3-4-5-6-7-8, Hotel Store, Poolroom, Apt. House and Engine House, 1927	449.88	26.49	3.42	479.79
Spray Beach Hotel Co.—Spray Beach Blk. H. lot 18, 1 garage, 1927	26.47	1.54	3.42	31.43
G. Earle Vogels—Spray Beach Blk. F. lots 1-2-3 and part of 6, 1 apartment house, 1927	230.23	13.56	3.42	247.21
James L. Heap Jr.—North Beach Haven Block 12, lot 16, 1927	5.30	.31	3.42	9.03
Realty Mart—North Beach Haven Block 6, lots 1 to 22 inc., 1927	116.44	6.86	3.42	126.72
Realty Mart—North Beach Haven Block F. lots 1 to 20 inc., 1927	105.86	6.23	3.42	115.51
Anthony Murphy—Beach Haven Heights Block 20, lots 36-38, 1927	5.30	.31	3.42	9.03
Dr. Mary E. Allen—St. Albans Sec. A. blk. 26, lots 1-3, 1927	1.33	.08	3.42	4.83
Albert L. Bemis—St. Albans Sec. B. blk. 47, lots 18-20, 1927	1.33	.08	3.42	4.83
Catherine A. Cole—St. Albans Sec. A. blk. 44, lot 25, 1927	.67	.05	3.42	4.14
Leora M. Dempsey—St. Albans Sec. B., blk. 78, lot 7, 1927	.67	.05	3.42	4.14
Jennie G. Felton—St. Albans Sec. B., blk. 40, lot 23, 1927	.67	.05	3.42	4.14
John L. Floyd—St. Albans Sec. A. blk. 34, lot 3				
Sec. A. blk. 35, lots 6-7				
Sec. A. blk. 36, lots 3-4, 1927	3.31	.20	3.42	6.93
Jos. S. Jacobowski—St. Albans Sec. B. blk. 52, lot 16, 1927	.67	.05	3.42	4.14
Minnie L. Joyce—St. Albans Sec. A. blk. 44, lot 6, 1927	.67	.05	3.42	4.14
Chas. N. Lang—St. Albans Sec. A. Blk. 12, lot 7, 1927	.67	.05	3.42	4.14
Florence M. Lloyd—St. Albans Sec. A., Blk. 44, Lots 1-2, 1927	1.33	.08	3.42	4.83
Walter E. Mallory—St. Albans Sec. B., Blk. 44, Lot 15, 1927	.67	.05	3.42	4.14
Dr. John Mellor Est.—St. Albans Sec. A., Blk. 61, Lot 7, 1927	.67	.05	3.42	4.14

	Tax	Int.	Cost	Total
John F. Murray—St. Albans				
Sec. B., Blk. 106, Lot 16, 1927	.67	.05	3.42	4.14
Dr. James G. McCollen—St. Albans				
Sec. A., Blk. 29, Lots 15-17, 1927	1.33	.08	3.42	4.83
Marie F. O'Connor—St. Albans				
Sec. A., Blk. 19, Lot 32, 1927	.67	.05	3.42	4.14
Harry L. Overton—St. Albans				
Sec. A., Blk. 57, Lot 12, 1927	.67	.05	3.42	4.14
W. Scott Prickett—St. Albans				
Sec. A., Blk. 11, Lots 16-18, 1927	1.33	.08	3.42	4.83
Samuel Rawlinson—St. Albans				
Sec. A., Blk. 57, Lots 4-5-7-9-11-13				
Sec. A., Blk. 36, Lots 5-7-9-11, 1927	6.62	.39	3.42	10.43
Dr. Wm. J. Ritter—St. Albans				
Sec. A., Blk. 11, Lots 31-33, 1927	1.33	.08	3.42	4.83
Wm. E. Sainick—St. Albans				
Sec. A., Blk. 16, Lot 29, 1927	.67	.05	3.42	4.14
Herman R. Soder—St. Albans				
Sec. A., Blk. 16, Lot 17, 1927	.67	.05	3.42	4.14
Albert H. Weller—St. Albans				
Sec. A., Blk. 57, Lot 10, 1927	.67	.05	3.42	4.14
St. Albans Improvement Co.—St. Albans				
Sec. A., Blk. 3, Lot 5.				
Sec. A., Blk. 4, Lots 1 to 25, inc.				
Sec. A., Blk. 5, Lots 7-9 to 25 inc., 27.				
Sec. A., Blk. 6, Lots 15-17-18-19-20-22-24				
Sec. A., Blk. 6, Lots 25-26-27				
Sec. A., Blk. 7, Lot 26.				
Sec. A., Blk. 11, Lots 15-17.				
Sec. A., Blk. 13, Lot 29.				
Sec. A., Blk. 14, Lots 17-19-21-23-25.				
Sec. A., Blk. 16, Lots 7-10-11-14-16-31.				
Sec. A., Blk. 19, Lot 39.				
Sec. A., Blk. 20, Lots 10-12-22-23.				
Sec. A., Blk. 23, Lot 29.				
Sec. A., Blk. 24, Lot 26.				
Sec. A., Blk. 29, Lots 6-31-33.				
Sec. A., Blk. 36, Lot 13.				
Sec. A., Blk. 37, Lot 27.				
Sec. A., Blk. 40, Lot 8.				
Sec. A., Blk. 41, Lots 23-25.				
Sec. A., Blk. 42, Lot 29.				
Sec. A., Blk. 45, Lots 22-24.				
Sec. A., Blk. 59, Lots 1-15.				
Sec. A., Blk. 62, Lots 7-8.				
Sec. B., Blk. 34, Lots 5-6-7.				
Sec. B., Blk. 38, Lot 6.				
Sec. B., Blk. 39, Lots 12-21.				
Sec. B., Blk. 40, Lots 6-16.				
Sec. B., Blk. 44, Lots 1-2-16-18-19.				
Sec. B., Blk. 44, Lots 20-21-23-25.				
Sec. B., Blk. 47, Lots 5-14-24.				
Sec. B., Blk. 51, Lots 19-21-23.				
Sec. B., Blk. 52, Lots 8-9-10-11-12-13				
Sec. B., Blk. 52, Lots 14-15-18-20-22.				
Sec. B., Blk. 56, Lots 2-3-5-7-9-11-13-17.				
Sec. B., Blk. 56, Lots 19-21-22-23.				
Sec. B., Blk. 59, Lots 11-12-13-14.				
Sec. B., Blk. 60, Lots 1 to 13 inc., 15.				
Sec. B., Blk. 62, Lots 10-11-12-13-14-16-18.				
Sec. B., Blk. 63, Lots 11-12-20-22-24.				
Sec. B., Blk. 64, Lots 1-2-3-4-5.				
Sec. B., Blk. 66, Lots 6-8-10-12-14-16-18.				
Sec. B., Blk. 66, Lots 20-21-22-23-24-25-26.				
Sec. B., Blk. 67, Lots 1 to 18 inc.				
Sec. B., Blk. 68, Lots 18-19-20-21-22-23.				
Sec. B., Blk. 72, Lots 16-18-22-24-26.				
Sec. B., Blk. 74, Lot 12.				
Sec. B., Blk. 76, Lots 12-14-15-16-17-18-19-20-22				
Sec. B., Blk. 77, Lots 2-10-22.				
Sec. B., Blk. 81, Lots 4 to 16 inc.				
Sec. B., Blk. 82, Lots 1-2-4-5-7-8-9-10.				
Sec. B., Blk. 83, Lots 10-13-15-17.				
Sec. B., Blk. 87, Lots 22.				
Sec. B., Blk. 88, Lots 9-11-12-13-14.				
Sec. B., Blk. 93, Lots 2-10-16-17-19.				
Sec. B., Blk. 94, Lot 8.				
Sec. B., Blk. 99, Lots 6-8.				
Sec. B., Blk. 101, Lots 5-7 to 12 inc.				
Sec. B., Blk. 105, Lots 14-15-16-17-18.				
Sec. B., Blk. 108, Lots 11-13.				
Sec. B., Blk. 116, Lots 2-3-5-7-8-9-10-13.				
Sec. B., Blk. 120, Lots 1 to 11 inc., 13.				
Sec. B., Blk. 130, Lots 15 to 20 inc., 24.				
For the year 1922	85.21	39.00		
For the year 1923	91.33	34.00		
For the year 1924	117.37	35.00		
For the year 1925	145.64	32.00		
For the year 1926	157.02	23.00		
For the year 1927	204.98	14.00	30.00	1008.55

BOUGHT IN BY ELLEN C. FORD—No Interest

315 Spruce St., Philadelphia, Pa.

John F. Ford—Beach Haven Crest				
Block 11, lot 40, 1927	6.62	.39	3.42	10.43

BOUGHT IN BY ANDREW V. HIBBS—8% Interest

Beach Haven Terrace, N. J.

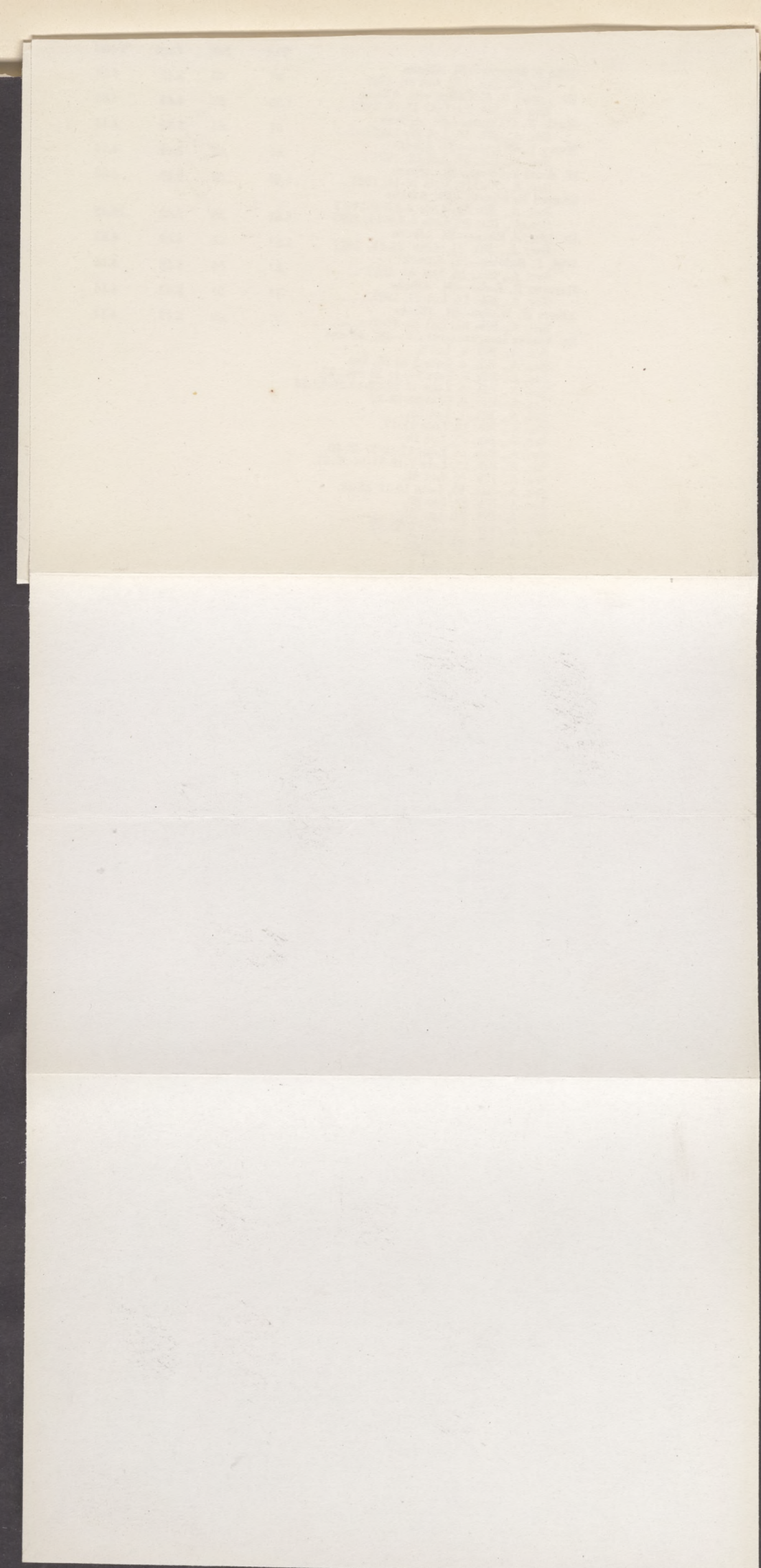
Joseph Coyle—Beach Haven Terrace				
Tract 1, sec. A., lot 43, 1927	6.62	.39	3.42	10.43
Jessie McElroy—Beach Haven Terrace				
Tract 1, sec. A. lot 32, 1927	5.30	.31	3.42	9.03

This sale is made under the provisions of an Act of the Legislature known as the "Tax Sale Revision," being Chapter 237, P. L. 1918, and the several Acts amendatory thereof and supplemental thereto.

Any of the aforesaid parcels of lands and real estate may be redeemed by the owner prior to the sale by payment of the amount due thereon for taxes, interest and costs.

Dated: October 24, 1928.

H. EARLE McCONNELL,
Collector of Taxes of the Township
of Long Beach.



Order

Case No. 5.

486 01/100

ORDER.

10

NEW JERSEY SUPREME COURT.

DANIEL B. FRAZIER Co., a
corporation of New Jer-
sey,

Prosecutor,

v.

TOWNSHIP OF LONG BEACH,
in the County of Ocean,
a municipal corporation
of the State of New Jer-
sey; H. EARLE McCON-
NELL, Collector of Taxes
of the Township of Long
Beach, and AUGUSTUS L.
KEIL, Township Clerk of
the Township of Long
Beach,

Defendants.

On Certiorari.
Order.

20

30

This matter being opened to the Court by Howard
Ewart, attorney for defendants, and it appearing

Order

that on the 15th day of January, 1932, an allocatur was made to a writ of certiorari in the above-entitled matter, which said writ of certiorari was made returnable on the 4th day of February, 1932;

And cause being shown:

It is, on this 2nd day of February, 1932, ordered
10 that the return day of the writ of certiorari in this matter be extended to the 15th day of February, 1932.

J. L. BODINE,
Judge, Supreme Court.

I hereby consent to the entry of the above order.

JOSEPH H. CARR,
20 *Attorney for Prosecutor.*

Notice

Case No. 5.

486 01/100

NOTICE.

NEW JERSEY SUPREME COURT.

10

DANIEL B. FRAZIER Co., a
corporation of New Jer-
sey,

Prosecutor,

v.

TOWNSHIP OF LONG BEACH,
in the County of Ocean,
a municipal corporation
of the State of New Jer-
sey; H. EARLE McCON-
NELL, Collector of Taxes
of the Township of Long
Beach, and AUGUSTUS L.
KEIL, Township Clerk of
the Township of Long
Beach,

Defendants.

On Certiorari.
Notice.

20

30

To Joseph H. Carr, Attorney for Prosecutor:

Sir:

Please take notice that on Monday, the 15th day
of February, 1932, at ten o'clock in the forenoon, or

Notice

as soon thereafter as counsel can be heard thereon,
at the State House in the City of Trenton, I shall
apply to his Honor, Joseph L. Bodine, Justice of
the Supreme Court, for a rule in the above-entitled
cause, vacating the allocatur on the writ of certi-
orari issued in this matter, on the following
10 grounds:

(1) That the prosecutor is in laches.

(2) That the tax sale proceeding, the legality of
which was questioned by the prosecutor, was valid.

(3) That the affidavit filed in this matter, under
which the allocatur to the writ of certiorari was
made, does not disclose reasonable cause for the is-
20 suance of the writ of certiorari.

Dated February 5, 1932.

HOWARD EWART,
Attorney for Defendants.

[ENDORSED]

Service of the within Notice is
hereby acknowledged this 6th day of
February, 1932.

Joseph H. Carr,
Attorney for Prosecutor.

Notice of Taking Depositions

Case No. 5.

486 01/100

NOTICE OF TAKING DEPOSITIONS.
NEW JERSEY SUPREME COURT.

10

DANIEL B. FRAZIER Co., a
corporation of New Jer-
sey,

Prosecutor,

v.

TOWNSHIP OF LONG BEACH,
in the County of Ocean,
a municipal corporation
of the State of New Jer-
sey; H. EARLE MCCON-
NELL, Collector of Taxes
of the Township of Long
Beach, and AUGUSTUS L.
KEIL, Township Clerk of
the Township of Long
Beach,

Defendants.

On Certiorari.
Notice of Taking
Depositions.

20

30

To Joseph H. Carr, Attorney for Prosecutor:

Sir:

Please take notice that depositions to be read on
the hearing of the motion to vacate the allocatur on

Notice of Taking Depositions

the writ of certiorari issued in this matter will be taken before the Honorable George C. Low, a Supreme Court Commissioner, at his office in the Veeder Building, Main Street, Toms River, New Jersey, on Thursday, the 11th day of February, 1932, at 10:00 o'clock in the forenoon.

10 Dated February 6, 1932.

Yours respectfully,

HOWARD EWART,
Attorney for Defendants.

[ENDORSED]

20

Service of the within Notice is hereby acknowledged this 6th day of February, 1932.

Joseph H. Carr,
Attorney for Prosecutor.

30

Depositions

10

Case No. 5.

486 01/100

DEPOSITIONS.

The depositions taken in this matter were taken in four other cases at the same time. These depositions are printed in the State of the Case in the case marked No. 1, 12 36/100.

30

Order Vacating Allocatur

Case No. 5.

486 01/100

10 ORDER VACATING ALLOCATUR.
NEW JERSEY SUPREME COURT.

DANIEL B. FRAZIER Co., a
corporation of New Jer-
sey,

Prosecutor,

v.

20 TOWNSHIP OF LONG BEACH,
in the County of Ocean,
a municipal corporation
of the State of New Jer-
sey; H. EARLE McCON-
NELL, Collector of Taxes
of the Township of Long
Beach, and AUGUSTUS L.
KEIL, Township Clerk of
the Township of Long
30 Beach,

Defendants.

On Certiorari.
Order Vacating
Allocatur.

This matter being opened to the Court by Howard
Ewart, attorney for defendants, and Joseph H. Carr,

Order Vacating Allocatur

appearing as attorney for prosecutor, on motion to vacate the allocatur to a writ of certiorari in this cause allowed January 15th, 1932, and returnable February 4th, 1932; and it appearing that by order of this Court made February 2nd, 1932, the return day of the writ of certiorari was extended to February 15th, 1932; and the Court having considered the depositions and evidence returned in support of the motion and having heard the arguments of counsel, and being of the opinion that the allocatur should be returned in support of the motion and having heard the arguments of counsel, and being of the opinion that the allocatur should be vacated; 10

It is, on this fifteenth day of February, 1932, ordered that the allocatur to the writ of certiorari allowed on January 15th, 1932, be and the same is hereby vacated, without prejudice to a renewal thereof before the Court. 20

J. L. BODINE,
J. S. C.

Notice

Case No. 5.

486 01/100

10

NOTICE.

NEW JERSEY SUPREME COURT.

DANIEL B. FRAZIER Co., a
corporation of New Jer-
sey,

Prosecutor,

v.

20

TOWNSHIP OF LONG BEACH,
in the County of Ocean,
a municipal corporation
of the State of New Jer-
sey; H. EARLE MCCON-
NELL, Collector of Taxes
of the Township of Long
Beach, and AUGUSTUS L.
KEIL, Township Clerk of
the Township of Long
Beach,

30

Defendants.

On Certiorari.
Notice.

*To Howard Ewart, Esquire, Attorney for Defen-
dants:*

Notice

Sir:—

Take notice that I shall apply to part No. 2 of the New Jersey Supreme Court on Wednesday, March 2, 1932, at one o'clock in the afternoon, or as soon as the matter can be heard on that day, at the State House Annex in Trenton, for a rule requiring the defendants above-named to show cause why the writ of certiorari allowed on January 15, 1932, should not be renewed by the said Court, or in the alternative, shall apply for a rule to show cause why a writ of certiorari should not issue to review the matters set forth in the writ of certiorari issued on January 15, 1932. 10

Respectfully,

JOSEPH H. CARR,

Attorney for Prosecutor.

Dated: Camden, N. J.

February 25, 1932. 20

[ENDORSED]

Service of the within notice is hereby acknowledged this 25th day of February, A. D. 1932. 30

.....,
Attorney for Defendants.

Order

Case No. 5.

486 01/100

10

ORDER.

NEW JERSEY SUPREME COURT.

DANIEL B. FRAZIER Co., a
corporation of New Jer-
sey,

Prosecutor,

v.

20 TOWNSHIP OF LONG BEACH,
in the County of Ocean,
a municipal corporation
of the State of New Jer-
sey; H. EARLE McCON-
NELL, Collector of Taxes
of the Township of Long
Beach, and AUGUSTUS L.
KEIL, Township Clerk of
the Township of Long
30 Beach,

Defendants.

On Certiorari.
Order.

The prosecutor herein having given notice to the
defendants of an application to be made March 2,

Order

1932, for a rule requiring the defendants to show cause why the writ of certiorari allowed on January 15, 1932, should not be removed, or in the alternative, that the prosecutor would apply for a rule to show cause why a writ of certiorari should not issue to review the matters set forth in the writ of certiorari issued on January 15, 1932; and it appearing to the Court that the order vacating the allocatur on the said writ of certiorari provided that the same was without prejudice to a renewal thereof before the Court, and that an appeal was taken from the order vacating the allocatur, by notice duly filed; and the Court having heard Joseph H. Carr, attorney for the prosecutor, for the motion under the notice aforesaid, and Howard Ewart, for the defendant, opposed; and the Court being of the opinion that in view of the said appeal the Court is without jurisdiction to act upon the motion of March 2, 1932, and is without jurisdiction to grant the relief applied for;

It is, as of March 2, 1932, ordered that the motion of the prosecutor be and the same is hereby denied with costs.

By the Court,

THOMAS W. TRENCHARD,

J. S. C.

Notice of Appeal

Case No. 5.

486 01/100

NOTICE OF APPEAL.

10

NEW JERSEY SUPREME COURT.

DANIEL B. FRAZIER Co., a
corporation of New Jer-
sey,

Prosecutor,

v.

20 TOWNSHIP OF LONG BEACH,
in the County of Ocean,
a municipal corporation
of the State of New Jer-
sey; H. EARLE McCON-
NELL, Collector of Taxes
of the Township of Long
Beach, and AUGUSTUS L.
KEIL, Township Clerk of
the Township of Long
Beach,

Defendants.

On Certiorari.
Notice of Appeal.

30

*To Howard Ewart, Esquire, Attorney for the Defen-
dants, Township of Long Beach; H. Earle Mc-
Connell, Collector of Taxes of the Township of
Long Beach, and Augustus L. Keil, Township
Clerk of the Township of Long Beach:*

Notice of Appeal

Sir:

Please take notice that the prosecutor in the above matter hereby appeals to the Court of Errors and Appeals from the whole of the judgment entered in the above-stated cause on the following ground:

1. The Supreme Court erred in its order vacating 10
the allocatur to the writ of certiorari allowed on
January 15, 1932.

Respectfully,
JOSEPH H. CARR,
Attorney for and of Counsel with
Daniel B. Frazier Co.

Dated February 23, 1932.

20

[ENDORSED]

Service of the within notice is hereby
acknowledged this 24th day of Feb-
ruary, A. D. 1932.

Howard Ewart,
Attorney for Township of Long
Beach, H. Earle McConnell,
Collector of Taxes of the
Township of Long Beach, and
Augustus L. Keil, Township
Clerk of the Township of Long
Beach.

30

Grounds of Appeal

Case No. 5.

486 01/100

GROUNDS OF APPEAL.

10 NEW JERSEY COURT OF ERRORS AND
APPEALS.

DANIEL B. FRAZIER Co., a
corporation of New Jer-
sey,

*Prosecutor-
Appellant,*

v.

20 TOWNSHIP OF LONG BEACH,
in the County of Ocean,
a municipal corporation
of the State of New Jer-
sey; H. EARLE McCON-
NELL, Collector of Taxes
of the Township of Long
Beach, and AUGUSTUS L.
KEIL, Township Clerk of
the Township of Long
30 Beach,

*Defendants-
Respondents.*

On Certiorari.
On Appeal.
Grounds of Appeal.

The appellant states the following ground of ap-
peal in this cause:

Grounds of Appeal

The Supreme Court erred in giving judgment for the defendants instead of for the prosecutor, and in vacating the allocatur and dismissing the writ of certiorari.

JOSEPH H. CARR,
Attorney for Prosecutor-
Appellant. 10

[ENDORSED]

Service of the within grounds of appeal is hereby acknowledged this 9th day of May, A. D. 1932.

Howard Ewart, 20
 Atty. for Defendants-
 Respondents.

Opinion

Case No. 5.

486 01/100

10

OPINION.

(Filed Mar. 28, 1932.)

NEW JERSEY SUPREME COURT.

20	DANIEL B. FRAZIER Co., a corporation of New Jer- sey, v. TOWNSHIP OF LONG BEACH, in the County of Ocean, <i>et als.</i> , <i>Defendants.</i>	}	Memorandum. (not for print in the official or unofficial reports)
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30

ON MOTION TO VACATE ALLOCATUR.

For the motion, HOWARD EWART.
 Contra, JOSEPH H. CARR.

Opinion

BODINE, J.:

For all practical purposes all five cases involving the taxation of lands of the Daniel B. Frazier Company in Long Beach Township, Ocean County, New Jersey, stand on the same footing and are here dealt with.

The Township of Long Beach filed five separate 10
bills in equity to foreclose certain tax sale certificates acquired in December of 1928, covering lands of the prosecutor which had been sold pursuant to law for unpaid taxes. The answers in chancery challenged the validity of the tax sales. Under Chapter 202, Pamphlet Laws of 1925, page 480, the answer will be struck unless the defendant obtains a writ of certiorari to review the validity of the tax sale within four months from the date of the filing of the answer in the chancery proceeding. In order that the 20
defendant should not be deprived of such rights as might exist by the mere passage of time, the application being tardy, and because it was apparent that by reason of the delay a rule to show cause might not be effective, the writ was allowed on *ex parte* affidavits.

The rights of the municipality to move for the vacation of the allocatur is clear; also the right of the Justice granting the same to vacate the same. Rule 170, of the Supreme Court, *Winegrath v. Fair-* 30
view, 77 N. J. L. 448, where Justice Minturn said:

"The statute 5 and 6 W. & M. expressly established the practice of applying for the writ to the Justice at Chambers, and required him, if he allowed it, to endorse thereon his allowance, to which act the term allocatur was ap-

plied. It will be perceived, therefore, that the allocatur to the writ is, in effect, but a substitute for the earlier common law fiat, which, like all orders or rules made by a single justice of the King's bench, was, until return made to the writ, within the power of the Justice granting it to amend, modify or recall."

No return was made to any of the writs and counsel for the defendant asked for further time for this purpose, if the allocatur was not vacated, as he had a right so to do under Rule 170.

The application for the writ of certiorari was predicated upon the following grounds: (1) The tax sale was invalid; (2) The notice of the tax sale was invalid as it contained no statement of the years the taxes became payable for which the sale was being made; (3) The amount of interest stated was excessive; (4) The description was insufficient; (5) The notice of sale was not posted in five of the most public places; (6) No list was made up pursuant to secs. 17, 18, 23 and 26 of Chapter 237 Pamphlet Laws 1918; (7) No record of the sale was made as required by law; (8) The sale was ineffective because the attempt was made to sell for 1927 taxes; (9) The certificate of sale contains no adequate description; (10) The certificate contains no averment that there were no other bidders.

The facts developed by the defendants' depositions indicate that the Daniel B. Frazier Company is a persistent and continuous evader of tax obligations, and that the property in question is sand dunes held for speculative purposes. The assessment of

Opinion

the taxes in question was appealed to the County Board of Taxes and reductions secured.

The tax sale was held November 19, 1928. Previous to the sale, the collector of taxes made up a list in which the lands subject to sale were described according to the description set forth in the 1927 duplicate, together with the name or names of the owners of said premises and the amount of all taxes and assessments which were a lien on July 1, 1928. This list was subsequently turned over to the printer and a notice of sale made up. A copy of this notice of sale was thereafter used by the collector of taxes as his list and on it was noted the record of properties redeemed before or at the sale and the results of the sale itself. The notice of sale was published in the Tuckerton Beacon, a newspaper circulating in the Township of Long Beach, once in each of the four calendar weeks preceding the sale. Copies of the notice of sale were posted in seven public places with the township on or before October 27, 1928, and further copies of the notice of sale were mailed to each of the owners.

There were no other bidders than the township at the sales in question.

The tax sale certificates were made up for each of the properties sold and delivered to the Township of Long Beach subsequent to the sale and were recorded. Notations to the effect that sale was made to the township were made by the collector on the tax duplicates for 1927, and on the duplicates for 1928, 1929 and 1930.

The Tax Sale Revision Act of 1918 provides as follows:

10 “No sale of lands for municipal liens heretofore or hereafter made, shall be set aside * * * because of insufficient description in the original entry of the lien, or in the list made up for the sale, or because of a mistake in or omission in the name of the owner, or because of the failure of the clerk or any municipal officer to record the proceedings relative to the sale, if it shall appear by other legal evidence that the land sold was, in fact, that assessed, and that the sale was made pursuant to law. * * *” Com. State. 1924, p. 3538, Secs. 208-44a (56); P. L. 1918, C. 237, p. 898.

20 The proofs show that there was substantial compliance with the legislative requirements in that all acts necessary to be done by the collector of taxes were, in fact, done with the exception of actually making up a complete record of the proceedings. Such substantial compliance brings the proceedings within the terms of the statute and they were in all respects legal and binding on the prosecutor.

30 It was proved and not controverted that the township officers frequently requested the payment of the taxes in question and made known to the prosecutor the embarrassment incident to the delay in payment, because of the inability of the township to meet tax anticipation notes which it had negotiated and which were long over due to the great detriment of banks affording accommodation to the township.

 The delay in resorting to foreclosure proceedings was due to the repeated promises and assurances of the president of the Frazier Company that the taxes

Opinion

would be paid and that accommodation had been secured from out of town banks to refiance the Frazier Company and provide the money needed for settlement of the taxes.

The Frazier Company owes about 65 or 70% of the township's unpaid taxes. The attempt to challenge the validity of the taxes, in the light of the admission of liability frequently made, seems without merit. Having recognized the validity of the obligation and the manner in which the township's right has been asserted it is now too late to assert a right to a discretionary writ to review that which the Frazier Company has conceded imposed a valid and binding obligation upon it which it was more than willing to pay, if like Mr. MacCauber, it could have borrowed the money. 10

The fanciful irregularities suggested in the township proceedings for the collection and sale for taxes seem due to the circumstances that the township is not a large municipality with voluminous records kept by skilled clerks. The essential records were, however, kept. The precise form and style of writing the records is immaterial under the statute above referred to, but at all events since there was an absolute recognition of the obligation and the rights arising from the sale and repeated requests for further time to secure the funds to make the payments due, it would seem that the allocatur was improvidently granted. The power to vacate is clear. 20 30

The allocatur is, therefore, vacated with costs.

Official

D 6

SALE OF LAND IN THE TOWNSHIP OF LONG BEACH OCEAN COUNTY, NEW JERSEY

PUBLIC NOTICE IS HEREBY GIVEN that the subscriber, Collector of Taxes of the Township of Long Beach, Ocean County, New Jersey, pursuant to the statute, will on

MONDAY, NOVEMBER 19, 1928

at the hour of 1 o'clock p. m., at the Township Hall, 16th Street and the Boulevard, at North Beach Haven in said Township, expose to public sale and sell to such person or persons as will purchase the same, subject to redemption at the lowest rate of interest or at the highest premium without interest, and pay the tax liens thereon including interest and costs, each of the parcels of lands in the Township of Long Beach, together with the tenements and hereditaments thereunto belonging, as described below.

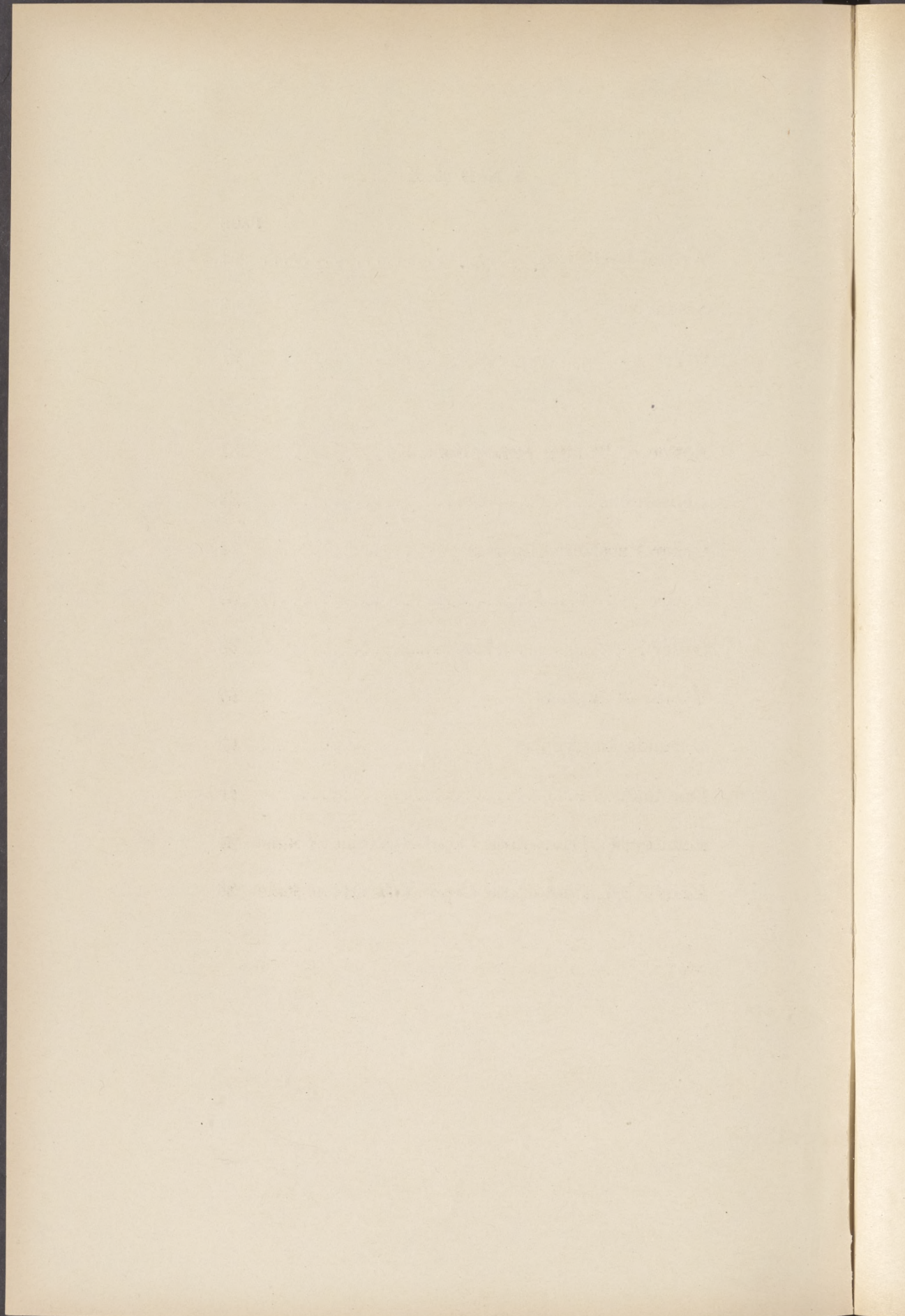
No lands will be sold subject to redemption at a rate of interest higher than eight per centum per annum. Payment for lands purchased must be made before the conclusion of the sale or the lands will be immediately resold.

The parcels of lands and real estate to be sold; the names of the persons against whom the same are assessed as owners; and the amount of the delinquent taxes, together with interest to July 1, 1928, and costs thereon, are as follows:

		Tax.	Int.	Cost	Total	
<i>Paid</i> 10/31/28.	La Rue Clayton, 10 Acres Part of McKinney tract south of Peahala, 1927.....	\$165.25	\$10.91	\$3.42	\$199.58	<i>Paid off</i>
T	George W. Evenson, 12 36-100 acres South of Harvey Cedars, 1927.....	105.86	6.23	3.42	115.51	
T	Daniel B. Frazier Co. South of Harvey Cedars, formerly R. R. property 18 35-100 A., 1927.....	95.27	5.61	3.42	104.30	
T	Daniel B. Frazier Co. 177 82-100 acres Sea Breeze tract, adjoining Surf City, 1927.....	2823.40	166.27	3.42	2993.09	
T	Daniel B. Frazier Co. 486.01 acres Between Harvey Cedars and Bar- negat City 1 house, 1927.....	7743.90	456.03	3.42	8203.35	
T	Daniel B. Frazier 24 52-100 acres Formerly Cassidy Est., 1927.....	389.32	22.93	3.42	415.67	
<i>Paid</i> 10/30/28	Brant Beach Realty Co.—Brant Beach Block 7, lots 38-40, 1 house, 1927.....	82.00	2.01	0.42	89.43	<i>Paid off</i>
<i>Paid</i> 11/19/28	Brant Beach Realty Co.—Brant Beach From South line of Hardenberg tract to north line of Beach Haven Crest, Ocean to bay 47 acres, 1927.....	435.32	34.34	3.42	473.08	
<i>Paid</i> 11/16/28	Brant Beach Realty Co.—Brant Beach West of R. R. from 31st St. to Beardslee ave. 24 39-100 acres 1927.....	158.78	12.53	3.42	174.73	
<i>Paid</i> 11/19/28	Walter Cullen—Brant Beach Sec. A. A. block I, lot 22, 1927.....	5.30	.31	3.42	9.03	
<i>Paid</i> 11/19/28	Joseph H. McGregor—Brant Beach Sec. A. blk. 6, lot 23, 1927.....	6.62	.39	3.42	10.43	
<i>Paid</i> 11/16/28	Samuel H. Burkhart—Beach Haven Crest Block 26, lots 24-35, 1927.....	7.94	.47	3.42	11.83	
	James McMurray, Inc.—Beach Haven Crest Block 19, lots 15-17-19-20-23-25-26 Block 19, lots 31-32-33-34-35-36 Block 20, lots 1-7-9-11-13-15-19-21- 23-25 Block 20, lots 27-29-34-35-36 Block 26, lots 1-2-3-5-6-7-8-9-10-11 12-13-14-15-16-17-18-19-22-26-28- 29-30-31-41 Block 27, lots 1-2-3-4-9-11-13-15-17 -19-21-23-25, 1927.....	63.52	5.01	3.42	71.95	
<i>Paid</i> 11/19/28	Harry M. Ellis—Beach Haven Crest Block 12, lots 16-18-20-22 Block 13, lots 25-27-29-31-32, 1927.....	25.72	1.51	3.42	30.65	
T	Domenico Frederico—Beach Haven Crest Block 9, lots 21-23 and part of 22- 24, 1927.....	23.82	1.40	3.42	28.64	

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Case No. 4.

18 35/100

WRIT OF CERTIORARI.

18 35/100

10

NEW JERSEY, TO WIT:

The State of New Jersey to the Township of Long Beach, in the County of Ocean, a municipal corporation of the State of New Jersey; H. Earle McConnell, Collector of Taxes of the Township of Long Beach; and Augustus L. Keil, Township Clerk of the Township of Long Beach.

20

We being willing for certain reasons to be certified of certain proceedings of the Township of Long Beach, relating to supposed sale for unpaid taxes, of certain property of Daniel B. Frazier Co., made on November 19, 1928, and all proceedings relating to the said sale, whether leading up to, or following the same and all records and papers relating to the said sale, or to the certificate of said sale, recorded in Book 223 of Mortgages, page 91, &c., said property being described therein as "South of Harvey Cedars, formerly R. R. property 18 35/100 A., on the tax duplicate of said municipality," and all matters and things touching and concerning the same and leading up to or in any way having to do therewith as fully and entirely as before you they remain,

Writ of Certiorari

so that the validity and legality of the proceedings to sell and of such sale and of such certificate may be reviewed.

10 We do command you that the aforesaid proceedings, together with all things touching and concerning the same and leading up to or in any way arising therefrom, to our Justices of the Supreme Court of Judicature at Trenton on the 4th day of February next, you certify and send, together with this writ that everything may be done what, of right and according to the laws of this State, should be done.

Witness, WILLIAM S. GUMMERE, ESQUIRE, Chief Justice of our Supreme Court at Trenton, this 15 day of January, A. D., nineteen hundred and thirty-two.

JOSEPH H. CARR,
Attorney.

20

FRED L. BLOODGOOD,
Clerk.

[ENDORSED]

30

This writ is allowed; let it be sealed.

By the Court:

Joseph L. Bloodgood,
J. S. C.

Jany 15th, 1932.

Affidavit

Case No. 4.

18 35/100

AFFIDAVIT.

NEW JERSEY SUPREME COURT.

10

DANIEL B. FRAZIER Co., a
corporation of New Jer-
sey,

Prosecutor,

v.

TOWNSHIP OF LONG BEACH,
in the County of Ocean,
a municipal corporation
of the State of New Jer-
sey; H. EARLE McCON-
NELL, Collector of Taxes
of the Township of Long
Beach; and AUGUSTUS L.
KEIL, Township Clerk of
the Township of Long
Beach,

Defendants.

On Certiorari.
Affidavit.

20

30

State of New Jersey, }
County of Camden, } ss.

WILLIAM N. MATTIX, being duly sworn according
to law, upon his oath deposes and says that:

Affidavit

1. He is secretary of Daniel B. Frazier Co., a New Jersey corporation, the prosecutor herein, and is the duly authorized agent of the corporation for the purpose of making this affidavit.

2. Said Daniel B. Frazier Co., is the owner of
10 lands in the Township of Long Beach, in the County of Ocean and State of New Jersey, and is a taxpayer therein.

3. Daniel B. Frazier Co., is the owner of a certain tract of land in the Township of Long Beach, County of Ocean and State of New Jersey, conveyed to it by deeds as follows:

No. 1. Deed dated May 18, 1925, from Barnegat
20 Railroad Company, recorded May 27, 1925, in the office of the Clerk of Ocean County in Book 648 of Deeds, page 443, &c.

No. 2. Deed dated October 5th, 1925, from Josiah B. Kinsey and Anna B. Kinsey, his wife, recorded October 8, 1925, in the office of the clerk of Ocean County in Book 663 of Deeds, page 170, &c.;

No. 3. Deed dated November 24th, 1925, from
30 Manor Real Estate and Trust Company, recorded December 3, 1925, in the office of the Clerk of Ocean County in Book 670 of Deeds, page 166, &c.;

No. 4. Deed dated September 9th, 1925, from Seabreeze Improvement Company, recorded September 28, 1925, in the office of the Clerk of Ocean

Affidavit

County in Book 662 of Deeds, page 109, &c.;
and described in said deeds as follows:

DEED NO. 1 ABOVE

Tract #1. ALL THAT CERTAIN strip or
piece of land situate partly in the Township of 10
Long Beach and partly in the Borough of Har-
vey Cedars, County of Ocean and State of New
Jersey, bounded and described as follows, viz:

BEGINNING (in said Township of Long
Beach) at a point in the line established as the
center line of the railroad of the Barnegat Rail-
road Company and in the middle line of North
Forty-seventh Street; thence along the said
middle line of street North fifty-five degrees
fifty-seven minutes West one hundred feet; 20
thence on a line parallel with the said center
line and one hundred feet distant northwest-
wardly therefrom, North thirty-four degrees
three minutes East seven hundred and fifty feet
to the southwesterly line of North Fiftieth
Street; thence along the same South fifty-five
degrees fifty-seven minutes East seventy feet;
thence on a line parallel with the said center
line and thirty feet distant northwestwardly
therefrom, crossing the southerly boundary line 30
of the Borough of Harvey Cedars, North thirty-
four degrees three minutes East two thousand
eight hundred and twenty-six feet and seven
tenths of a foot; thence North fifty-five degrees
fifty-seven minutes West seventy feet; thence
on a line parallel with the said center line and

Affidavit

one hundred feet distant northwestwardly therefrom, North thirty-four degrees three minutes East one thousand feet; thence South fifty-five degrees fifty-seven minutes East seventy feet; thence on a line parallel with the said center line and thirty feet distant northwestwardly therefrom, North thirty-four degrees three minutes East two thousand three hundred and eleven feet and three tenths of a foot; thence northeastwardly on a line curving toward the left with a radius of two thousand eight hundred and thirty-five feet, parallel with the said center line and thirty feet distant northwestwardly therefrom, a distance of one hundred and seventy-seven feet and six tenths of a foot to the northerly boundary line of the land conveyed by the hereinafter recited deed from Charles S. Ridgway, et al. to The Long Beach Railroad Company; thence along said boundary line, crossing the said center line, South fifty-eight degrees East sixty feet; thence southwestwardly on a line curving toward the right with a radius of two thousand eight hundred and ninety-five feet, parallel with the said center line and thirty feet distant southeastwardly therefrom, a distance of one hundred and seventy-nine feet and eight tenths of a foot; thence on a line parallel with the said center line and thirty feet distant southeastwardly therefrom, South thirty-four degrees three minutes West two thousand three hundred and eleven feet and three tenths of a foot; thence South fifty-five degrees fifty-seven minutes East seventy feet; thence on a line par-

Affidavit

allel with the said center line and one hundred feet distant southeastwardly therefrom, South thirty-four degrees three minutes West one thousand feet; thence North fifty-five degrees fifty-seven minutes West seventy feet; thence recrossing the southerly boundary line of the said Borough of Harvey Cedars, on a line parallel with the said center line and thirty feet distant southeastwardly therefrom, South thirty-four degrees three minutes West two thousand eight hundred and twenty-six feet and seven tenths of a foot to the southwesterly line of the said North Fiftieth Street; thence along the same South fifty-five degrees fifty-seven minutes East seventy feet; thence on a line parallel with the said center line and one hundred feet distant southeastwardly therefrom, South thirty-four degrees three minutes West seven hundred and fifty feet to the said middle line of North Forty-seventh Street, and thence along the same North fifty-five degrees fifty-seven minutes West one hundred feet to the place of beginning. CONTAINING fifteen acres and three hundred and fifty-eight thousandths of an acre, more or less.

Tract #2. ALL THAT CERTAIN strip or piece of land situate in the said Township of Long Beach, in the County of Ocean and State of New Jersey, bounded and described as follows, viz:

BEGINNING at a point in the line established as the center line of the railroad of the Barnegat Railroad Company and in the southwesterly

Affidavit

line of land conveyed by The Barnegat City
Beach Association to The Long Beach Railroad
Company by deed dated January 2nd, 1886; ex-
tending thence by said land South fifty-seven
degrees East thirty feet and one tenth of a foot;
thence on a line parallel with the said center
line and thirty feet distant southeastwardly
therefrom, South twenty-seven degrees thirty
minutes West four thousand three hundred and
fifteen feet and nine tenths of a foot; thence
South sixty-two degrees thirty minutes East
seventy feet; thence on a line parallel with the
said center line and one hundred feet distant
southeastwardly therefrom, South twenty-seven
degrees thirty minutes West one thousand feet;
thence North sixty-two degrees thirty minutes
West seventy feet; thence on a line parallel with
the said center line and thirty feet distant south-
eastwardly therefrom, South twenty-seven de-
grees thirty minutes West five thousand six
hundred and seventy-eight feet and two tenths
of a foot; thence by land conveyed by The
Barnegat and Long Beach Improvement Com-
pany to The Long Beach Railroad Company by
deed dated January 13th, 1886, crossing the
said center line, North fifty-eight degrees nine-
teen minutes West sixty feet and two tenths of
a foot; thence on a line parallel with the said
center line and thirty feet distant northwest-
wardly therefrom, North twenty-seven degrees
thirty minutes East five thousand six hundred
and seventy-three feet and eight tenths of a
foot; thence North sixty-two degrees thirty

Affidavit

minutes West seventy feet; thence on a line parallel with the said center line and one hundred feet distant northwestwardly therefrom, North twenty-seven degrees thirty minutes East one thousand feet; thence South sixty-two degrees thirty minutes East seventy feet; thence on a line parallel with the said center line and thirty 10 feet distant northwestwardly therefrom, North twenty-seven degrees thirty minutes East four thousand three hundred and twenty-one feet and seven tenths of a foot to the southwesterly line of said land conveyed by The Barnegat City Beach Association to The Long Beach Railroad Company by deed dated January 2nd, 1886, and thence by said land South fifty-seven degrees East thirty feet and one tenth of a foot to the 20 place of beginning. CONTAINING eighteen acres and three hundred and fifty-eight thousandths of an acre, more or less.

DEED NO. 2 ABOVE

ALL THOSE TWO CERTAIN strips or pieces of land situate in the Township of Long Beach, County of Ocean and State of New Jersey, bounded and described as follows, viz:

NUMBER ONE. Beginning at a point in the 30 line established as the former center line of the Railroad of the Barnegat Railroad Company and in the middle line of North Forty-seventh Street; thence along the middle of said street South fifty-five degrees fifty-seven minutes East one hundred feet; thence on a line parallel with

Affidavit

the said center line and one hundred feet distant Southeastwardly therefrom, South thirty-four degrees three minutes West two hundred and thirty feet to the Northeasterly line of North Forty-sixth Street; thence along said line of Street, North fifty-five degrees fifty-seven minutes West seventy feet; thence on a line parallel with the said center line and thirty feet distant Southeastwardly therefrom, South thirty-four degrees three minutes West thirty-six feet and three tenths of a foot to the land hereinafter described, at or near the middle line of said street; thence along said land and along or near the middle line of said North Forty-sixth Street, crossing the said center line, North fifty-five degrees fifty-seven minutes West sixty feet; thence on a line parallel with the said center line and thirty feet distant Northwestwardly, North thirty-four degrees three minutes East thirty-six feet and three tenths of a foot; thence along the Northeasterly line of said North Forty-sixth Street, North fifty-five degrees fifty-seven minutes West seventy feet; thence on a line parallel with the said center line and one hundred feet distant Northwestwardly therefrom, North thirty-four degrees three minutes East two hundred and thirty feet to the said middle line of North Forty-seventh Street, and thence along said line of street South fifty-five degrees fifty-seven minutes East one hundred feet to the place of beginning. CONTAINING one acre and one hundred and six thousandths of an acre, more or less.

Affidavit

NUMBER TWO. Beginning at a point in the said center line and in the middle line of North Forty-fifth Street; extending thence along the middle of said street, by other land of the said Barnegat Railroad Company, North fifty-two degrees fifty-five minutes West thirty feet; thence Northeastwardly on a line parallel with 10 the said center line and thirty feet distant Northwestwardly therefrom, as follows, viz: First, on a line curving toward the left with a radius of two thousand eight hundred and thirty-five feet, a distance of one hundred and eighty feet, more or less, and Second, North thirty-four degrees three minutes East one hundred and twenty-one feet and eight tenths of a foot to a point at or near the middle line of North Forty-sixth Street; thence along or near 20 the middle line of said street and along land hereinabove described, crossing the said center line, South fifty-five degrees fifty-seven minutes East sixty feet; thence Southwestwardly on a line parallel with the said center line and thirty feet distant Southeastwardly therefrom, as follows, viz: First, South thirty-four degrees three minutes West one hundred and twenty-one feet and eight tenths of a foot, and second, on a line 30 curving toward the right with a radius of two thousand eight hundred and ninety-five feet, a distance of one hundred and eighty-five feet, more or less, to the said middle line of North forty-fifth Street, and thence along the middle line of said street, by other land of the Barnegat Railroad Company, North fifty-two degrees

Affidavit

fifty-five minutes West thirty feet to the place of beginning. CONTAINING eighteen thousand two hundred and fifty-eight square feet, more or less.

DEED NO. 3 ABOVE

10

ALL THAT CERTAIN strip or piece of land situate in the Township of Long Beach, in the County of Ocean and State of New Jersey, bounded and described as follows, viz:

20

BEGINNING at a stake in the center line of the railroad of the Barnegat Railroad Company as formerly located and constructed on the land now being described, and in line of land conveyed by The Long Beach City Land Company to The Long Beach Railroad Company by deed dated January 13th, 1886; and extending thence by said land North fifty degrees forty-six minutes West thirty feet; thence by land of said Daniel B. Frazier Co. (formerly land of George W. Bailey and others) as follows, viz: (first) parallel with the said center line of railroad and thirty feet distant northwestwardly therefrom, North thirty-nine degrees fourteen minutes East twenty-six feet and six tenths of a foot; (second) North fifty degrees forty-six minutes West seventy feet; (third) parallel with the said center line and one hundred feet distant northwestwardly therefrom, North thirty-nine degrees fourteen minutes East nine hundred and eighty feet; (fourth) South fifty degrees forty-six minutes East seventy feet; (fifth) parallel

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Affidavit

with the said center line and thirty feet distant northwestwardly therefrom, North thirty-nine degrees fourteen minutes East three thousand eight hundred and eighty-two feet and seven tenths of a foot, and (sixth) northeastwardly by a line curving toward the left with a radius of two thousand eight hundred and thirty-five feet, 10 parallel with the said center line, the distance of seventy-six feet and five tenths of a foot, more or less, to land quit claimed by the Barne-gat Railroad Company to Josiah B. Kinsey by deed dated March 11th, 1925; thence by said land and along the middle line of North Forty-fifth Street, South fifty-two degrees fifty-five minutes East thirty feet to the said center line of railroad, and still by the same course and said land, the additional distance of thirty feet; 20 thence southwestwardly by other land of said Daniel B. Frazier Co. (formerly land of the said George W. Bailey and others), parallel with the said center line and thirty feet distant southeastwardly therefrom, as follows, viz: (first) by a line curving toward the right with a radius of two thousand eight hundred and ninety-five feet, the distance of seventy-six feet and nine tenths of a foot, more or less, and (second) South thirty-nine degrees fourteen minutes West three 30 thousand eight hundred and eighty-two feet and seven tenths of a foot; thence still by said land, South fifty degrees forty-six minutes East seventy feet; thence still by said land, parallel with the said center line and one hundred feet distant southeastwardly therefrom, South thirty-

Affidavit

10 nine degrees fourteen minutes West nine hundred and eighty feet; thence still by said land North fifty degrees forty-six minutes West seventy feet; thence still by said land, parallel with the said center line and thirty feet distant south-eastwardly therefrom, South thirty-nine degrees fourteen minutes West twenty-six feet and six tenths of a foot to the aforesaid land conveyed by the Long Beach City Land Company to the Long Beach Railroad Company January 13th, 1886; and thence by said land North fifty degrees forty-six minutes West thirty feet to the place of beginning: CONTAINING nine acres and nine hundred and ninety thousandths of an acre, more or less.

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DEED NO. 4 ABOVE

ALL that certain tract or parcel of land situate, lying and being on Long Beach, in the County of Ocean and State of New Jersey,

30 BEGINNING at a point in the high water mark on the easterly shore of Barnegat Bay, where the centre line of Twenty-fifth Street strikes the same, as laid down on a plan of Long Beach City, duly filed; thence (1) along said centre line of Twenty-fifth Street, which is also the northerly line of lands of the Long Beach City Land Company, South fifty-one degrees East, crossing a hub and tack center on the top of sand hills and a hub and tack centre below the sand hills, supposed to be put in by A. P.

Affidavit

Irons, Esquire, 1600 feet more or less to a high water mark of the Atlantic Ocean; thence (2) along the same northeasterly, the general course being North forty degrees East, to a point in the said high water mark distant 5284 feet from said centre line of Twenty-fifth Street, on a course at right angles with said centre line, 10 which said point is in a line marked by two stakes; thence (3) North fifty-one degrees West 1700 feet, more or less, to high water mark on the Easterly shore of Barnegat Bay; thence (4) Southerly along the high water mark on the easterly shore of Barnegat Bay to the beginning, intending hereby to describe all the land between high water mark on the Easterly shore of Barnegat Bay and high water mark on the Atlantic Ocean, lying between the centre line of 20 Twenty-fifth Street and a line parallel therewith, marked by two stakes distant 5284 feet northerly therefrom on a course at right angles, thereto, containing 196-20/100 acres.

EXCEPTING thereout the land conveyed by deed from George W. Bailey and wife, Thomas W. Synott and wife, Benjamin F. Archer and wife, William J. Sewell and wife, William T. Bailey and wife and Walter M. Patton and wife, to the Long Beach Railroad Company, dated 30 January, 12, 1886, and recorded at Toms River in Book 140 of Deeds, pages 448, &c., also excepting that portion of said tract taken by the Township of Long Beach for the road known as Bay Avenue.

Affidavit

4. On or about September 15, 1931, the Township of Long Beach, one of the defendants herein filed a bill in the Court of Chancery of New Jersey, docket 86-306, for the purpose of foreclosing a tax sale certificate, dated December 24, 1928, recorded in the office of the Clerk of Ocean County on December 29, 10 1928, in Book 223 of Mortgages, page 91, &c. A copy of the said certificate of sale as the same appears of record is attached hereto, and marked "Exhibit A."

5. It is claimed in the Chancery suit aforesaid that the lands of prosecutor above described in paragraph No. 3, are the lands covered by the tax sale certificate referred to in paragraph No. 4 hereof.

20 6. Prosecutor has filed an answer in said Chancery suit setting up that said sale referred to in said certificate was ineffective, invalid and void and that the certificate of sale sought to be foreclosed was ineffective, invalid and void, and under the terms of an Act of the State of New Jersey, being Chapter 202 Laws of 1925, prosecutor is required on the filing of such answer to proceed in this cause by writ of certiorari to review the legality of the matters set up in the answer to said Chancery suit. Said 30 answer was filed within time, subpoenas having been served upon the prosecutor on October 13, 1931.

7. Prosecutor has in its possession what purports to be a copy of the notice of sale referred to in the aforementioned Chancery proceedings, with certain additional matter printed therein. Deponent be-

Affidavit

lieves that this notice is a true copy of the notice of sale with the exception of such additional printed matter. Said copy attached hereto is marked "Exhibit B."

8. The answer filed by the prosecutor set forth the following defenses:

10

(a) The tax sale attempted to be made on November 19, 1928, and referred to in paragraph 2 of the bill of complaint was ineffective, invalid and void because of the fact that proper notice was not given of said sale and notice such as is required by the statute of the State of New Jersey in such cases made and provided was not given.

(b) The notice of sale given by the Township was defective in that it contained no statement of the year in which the taxes for which sale was to be held became due and payable. Said notice of sale was further defective in that it contained no statement of the rate of interest due on such taxes; said notice was defective in that it erroneously stated the amount of interest due July 1, 1928, upon such taxes and stated the amount of interest at an excessive amount; and said notice was likewise defective in that it did not contain a description of the property to be sold at tax sale sufficient to identify the property proposed to be sold and did not contain a description of the property sufficient to inform the owner thereof of the claim made upon the owner or upon the property of the owner and because said description was not sufficient to notify the members

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Affidavit

of the public as to what land was offered for sale for non-payment of taxes and that said description was not sufficient to enable a purchaser to procure a title thereby by said description and by reason of all of which said description was not sufficient to procure for the benefit of the owner the
10 competitive bidding to which such owner was entitled, and because of all of which matters said sale was ineffective, invalid and void.

(c) Said sale on November 19, 1928, was ineffective, invalid and void because the notice thereof was not set up in five of the most public places in the municipality of Long Beach and a copy of such notice was not published in a newspaper circulating in said municipality once in each of the four calendar
20 weeks preceding the day of the sale.

(d) Said sale on November 19, 1928, was ineffective, invalid and void because there was never made up the list referred to in Sections 17, 18, 23 and 26 of an Act known as the Tax Sale Revision of 1918, being Chapter 237 of the Laws of 1918 and the amendments and supplements thereto, and as otherwise required by the said act; nor were any of the matters and things required under the terms of such
30 statute and the amendments and supplements thereto to be done in connection with such list by way of record of such sale ever done or performed.

(e) Said sale on November 19, 1928, was ineffective, invalid and void because of the absence of any record of any nature or kind and the absence of the

Affidavit

record required by the said Tax Sale Revision Act, its amendments and supplements, with respect to the proceedings leading up to said sale or the said sale itself or matters transpiring after the sale.

(f) Said sale on November 19, 1928, was ineffective, invalid and void because the lands sold at said sale were not described sufficiently to identify the same, nor to inform the owner thereof of the property sold, or to enable the purchaser thereof to procure title thereby by said description and was not sufficient to notify the members of the general public as to what land was offered for sale, and was not sufficient to induce competitive bidding for such premises.

(g) Said sale on November 19, 1928, was ineffective, invalid and void because it attempted thereby to sell for taxes for the year 1927 subject to municipal liens accruing after July 1, 1927, whereas, as a matter of fact, the taxes for the year 1927 did not accrue as municipal liens until December 1, 1927, and, therefore, the attempt was made to sell for 1927 taxes subject to 1927 taxes.

(h) The certificate of sale referred to in paragraph 5 of the bill was ineffective, invalid and void because it does not contain a description of the property purported to be sold thereby sufficient to identify the said property and does not contain a description of the property sufficient to inform the owner thereof that his property was sold for taxes and because said description is not sufficient to en-

Affidavit

able the purchaser to procure title by said description.

10 (i) The certificate of sale referred to in paragraph 5 of the bill was ineffective, invalid and void because there is no showing therein or statement therein that there were no other bidders for such property than the Township of Long Beach. Said certificate of sale was ineffective, invalid and void because the same does not set forth the name of the owner of the property proposed to be sold as required by the laws of the State of New Jersey applicable thereto.

20 (j) The certificate of sale referred to in paragraph 5 of the bill was ineffective, invalid and void because, while it therein is stated that said sale was for taxes for the year 1927, it is also therein stated that the said sale is subject to municipal liens accruing after July 1, 1927, and the taxes for the year 1927, did not accrue as municipal liens until December 1, 1927, and said certificate, therefore, purports to sell for 1927 taxes and subject to said taxes.

30 (k) The certificate of sale referred to in paragraph 5 of the bill was ineffective, invalid and void because the said sale was invalid for the reasons set forth in paragraphs a to g inclusive, set forth hereinabove.

9. After the filing of said answer, notice was given to the Township of Long Beach that an application would be made for a bill of particulars and on No-

Affidavit

vember 17th, 1931, an order was made directing the Township of Long Beach to furnish the prosecutor with certain particulars. Bill of particulars was furnished by the Township of Long Beach, but the same did not cover all of the matters called for by the order in the Court of Chancery and an additional bill of particulars was furnished the prosecutor on December 9th, 1931. In said bill of particulars it is stated that no resolution has been passed by the Township Committee of the Township of Long Beach, fixing the rate of interest to be charged on delinquent or unpaid taxes. 10

10. Deponent is advised that the defenses interposed are sound in law and believes same can be substantiated by the evidence, but the evidence necessary to be produced, to a large extent, is under the control of the Township of Long Beach, and, therefore, the prosecutor cannot attach hereto affidavits of persons familiar with all of the facts as to the situation and will have to rely upon the examination of witnesses under subpoena in proceedings taken herein. 20

11. Daniel B. Frazier Co., prays that a writ of certiorari may be allowed to review the validity of the aforementioned sale and of the certificate issued thereunder and of the proceedings to sell such lands, and also all matters and things touching and concerning the same and leading up to and in any way arising therefrom. 30

WILLIAM N. MATTIX.

Affidavit

Sworn and subscribed before me this 11th day of December, A. D. 1931.

EARLE V. WESCOTT,
Notary Public of N. J.

10

EXHIBIT "A."

H. Earle McConnell, Coll.
To
Twp. of Long Beach

I, H. EARLE McCONNELL, Collector of Taxes of the Township of Long Beach, in the County of Ocean, State of New Jersey, do hereby certify, that
20 at a sale at public auction for unpaid municipal liens, duly held by me on November 19, 1928, pursuant to the provisions of an Act of the Legislature of the State of New Jersey, entitled, "An Act concerning unpaid taxes, assessments and other municipal charges on real property, and providing for the collection thereof by the creation and enforcement of liens thereon (Revision of 1918)," and the acts supplementary thereto and amendatory thereof, I sold, in fee, to the Township of Long Beach, for \$104.30,
30 the lands in said municipality described as:

South of Harvey Cedars, formerly R. R. property 18 35/100 A, on the tax duplicate of said municipality and assessed thereon to Daniel B. Frazier Co. as owner.

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

Affidavit

Taxes, 1927	\$95.27
Interest	5.61
Costs	3.42
	\$104.30

SAID sale is subject to redemption on repayment 10
of the amount of the sale, together with interest
thereon at the rate of eight per centum per annum
from the date of sale, and the costs incurred by the
purchaser. Said sale is subject only to municipal
liens accruing after July 1, 1927.

THE right to redeem will expire in SIX MONTHS
after the service of notice to redeem, except that
the right to redeem shall in all cases extend for
TWO YEARS from the date of sale.

20

WITNESS my hand and seal this 24th day of
December, nineteen hundred and twenty-eight.

H. Earle McConnell (L. S.)
Collector of Taxes of the
Township of Long Beach.

WITNESS:

Edwin G. Scovel

STATE OF NEW JERSEY }
COUNTY OF CAMDEN } ss

30

BE IT REMEMBERED, That on this 24th day of
December, 1927, before me, a *a* Master in Chancery
of New Jersey, personally appeared H. EARLE Mc-
CONNELL, Collector of Taxes of the Township of

Affidavit

Long Beach, in the County of Ocean and State of New Jersey, who I am satisfied is the person named in and who executed the above certificate of Tax Sale; 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 deed, for the uses and purposes therein expressed.

Edwin G. Scovel
A Master in Chancery of
New Jersey

Received and Recorded December 29, 1928; 9:15
A. M.

John A. Ernst, Clerk

20 STATE OF NEW JERSEY }
COUNTY OF OCEAN } ss

I, JOHN A. ERNST, Clerk of the said County of Ocean do hereby certify, that the foregoing is a true, full and correct copy of a certain Certificate of Tax Sale, recorded in my office in Book No. 223 of Mortgages, page No. 91.

30 (SEAL) IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the official seal of said County at Toms River, New Jersey, this Eleventh day of July, A. D., 1931.

John A. Ernst
County Clerk of Ocean County
By: LeRoy Grant
Deputy Clerk

SALE OF LAND

IN THE TOWNSHIP OF LONG BEACH

OCEAN COUNTY, NEW JERSEY

PUBLIC NOTICE IS HEREBY GIVEN that the subscriber, Collector of Taxes of the Township of Long Beach, Ocean County, New Jersey, pursuant to the statute, will on

MONDAY, NOVEMBER 19, 1928

at the hour of 1 o'clock p. m., at the Township Hall, 16th Street and the Boulevard, at North Beach Haven in said Township, expose to public sale and sell to such person or persons as will purchase the same, subject to redemption at the lowest rate of interest or at the highest premium without interest, and pay the tax liens thereon including interest and costs, each of the parcels of lands in the Township of Long Beach, together with the tenements and hereditaments thereunto belonging, as described below.

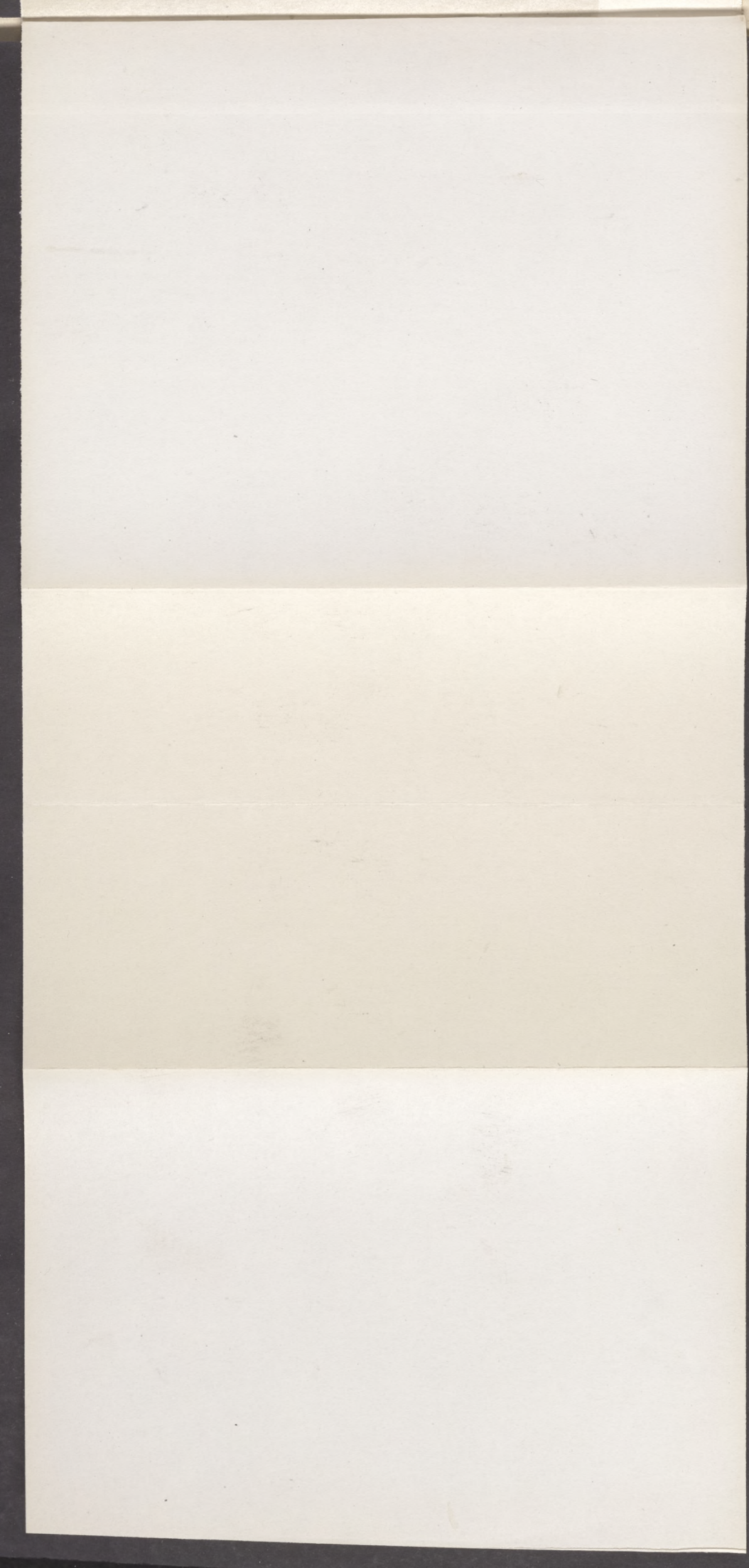
No lands will be sold subject to redemption at a rate of interest higher than eight per centum per annum. Payment for lands purchased must be made before the conclusion of the sale or the lands will be immediately resold.

The parcels of lands and real estate to be sold; the names of the persons against whom the same are assessed as owners; and the amount of the delinquent taxes, together with interest to July 1, 1928, and costs thereon, are as follows:

—RESULT OF TAX SALE—

BOUGHT IN BY THE TOWNSHIP OF LONG BEACH:—

	Tax.	Int.	Cost	Total
George W. Evenson, 12 36-100 acres South of Harvey Cedars, 1927	105.86	6.23	3.42	115.51
Daniel B. Frazier Co. South of Harvey Cedars, formerly R. R. property 18 35-100 A., 1927	95.27	5.61	3.42	104.30
Daniel B. Frazier Co. 177 82-100 acres Sea Breeze tract, adjoining Surf City, 1927	2823.40	166.27	3.42	2993.09
Daniel B. Frazier Co. 486.01 acres Between Harvey Cedars and Bar- negat City 1 house, 1927	7743.90	456.03	3.42	8203.35
Daniel B. Frazier 24 52-100 acres Formerly Cassidy Est., 1927	389.32	22.93	3.42	415.67
Samuel H. Burkhardt—Beach Haven Crest Block 26, lots 24-35, 1927	7.94	.47	3.42	11.83
Domenico Frederico—Beach Haven Crest Block 9, lots 21-23 and part of 22- 24, 1927	23.82	1.40	3.42	28.64
Rev. Francis P. Haltgreve—Beach Haven Crest Block 20, lot 6, 1927	3.97	.24	3.42	7.63
J. O. Huber—Beach Haven Crest Block 20, lots 31-32-33, 1927	11.91	.70	3.42	16.03
I. Santaro—Beach Haven Crest Block 12, lot 6, 1927	6.62	.39	3.42	10.43
Leroy L. Vennell—Beach Haven Crest Block 31, lots 7-8, 1927	7.94	.47	3.42	11.83
Ellis L. Goodall—Brighton Beach Blk. 447, lots 22-23-24, 1927	15.88	.93	3.42	20.23
Harry F. Reinhardt—Brighton Beach Block 437, lots 14-15 Block 447, lots 4-5, 1927	14.56	.86	3.42	18.84
Wallace Royles—Beach Haven Terrace Tract 1, sec. D. lot 53, 1927	3.97	.24	3.42	7.63
Alex. R. Schuler—Beach Haven Terrace Tract 2, sec. D. lot 30, 1927	5.30	.31	3.42	9.03
Martin Wida—Beach Haven Terrace Tract 1, section A. lots 3-4 1 hotel 1927	116.44	6.86	3.42	126.72
Spray Beach Hotel Co.—Spray Beach Blk. E. lots 2-3, hotel annex and public garage, 1927	100.56	5.92	3.42	109.90
Spray Beach Hotel Co.—Spray Beach Blk. B. lots 1-2-3-4-5-6-7-8, Hotel Store, Poolroom, Apt. House and Engine House, 1927	449.88	26.49	3.42	479.79
Spray Beach Hotel Co.—Spray Beach Blk. H. lot 18, 1 garage, 1927	26.47	1.54	3.42	31.43
G. Earle Vogels—Spray Beach Blk. F. lots 1-2-3 and part of 6, 1 apartment house, 1927	230.23	13.56	3.42	247.21
James L. Heap Jr.—North Beach Haven Block 12, lot 16, 1927	5.30	.31	3.42	9.03
Realty Mart—North Beach Haven Block 6, lots 1 to 22 inc., 1927	116.44	6.86	3.42	126.72
Realty Mart—North Beach Haven Block F. lots 1 to 20 inc., 1927	105.86	6.23	3.42	115.51
Anthony Murphy—Beach Haven Heights Block 20, lots 36-38, 1927	5.30	.31	3.42	9.03
Dr. Mary E. Allen—St. Albans Sec. A. blk. 26, lots 1-3, 1927	1.33	.08	3.42	4.83
Albert L. Bemis—St. Albans Sec. B. blk. 47, lots 18-20, 1927	1.33	.08	3.42	4.83
Catherine A. Cole—St. Albans Sec. A. blk. 44, lot 25, 1927	.67	.05	3.42	4.14
Leora M. Dempsey—St. Albans Sec. B., blk. 78, lot 7, 1927	.67	.05	3.42	4.14
Jennie G. Felton—St. Albans Sec. B., blk. 40, lot 23, 1927	.67	.05	3.42	4.14
John L. Floyd—St. Albans Sec. A. blk. 34, lot 3 Sec. A. blk. 35, lots 6-7 Sec. A. blk. 36, lots 3-4, 1927	3.31	.20	3.42	6.93
Jos. S. Jacobowski—St. Albans Sec. B. blk. 52, lot 16, 1927	.67	.05	3.42	4.14
Minnie L. Joyce—St. Albans Sec. A. blk. 44, lot 6, 1927	.67	.05	3.42	4.14
Chas. N. Lang—St. Albans Sec. A. Blk. 12, lot 7, 1927	.67	.05	3.42	4.14
Florence M. Lloyd—St. Albans Sec. A. Blk. 44, Lots 1-2, 1927	1.33	.08	3.42	4.83
Walter E. Mallory—St. Albans Sec. B. Blk. 44, Lot 15, 1927	.67	.05	3.42	4.14
Dr. John Mellor Est.—St. Albans Sec. A., Blk. 61, Lot 7, 1927	.67	.05	3.42	4.14



	Tax	Int.	Cost	Total
John F. Murray—St. Albans				
Sec. B., Blk. 106, Lot 16, 1927	.67	.05	3.42	4.14
Dr. James G. McCollen—St. Albans				
Sec. A., Blk. 29, Lots 15-17, 1927	1.33	.08	3.42	4.83
Marie F. O'Connor—St. Albans				
Sec. A., Blk. 19, Lot 32, 1927	.67	.05	3.42	4.14
Harry L. Overton—St. Albans				
Sec. A., Blk. 57, Lot 12, 1927	.67	.05	3.42	4.14
W. Scott Prickett—St. Albans				
Sec. A., Blk. 11, Lots 16-18, 1927	1.33	.08	3.42	4.83
Samuel Rawlinson—St. Albans				
Sec. A., Blk. 57, Lots 4-5-7-9-11-13				
Sec. A., Blk. 36, Lots 5-7-9-11, 1927	6.62	.39	3.42	10.43
Dr. Wm. J. Ritter—St. Albans				
Sec. A., Blk. 11, Lots 31-33, 1927	1.33	.08	3.42	4.83
Wm. E. Salmick—St. Albans				
Sec. A., Blk. 16, Lot 29, 1927	.67	.05	3.42	4.14
Herman R. Soder—St. Albans				
Sec. A., Blk. 16, Lot 17, 1927	.67	.05	3.42	4.14
Albert H. Weller—St. Albans				
Sec. A., Blk. 57, Lot 10, 1927	.67	.05	3.42	4.14
St. Albans Improvement Co.—St. Albans				
Sec. A., Blk. 3, Lot 5.				
Sec. A., Blk. 4, Lots 1 to 25, inc.				
Sec. A., Blk. 5, Lots 7-9 to 25 inc., 27.				
Sec. A., Blk. 6, Lots 15-17-18-19-20-22-24				
Sec. A., Blk. 6, Lots 25-26-27				
Sec. A., Blk. 7, Lot 26.				
Sec. A., Blk. 11, Lots 15-17.				
Sec. A., Blk. 13, Lot 29.				
Sec. A., Blk. 14, Lots 17-19-21-23-25.				
Sec. A., Blk. 16, Lots 7-10-11-14-16-31.				
Sec. A., Blk. 19, Lot 39.				
Sec. A., Blk. 20, Lots 10-12-22-23.				
Sec. A., Blk. 23, Lot 29.				
Sec. A., Blk. 24, Lot 26.				
Sec. A., Blk. 29, Lots 6-31-33.				
Sec. A., Blk. 36, Lot 13.				
Sec. A., Blk. 37, Lot 27.				
Sec. A., Blk. 40, Lot 8.				
Sec. A., Blk. 41, Lots 23-25.				
Sec. A., Blk. 42, Lot 29.				
Sec. A., Blk. 45, Lots 22-24.				
Sec. A., Blk. 59, Lots 1-16.				
Sec. A., Blk. 62, Lots 7-8.				
Sec. B., Blk. 34, Lots 5-6-7.				
Sec. B., Blk. 38, Lot 6.				
Sec. B., Blk. 39, Lots 12-21.				
Sec. B., Blk. 40, Lots 6-16.				
Sec. B., Blk. 44, Lots 1-2-16-18-19.				
Sec. B., Blk. 44, Lots 20-21-23-25.				
Sec. B., Blk. 47, Lots 5-14-24.				
Sec. B., Blk. 51, Lots 19-21-23.				
Sec. B., Blk. 52, Lots 8-9-10-11-12-13				
Sec. B., Blk. 52, Lots 14-15-18-20-22.				
Sec. B., Blk. 56, Lots 2-3-5-7-9-11-13-17.				
Sec. B., Blk. 56, Lots 19-21-22-23.				
Sec. B., Blk. 59, Lots 11-12-13-14.				
Sec. B., Blk. 60, Lots 1 to 13 inc., 15.				
Sec. B., Blk. 62, Lots 10-11-12-13-14-16-18.				
Sec. B., Blk. 63, Lots 11-12-20-22-24.				
Sec. B., Blk. 64, Lots 1-2-3-4-5.				
Sec. B., Blk. 66, Lots 6-8-10-12-14-16-18.				
Sec. B., Blk. 66, Lots 20-21-22-23-24-25-26.				
Sec. B., Blk. 67, Lots 1 to 18 inc.				
Sec. B., Blk. 68, Lots 18-19-20-21-22-23.				
Sec. B., Blk. 72, Lots 16-18-22-24-26.				
Sec. B., Blk. 74, Lot 12.				
Sec. B., Blk. 76, Lots 12-14-15-16-17-18-19-20-22				
Sec. B., Blk. 77, Lots 2-10-22.				
Sec. B., Blk. 81, Lots 4 to 16 inc.				
Sec. B., Blk. 82, Lots 1-2-4-5-7-8-9-10.				
Sec. B., Blk. 83, Lots 10-13-15-17.				
Sec. B., Blk. 87, Lots 22.				
Sec. B., Blk. 88, Lots 9-11-12-13-14.				
Sec. B., Blk. 93, Lots 2-10-16-17-19.				
Sec. B., Blk. 94, Lot 8.				
Sec. B., Blk. 99, Lots 6-8.				
Sec. B., Blk. 101, Lots 5-7 to 12 inc.				
Sec. B., Blk. 105, Lots 14-15-16-17-18.				
Sec. B., Blk. 108, Lots 11-13.				
Sec. B., Blk. 116, Lots 2-3-5-7-8-9-10-13.				
Sec. B., Blk. 120, Lots 1 to 11 inc., 13.				
Sec. B., Blk. 130, Lots 15 to 20 inc., 24.				
For the year 1922	85.21	39.00		
For the year 1923	91.33	34.00		
For the year 1924	117.37	35.00		
For the year 1925	145.64	32.00		
For the year 1926	157.02	23.00		
For the year 1927	204.98	14.00	30.00	1008.55

BOUGHT IN BY ELLEN C. FORD—No Interest

315 Spruce St., Philadelphia, Pa.

John F. Ford—Beach Haven Crest				
Block 11, lot 40, 1927.....	6.62	.39	3.42	10.43

BOUGHT IN BY ANDREW V. HIBBS—8% Interest

Beach Haven Terrace, N. J.

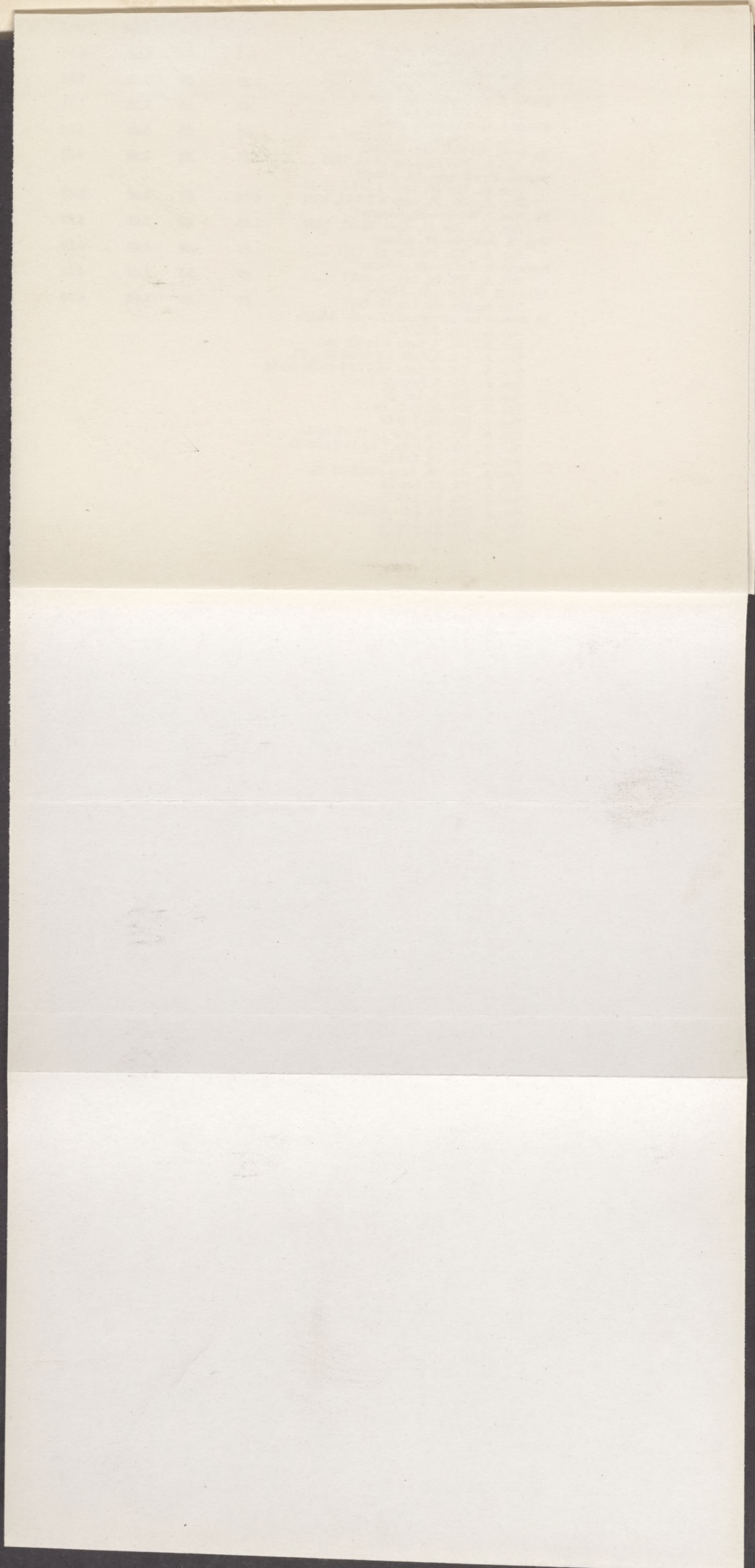
Joseph Coyle—Beach Haven Terrace				
Tract 1, sec. A., lot 43, 1927	6.62	.39	3.42	10.43
Jessie McElroy—Beach Haven Terrace				
Tract 1, sec. A. lot 32, 1927.....	5.30	.31	3.42	9.03

This sale is made under the provisions of an Act of the Legislature known as the "Tax Sale Revision," being Chapter 237, P. L. 1918, and the several Acts amendatory thereof and supplemental thereto.

Any of the aforesaid parcels of lands and real estate may be redeemed by the owner prior to the sale by payment of the amount due thereon for taxes, interest and costs.

Dated: October 24, 1928.

H. EARLE McCONNELL,
Collector of Taxes of the Township
of Long Beach.



Order

Case No. 4.

18 35/100

ORDER.

10

NEW JERSEY SUPREME COURT.

DANIEL B. FRAZIER Co., a
corporation of New Jersey,

Prosecutor,

v.

20

TOWNSHIP OF LONG BEACH,
in the County of Ocean,
a municipal corporation
of the State of New Jersey;
H. EARLE McCONNELL, Collector of Taxes
of the Township of Long Beach,
and AUGUSTUS L. KEIL, Township Clerk of
the Township of Long Beach,

Defendants.

On Certiorari.
Order.

30

This matter being opened to the Court by Howard Ewart, attorney for defendants, and it appearing

Order

that on the 15th day of January, 1932, an allocatur was made to a writ of certiorari in the above-entitled matter, which said writ of certiorari was made returnable on the 4th day of February, 1932;

And cause being shown:

10 It is, on this 2nd day of February, 1932, ordered that the return day of the writ of certiorari in this matter be extended to the 15th day of February, 1932.

J. L. BODINE,
Judge, Supreme Court.

I hereby consent to the entry of the above order.

JOSEPH H. CARR,
Attorney for Prosecutor.

Notice

Case No. 4.

18 35/100

NOTICE.

NEW JERSEY SUPREME COURT.

10

DANIEL B. FRAZIER Co., a
corporation of New Jer-
sey,

Prosecutor,

v.

TOWNSHIP OF LONG BEACH,
in the County of Ocean,
a municipal corporation
of the State of New Jer-
sey; H. EARLE McCON-
NELL, Collector of Taxes
of the Township of Long
Beach, and AUGUSTUS L.
KEIL, Township Clerk of
the Township of Long
Beach,

Defendants.

On Certiorari.
Notice.

20

30

To Joseph H. Carr, Attorney for Prosecutor:

Sir:

Please take notice that on Monday, the 15th day
of February, 1932, at ten o'clock in the forenoon, or

Notice

as soon thereafter as counsel can be heard thereon,
at the State House in the City of Trenton, I shall
apply to his Honor, Joseph L. Bodine, Justice of
the Supreme Court, for a rule in the above-entitled
cause, vacating the allocatur on the writ of certi-
orari issued in this matter, on the following
10 grounds:

(1) That the prosecutor is in laches.

(2) That the tax sale proceeding, the legality of
which was questioned by the prosecutor, was valid.

(3) That the affidavit filed in this matter, under
which the allocatur to the writ of certiorari was
made, does not disclose reasonable cause for the is-
20 suance of the writ of certiorari.

Dated February 5, 1932.

HOWARD EWART,
Attorney for Defendants.

[ENDORSED]

30

Service of the within Notice is
hereby acknowledged this 6th day of
February, 1932.

Joseph H. Carr,
Attorney for Prosecutor.

Notice of Taking Depositions

Case No. 4.

18 35/100

NOTICE OF TAKING DEPOSITIONS.

NEW JERSEY SUPREME COURT.

10

DANIEL B. FRAZIER Co., a
corporation of New Jer-
sey,

Prosecutor,

v.

TOWNSHIP OF LONG BEACH,
in the County of Ocean,
a municipal corporation
of the State of New Jer-
sey; H. EARLE McCON-
NELL, Collector of Taxes
of the Township of Long
Beach, and AUGUSTUS L.
KEIL, Township Clerk of
the Township of Long
Beach,

Defendants.

On Certiorari.
Notice of Taking
Depositions.

20

30

To Joseph H. Carr, Attorney for Prosecutor:

Sir:

Please take notice that depositions to be read on
the hearing of the motion to vacate the allocatur on

Notice of Taking Depositions

the writ of certiorari issued in this matter will be taken before the Honorable George C. Low, a Supreme Court Commissioner, at his office in the Veeder Building, Main Street, Toms River, New Jersey, on Thursday, the 11th day of February, 1932, at 10:00 o'clock in the forenoon.

10 Dated February 6, 1932.

Yours respectfully,

HOWARD EWART,
Attorney for Defendants.

[ENDORSED]

20

Service of the within Notice is hereby acknowledged this 6th day of February, 1932.

Joseph H. Carr,
Attorney for Prosecutor.

30

Depositions

10

Case No. 4.

18 35/100

DEPOSITIONS.

The depositions taken in this matter were taken in four other cases at the same time. These depositions are printed in the State of the Case in the case marked No. 1, 12 36/100. 20

30

Order Vacating Allocatur

Case No. 4.

18 35/100

10

ORDER VACATING ALLOCATUR.

NEW JERSEY SUPREME COURT.

DANIEL B. FRAZIER Co., a
corporation of New Jer-
sey,

Prosecutor,

v.

20

TOWNSHIP OF LONG BEACH,
in the County of Ocean,
a municipal corporation
of the State of New Jer-
sey; H. EARLE McCON-
NELL, Collector of Taxes
of the Township of Long
Beach, and AUGUSTUS L.
KEIL, Township Clerk of
the Township of Long
Beach,

30

Defendants.

On Certiorari.
Order Vacating
Allocatur.

This matter being opened to the Court by Howard
Ewart, attorney for defendants, and Joseph H. Carr,

Order Vacating Allocatur

appearing as attorney for prosecutor, on motion to vacate the allocatur to a writ of certiorari in this cause allowed January 15th, 1932, and returnable February 4th, 1932; and it appearing that by order of this Court made February 2nd, 1932, the return day of the writ of certiorari was extended to February 15th, 1932; and the Court having considered 10 the depositions and evidence returned in support of the motion and having heard the arguments of counsel, and being of the opinion that the allocatur should be returned in support of the motion and having heard the arguments of counsel, and being of the opinion that the allocatur should be vacated;

It is, on this fifteenth day of February, 1932, ordered that the allocatur to the writ of certiorari allowed on January 15th, 1932, be and the same is hereby vacated, without prejudice to a renewal thereof before the Court. 20

J. L. BODINE,
J. S. C.

Notice

Case No. 4.

18 35/100

10

NOTICE.

NEW JERSEY SUPREME COURT.

DANIEL B. FRAZIER Co., a
corporation of New Jersey,

Prosecutor,

v.

20

TOWNSHIP OF LONG BEACH,
in the County of Ocean,
a municipal corporation
of the State of New Jersey; H. EARLE McCONNELL, Collector of Taxes
of the Township of Long
Beach, and AUGUSTUS L.
KEIL, Township Clerk of
the Township of Long
Beach,

30

Defendants.

On Certiorari.
Notice.

To Howard Ewart, Esquire, Attorney for Defendants:

Notice

Sir:—

Take notice that I shall apply to part No. 2 of the New Jersey Supreme Court on Wednesday, March 2, 1932, at one o'clock in the afternoon, or as soon as the matter can be heard on that day, at the State House Annex in Trenton, for a rule requiring the defendants above-named to show cause why the writ of certiorari allowed on January 15, 1932, should not be renewed by the said Court, or in the alternative, shall apply for a rule to show cause why a writ of certiorari should not issue to review the matters set forth in the writ of certiorari issued on January 15, 1932. 10

Respectfully,

JOSEPH H. CARR,

Attorney for Prosecutor.

Dated: Camden, N. J.
February 25, 1932.

20

[ENDORSED]

Service of the within notice is hereby acknowledged this 25th day of February, A. D. 1932.

30

.....,
Attorney for Defendants.

Case No. 4.

18 35/100

ORDER.

10

NEW JERSEY SUPREME COURT.

DANIEL B. FRAZIER Co., a
corporation of New Jersey,

Prosecutor,

v.

20 TOWNSHIP OF LONG BEACH,
in the County of Ocean,
a municipal corporation
of the State of New Jersey; H. EARLE McCONNELL, Collector of Taxes
of the Township of Long
Beach, and AUGUSTUS L.
KEIL, Township Clerk of
the Township of Long
30 Beach,

Defendants.

On Certiorari.
Order.

The prosecutor herein having given notice to the
defendants of an application to be made March 2,

Order

1932, for a rule requiring the defendants to show cause why the writ of certiorari allowed on January 15, 1932, should not be removed, or in the alternative, that the prosecutor would apply for a rule to show cause why a writ of certiorari should not issue to review the matters set forth in the writ of certiorari issued on January 15, 1932; and it appearing to the 10 Court that the order vacating the allocatur on the said writ of certiorari provided that the same was without prejudice to a renewal thereof before the Court, and that an appeal was taken from the order vacating the allocatur, by notice duly filed; and the Court having heard Joseph H. Carr, attorney for the prosecutor, for the motion under the notice aforesaid, and Howard Ewart, for the defendant, opposed; and the Court being of the opinion that in view of the said appeal the Court is without juris- 20 diction to act upon the motion of March 2, 1932, and is without jurisdiction to grant the relief applied for;

It is, as of March 2, 1932, ordered that the motion of the prosecutor be and the same is hereby denied with costs.

By the Court,

THOMAS W. TRENCHARD,

J. S. C.

Notice of Appeal

Case No. 4.

18 35/100

NOTICE OF APPEAL.

10

NEW JERSEY SUPREME COURT.

DANIEL B. FRAZIER Co., a
corporation of New Jersey,

Prosecutor,

v.

TOWNSHIP OF LONG BEACH,
in the County of Ocean,
a municipal corporation
of the State of New Jersey;
H. EARLE MCCONNELL, Collector of Taxes
of the Township of Long Beach,
and AUGUSTUS L. KEIL, Township Clerk of
the Township of Long Beach,

Defendants.

20

On Certiorari.
Notice of Appeal.

30

To Howard Ewart, Esquire, Attorney for the Defendants, Township of Long Beach; H. Earle McConnell, Collector of Taxes of the Township of Long Beach, and Augustus L. Keil, Township Clerk of the Township of Long Beach:

Notice of Appeal

Sir:

Please take notice that the prosecutor in the above matter hereby appeals to the Court of Errors and Appeals from the whole of the judgment entered in the above-stated cause on the following ground:

1. The Supreme Court erred in its order vacating 10 the allocatur to the writ of certiorari allowed on January 15, 1932.

Respectfully,

JOSEPH H. CARR,

*Attorney for and of Counsel with
Daniel B. Frazier Co.*

Dated February 23, 1932.

20

[ENDORSED]

Service of the within notice is hereby acknowledged this 24th day of February, A. D. 1932.

Howard Ewart,
Attorney for Township of Long
Beach, H. Earle McConnell,
Collector of Taxes of the
Township of Long Beach, and
Augustus L. Keil, Township
Clerk of the Township of Long
Beach.

30

Grounds of Appeal

Case No. 4.

18 35/100

GROUNDS OF APPEAL.

10 NEW JERSEY COURT OF ERRORS AND
APPEALS.

DANIEL B. FRAZIER Co., a
corporation of New Jer-
sey,

*Prosecutor-
Appellant,*

v.

20 TOWNSHIP OF LONG BEACH,
in the County of Ocean,
a municipal corporation
of the State of New Jer-
sey; H. EARLE MCCON-
NELL, Collector of Taxes
of the Township of Long
Beach, and AUGUSTUS L.
KEIL, Township Clerk of
the Township of Long
30 Beach,

*Defendants-
Respondents.*

On Certiorari.
On Appeal.
Grounds of Appeal.

The appellant states the following ground of ap-
peal in this cause:

Grounds of Appeal

The Supreme Court erred in giving judgment for the defendants instead of for the prosecutor, and in vacating the allocatur and dismissing the writ of certiorari.

JOSEPH H. CARR,
Attorney for Prosecutor-
Appellant. 10

[ENDORSED]

Service of the within grounds of appeal is hereby acknowledged this 9th day of May, A. D. 1932.

Howard Ewart, 20
Atty. for Defendants-
Respondents.

Opinion

Case No. 4.

18 35/100

10

OPINION.

(Filed Mar. 28, 1932.)

NEW JERSEY SUPREME COURT.

20	DANIEL B. FRAZIER Co., a corporation of New Jer- sey, <i>Prosecutor,</i> v. TOWNSHIP OF LONG BEACH, in the County of Ocean, <i>et als.,</i> <i>Defendants.</i>	} Memorandum. (not for print in the official or unofficial reports)
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30

ON MOTION TO VACATE ALLOCATUR.

For the motion, HOWARD EWART.
 Contra, JOSEPH H. CARR.

Opinion

BODINE, J.:

For all practical purposes all five cases involving the taxation of lands of the Daniel B. Frazier Company in Long Beach Township, Ocean County, New Jersey, stand on the same footing and are here dealt with.

The Township of Long Beach filed five separate bills in equity to foreclose certain tax sale certificates acquired in December of 1928, covering lands of the prosecutor which had been sold pursuant to law for unpaid taxes. The answers in chancery challenged the validity of the tax sales. Under Chapter 202, Pamphlet Laws of 1925, page 480, the answer will be struck unless the defendant obtains a writ of certiorari to review the validity of the tax sale within four months from the date of the filing of the answer in the chancery proceeding. In order that the defendant should not be deprived of such rights as might exist by the mere passage of time, the application being tardy, and because it was apparent that by reason of the delay a rule to show cause might not be effective, the writ was allowed on *ex parte* affidavits. 10 20

The rights of the municipality to move for the vacation of the allocatur is clear; also the right of the Justice granting the same to vacate the same. Rule 170, of the Supreme Court, *Winegrath v. Fairview*, 77 N. J. L. 448, where Justice Minturn said: 30

“The statute 5 and 6 W. & M. expressly established the practice of applying for the writ to the Justice at Chambers, and required him, if he allowed it, to endorse thereon his allowance, to which act the term allocatur was ap-

plied. It will be perceived, therefore, that the allocatur to the writ is, in effect, but a substitute for the earlier common law fiat, which, like all orders or rules made by a single justice of the King's bench, was, until return made to the writ, within the power of the Justice granting it to amend, modify or recall."

10

No return was made to any of the writs and counsel for the defendant asked for further time for this purpose, if the allocatur was not vacated, as he had a right so to do under Rule 170.

The application for the writ of certiorari was predicated upon the following grounds: (1) The tax sale was invalid; (2) The notice of the tax sale was invalid as it contained no statement of the years
20 the taxes became payable for which the sale was being made; (3) The amount of interest stated was excessive; (4) The description was insufficient; (5) The notice of sale was not posted in five of the most public places; (6) No list was made up pursuant to secs. 17, 18, 23 and 26 of Chapter 237 Pamphlet Laws 1918; (7) No record of the sale was made as required by law; (8) The sale was ineffective because the attempt was made to sell for 1927 taxes; (9) The certificate of sale contains no adequate description;
30 (10) The certificate contains no averment that there were no other bidders.

The facts developed by the defendants' depositions indicate that the Daniel B. Frazier Company is a persistent and continuous evader of tax obligations, and that the property in question is sand dunes held for speculative purposes. The assessment of

Opinion

the taxes in question was appealed to the County Board of Taxes and reductions secured.

The tax sale was held November 19, 1928. Previous to the sale, the collector of taxes made up a list in which the lands subject to sale were described according to the description set forth in the 1927 duplicate, together with the name or names of the owners of said premises and the amount of all taxes and assessments which were a lien on July 1, 1928. This list was subsequently turned over to the printer and a notice of sale made up. A copy of this notice of sale was thereafter used by the collector of taxes as his list and on it was noted the record of properties redeemed before or at the sale and the results of the sale itself. The notice of sale was published in the Tuckerton Beacon, a newspaper circulating in the Township of Long Beach, once in each of the four calendar weeks preceding the sale. Copies of the notice of sale were posted in seven public places with the township on or before October 27, 1928, and further copies of the notice of sale were mailed to each of the owners. 10 20

There were no other bidders than the township at the sales in question.

The tax sale certificates were made up for each of the properties sold and delivered to the Township of Long Beach subsequent to the sale and were recorded. Notations to the effect that sale was made to the township were made by the collector on the tax duplicates for 1927, and on the duplicates for 1928, 1929 and 1930. 30

The Tax Sale Revision Act of 1918 provides as follows:

Opinion

10 “No sale of lands for municipal liens heretofore or hereafter made, shall be set aside * * * because of insufficient description in the original entry of the lien, or in the list made up for the sale, or because of a mistake in or omission in the name of the owner, or because of the failure of the clerk or any municipal officer to record the proceedings relative to the sale, if it shall appear by other legal evidence that the land sold was, in fact, that assessed, and that the sale was made pursuant to law. * * *” Com. State. 1924, p. 3538, Secs. 208-44a (56); P. L. 1918, C. 237, p. 898.

20 The proofs show that there was substantial compliance with the legislative requirements in that all acts necessary to be done by the collector of taxes were, in fact, done with the exception of actually making up a complete record of the proceedings. Such substantial compliance brings the proceedings within the terms of the statute and they were in all respects legal and binding on the prosecutor.

30 It was proved and not controverted that the township officers frequently requested the payment of the taxes in question and made known to the prosecutor the embarrassment incident to the delay in payment, because of the inability of the township to meet tax anticipation notes which it had negotiated and which were long over due to the great detriment of banks affording accommodation to the township.

 The delay in resorting to foreclosure proceedings was due to the repeated promises and assurances of the president of the Frazier Company that the taxes

Opinion

would be paid and that accommodation had been secured from out of town banks to refiance the Frazier Company and provide the money needed for settlement of the taxes.

The Frazier Company owes about 65 or 70% of the township's unpaid taxes. The attempt to challenge the validity of the taxes, in the light of the admission of liability frequently made, seems without merit. Having recognized the validity of the obligation and the manner in which the township's right has been asserted it is now too late to assert a right to a discretionary writ to review that which the Frazier Company has conceded imposed a valid and binding obligation upon it which it was more than willing to pay, if like Mr. MacCauber, it could have borrowed the money. 10

The fanciful irregularities suggested in the township proceedings for the collection and sale for taxes seem due to the circumstances that the township is not a large municipality with voluminous records kept by skilled clerks. The essential records were, however, kept. The precise form and style of writing the records is immaterial under the statute above referred to, but at all events since there was an absolute recognition of the obligation and the rights arising from the sale and repeated requests for further time to secure the funds to make the payments due, it would seem that the allocatur was improvidently granted. The power to vacate is clear. 20 30

The allocatur is, therefore, vacated with costs.

Official

D 6

SALE OF LAND IN THE TOWNSHIP OF LONG BEACH OCEAN COUNTY, NEW JERSEY

PUBLIC NOTICE IS HEREBY GIVEN that the subscriber, Collector of Taxes of the Township of Long Beach, Ocean County, New Jersey, pursuant to the statute, will on

MONDAY, NOVEMBER 19, 1928

at the hour of 1 o'clock p. m., at the Township Hall, 16th Street and the Boulevard, at North Beach Haven in said Township, expose to public sale and sell to such person or persons as will purchase the same, subject to redemption at the lowest rate of interest or at the highest premium without interest, and pay the tax liens thereon including interest and costs, each of the parcels of lands in the Township of Long Beach, together with the tenements and hereditaments thereunto belonging, as described below.

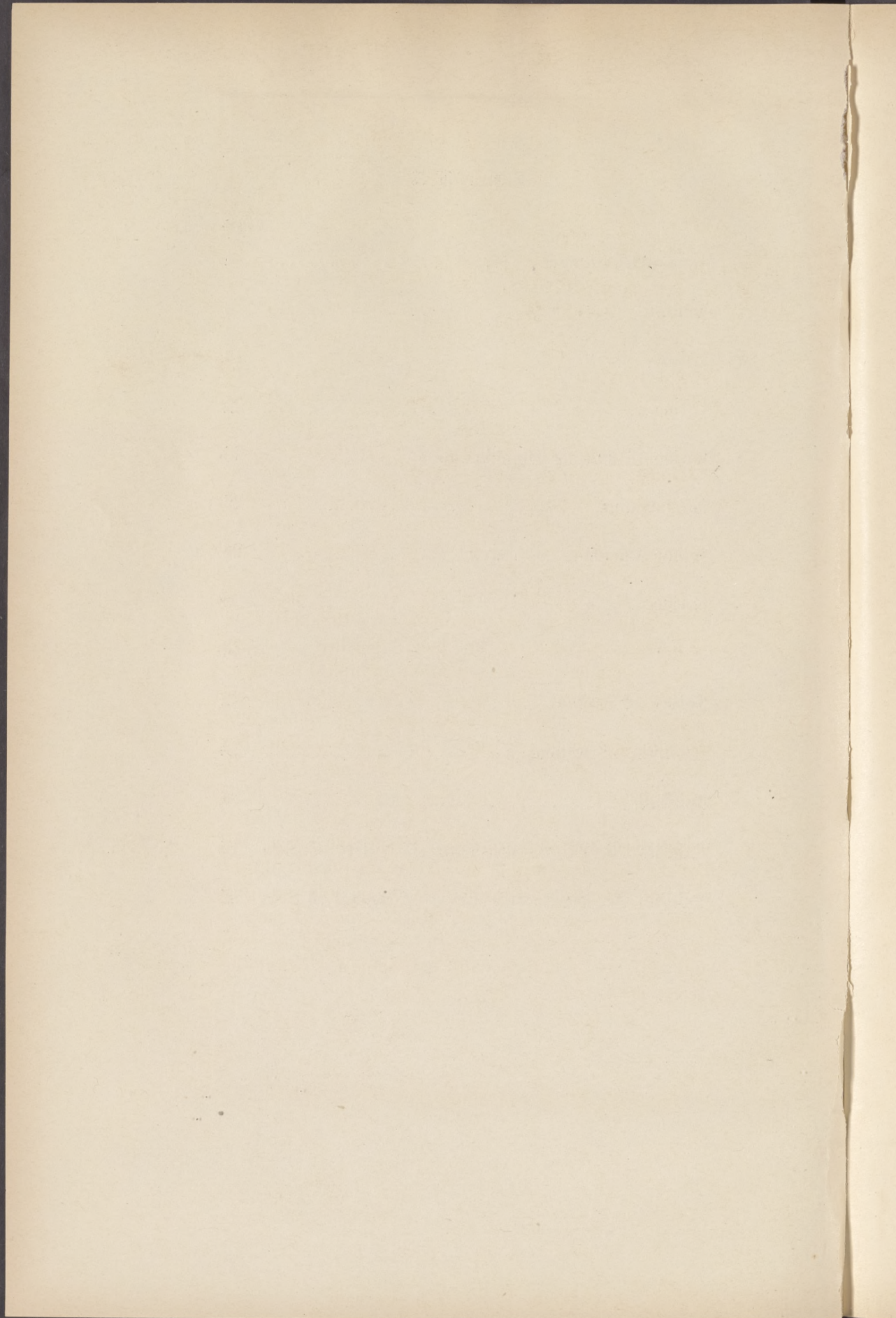
No lands will be sold subject to redemption at a rate of interest higher than eight per centum per annum. Payment for lands purchased must be made before the conclusion of the sale or the lands will be immediately resold.

The parcels of lands and real estate to be sold; the names of the persons against whom the same are assessed as owners; and the amount of the delinquent taxes, together with interest to July 1, 1928, and costs thereon, are as follows:

	Tax.	Int.	Cost	Total
<i>Paid</i> 10/31/28. La Rue-Clayton, 10 Acres				
Part of McKinney tract south of Eastala, 1927	\$165.25	\$10.91	\$3.42	\$199.58 <i>Paid off</i>
T George W. Evenson, 12 36-100 acres South of Harvey Cedars, 1927	105.86	6.23	3.42	115.51
T Daniel B. Frazier Co.				
South of Harvey Cedars, formerly R. R. property 18 35-100 A., 1927	95.27	5.61	3.42	104.30
T Daniel B. Frazier Co. 177 82-100 acres Sea Breeze tract, adjoining Surf City, 1927	2823.40	166.27	3.42	2993.09
T Daniel B. Frazier Co. 486.01 acres Between Harvey Cedars and Barnegat City 1 house, 1927	7743.90	456.03	3.42	8203.35
T Daniel B. Frazier 24 52-100 acres Formerly Cassidy Est., 1927	389.32	22.93	3.42	415.67
<i>Paid</i> 10/30/28 <i>Paid</i> 11/17/28 Brant Beach Realty Co.—Brant Beach				
Block 7, lots 89-10, 1 house, 1927	83.08	2.01	0.42	89.11 <i>Paid off</i>
Brant Beach Realty Co.—Brant Beach From South line of Hardenberg tract to north line of Beach Haven Crest, Ocean to bay 47 acres, 1927	435.32	34.34	3.42	473.08
<i>Paid</i> 11/16/28 Brant Beach Realty Co.—Brant Beach				
West of R. R. from 31st St. to Beardslee ave. 24 39-100 acres 1927	158.78	12.53	3.42	174.73
<i>Paid</i> 11/19/28 Walter Culbertson—Brant Beach				
Sec. A. A. block I, lot 22, 1927	5.30	.31	3.42	9.03
<i>Paid</i> 11/19/28 Joseph H. McGregor—Brant Beach				
Sec. A. blk. 6, lot 23, 1927	6.62	.39	3.42	10.43
T Samuel H. Burkhart—Beach Haven Crest				
Block 26, lots 24-35, 1927	7.94	.47	3.42	11.83
<i>Paid</i> 11/16/28 James McMurray, Inc.—Beach Haven Crest				
Block 19, lots 15-17-19-20-23-25-26				
Block 19, lots 31-32-33-34-35-36				
Block 20, lots 1-7-9-11-13-15-19-21-23-25				
Block 20, lots 27-29-34-35-36				
Block 26, lots 1-2-3-5-6-7-8-9-10-11				
12-13-14-15-16-17-18-19-22-26-28-29-30-31-41				
Block 27, lots 1-2-3-4-9-11-13-15-17-19-21-23-25, 1927	63.52	5.01	3.42	71.95
<i>Paid</i> 11/19/28 Harry M. Ellis—Beach Haven Crest				
Block 12, lots 16-18-20-22				
Block 13, lots 25-27-29-31-32, 1927	25.72	1.51	3.42	30.65
T Domenico Frederico—Beach Haven Crest				
Block 9, lots 21-23 and part of 22-24, 1927	23.82	1.40	3.42	28.64

I N D E X

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Case No. 3.

177 82/100

WRIT OF CERTIORARI.

177 82/100

10

New Jersey, to wit:

The State of New Jersey to the Township of Long Beach, in the County of Ocean, a municipal corporation of the State of New Jersey; H. Earle McConnell, Collector of Taxes of the Township of Long Beach; and Augustus L. Keil, Township Clerk of the Township of Long Beach.

20

We being willing for certain reasons to be certified of certain proceedings of the Township of Long Beach, relating to supposed sale for unpaid taxes, of certain property of Daniel B. Frazier Co., made on November 19, 1928, and all proceedings relating to the said sale, whether leading up to, or following the same and all records and papers relating to the said sale, or to the certificate of said sale, recorded in Book 223 of Mortgages, page 90, &c., said property 30 being described therein as "177 82/100 acres, Sea Breeze tract, adjoining Surf City, on the tax duplicate of said municipality," and all matters and things touching and concerning the same and leading up to or in any way having to do therewith as fully and entirely as before you they remain, so that the

Writ of Certiorari

validity and legality of the proceedings to sell and of such sale and of such certificate may be reviewed.

We do command you that the aforesaid proceedings, together with all things touching and concerning the same and leading up to or in any way arising therefrom, to our Justices of the Supreme Court
10 of Judicature, at Trenton, on the 4th day of February next, you certify and send, together with this writ, that everything may be done what of right and according to the laws of this State, should be done.

Witness, WILLIAM S. GUMMERE, ESQUIRE, Chief Justice of our Supreme Court at Trenton, this 15th day of January, A. D. nineteen hundred and thirty-two.

JOSEPH H. CARR,
Attorney.

20 FRED L. BLOODGOOD,
Clerk.

[ENDORSED]

30 This writ is allowed; let it be sealed.
By the Court:

Joseph L. Bodine,
J. S. C.
Jany. 15th, 1932.

Affidavit

Case No. 3.

177 82/100

AFFIDAVIT.

NEW JERSEY SUPREME COURT.

10

DANIEL B. FRAZIER Co., a
corporation of New Jer-
sey,

Prosecutor,

v.

TOWNSHIP OF LONG BEACH,
in the County of Ocean,
a municipal corporation
of the State of New Jer-
sey; H. EARLE McCON-
NELL, Collector of Taxes
of the Township of Long
Beach, and AUGUSTUS L.
KEIL, Township Clerk of
the Township of Long
Beach,

Defendants.

20

On Certiorari.
Affidavit.

30

State of New Jersey, }
County of Camden, } ss.

WILLIAM N. MATTIX, being duly sworn according
to law, upon his oath deposes and says that:

Affidavit

1. He is secretary of Daniel B. Frazier Co., a New Jersey corporation, the prosecutor herein, and is the duly authorized agent of the corporation for the purpose of making this affidavit.

10 2. Said Daniel B. Frazier Co. is the owner of lands in the Township of Long Beach, in the County of Ocean and State of New Jersey, and is a taxpayer therein.

3. Daniel B. Frazier Co. is the owner of a certain tract of land in the Township of Long Beach, County of Ocean and State of New Jersey, conveyed to it by a deed dated April 26, 1926, from George W. Eavenson and Mary Eavenson, his wife, recorded May 4th, 1926, in the office of the Clerk of Ocean
20 County in Book 690 of Deeds, page 173, &c., and described in said deed as follows:

ALL that certain tract, piece or parcel of land situate, lying and being in the Township of Long Beach, County of Ocean, State of New Jersey as shown on a map entitled, "Map of part of the property of the Barnegat and Long Beach Improvement Co., Ocean County, New Jersey, January 1883, being a part of Inman Tract.

30 BEGINNING at a point the intersection of the line of high water of the Atlantic Ocean and the center line of North 47th Street as the same is shown on said Map and from thence running (1) northwesterly along the center line of North 47th Street fifteen hundred and ten feet, more or less, to the line of high water of a small cove

Affidavit

of Barnegat Bay and from thence running in a course generally southwesterly along the line of high water of said cove and said Bay its several courses and distances thereof, to the center of North 45th Avenue as the same is shown on said map, and from thence running southeasterly along the center line of North 45th Avenue as the same is shown on said map Twenty-two hundred feet more or less to the line of high water of the Atlantic Ocean and from thence running Northeasterly along the line of high water of the Atlantic Ocean about five hundred and thirty feet to the place of beginning. 10

CONTAINING nineteen and seventy-seven one-hundredths acres, more or less.

EXCEPTING AND RESERVING, thereout and therefrom, a strip of land sixty feet in width across said tract of land formerly reserved for a right of way of the Long Beach Railroad and also reserving two strips of land seventy feet in width upon each side of said right of way running from the center of North forty-seventh (47th) Street, being a part of the proposed station ground, at Bays Water station. The party of the first part however hereby conveys to the party of the second part whatever right, title and interest he may have, if any, in and to the aforesaid portions of land so reserved. 20 30

IT being the intention to convey all the land and all the right, title and interest therein to the party of the first part which were conveyed by the Barnegat and Long Beach Improvement

Affidavit

Company to the late Joseph W. Yates, deceased, by deed bearing date January 11th, 1886, and recorded on January 16th, 1886, in the Clerk's Office of Ocean County, at Toms River, N. J. in Book 141 of Deeds, page 233, &c., subject to the reservations in said deed.

10

4. On or about September 15, 1931, the Township of Long Beach, one of the defendants herein, filed a bill in the Court of Chancery of New Jersey, docket 86-303, for the purpose of foreclosing a tax sale certificate, dated December 24, 1928, recorded in the office of the Clerk of Ocean County on December 29, 1928, in Book 223 of Mortgages, page 82, &c. A copy of the said certificate of sale as the same appears of record is attached hereto and
20 marked "Exhibit A."

5. It is claimed in the Chancery suit aforesaid that the lands of prosecutor, above described in paragraph No. 3, are the lands covered by the tax sale certificate referred to in paragraph No. 4 hereof.

6. Prosecutor has filed an answer in said Chancery suit setting up that said sale referred to in
30 said certificate was ineffective, invalid and void, and that the certificate of sale sought to be foreclosed was ineffective, invalid and void, and under the terms of an Act of the State of New Jersey, being Chapter 202, Laws of 1925, prosecutor is required on the filing of such answer to proceed in this cause by writ of certiorari to review the legality of the

Affidavit

matters set up in the answer to said Chancery suit. Said answer was filed within time, subpoenas having been served upon the prosecutor on October 13, 1931.

7. Prosecutor has in its possession what purports to be a copy of the notice of sale referred to in the aforementioned Chancery proceedings, with certain additional matter printed therein. Deponent believes that this notice is a true copy of the notice of sale with the exception of such additional printed matter. Said copy attached hereto is marked "Exhibit B."

8. The answer filed by the prosecutor set forth the following defenses:

(a) The tax sale attempted to be made on November 19, 1928, and referred to in paragraph 2 of the bill of complaint was ineffective, invalid and void because of the fact that proper notice was not given of said sale and notice such as is required by the statute of the State of New Jersey in such cases made and provided was not given.

(b) The notice of sale given by the Township was defective in that it contained no statement of the year in which the taxes for which sale was to be held became due and payable. Said notice of sale was further defective in that it contained no statement of the rate of interest due on such taxes; said notice was defective in that it erroneously stated the amount of interest due July 1, 1928, upon such taxes and stated the amount of interest at an

Affidavit

excessive amount; and said notice was likewise defective in that it did not contain a description of the property to be sold at tax sale sufficient to identify the property proposed to be sold and did not contain a description of the property sufficient to inform the owner thereof of the claim made upon
10 the owner or upon the property of the owner and because said description was not sufficient to notify the members of the public as to what land was offered for sale for non-payment of taxes and that said description was not sufficient to enable a purchaser to procure a title thereby by said description and by reason of all of which said description was not sufficient to procure for the benefit of the owner the competitive bidding to which such owner was entitled, and because of all of which matters said
20 sale was ineffective, invalid and void.

(c) Said sale on November 19, 1928, was ineffective, invalid and void because the notice thereof was not set up in five of the most public places in the municipality of Long Beach and a copy of such notice was not published in a newspaper circulating in said municipality once in each of the four calendar weeks preceding the day of the sale.

30 (d) Said sale on November 19, 1928, was ineffective, invalid and void because there was never made up the list referred to in Sections 17, 18, 23 and 26 of an Act known as the Tax Sale Revision of 1918, being Chapter 237 of the Laws of 1918 and the amendments and supplements thereto, and as otherwise required by the said Act; nor were any of the

Affidavit

matters and things required under the terms of such statute and the amendments and supplements thereto to be done in connection with such list by way of record of such sale ever done or performed.

(e) Said sale on November 19, 1928, was ineffective, invalid and void because of the absence of any record of any nature or kind and the absence of the record required by the said Tax Sale Revision Act, its amendments and supplements, with respect to the proceedings leading up to said sale or the said sale itself or matters transpiring after the sale. 10

(f) Said sale on November 19, 1928, was ineffective, invalid and void because the lands sold at said sale were not described sufficiently to identify the same, nor to inform the owner thereof of the property sold, or to enable the purchaser thereof to procure title thereby by said description and was not sufficient to notify the members of the general public as to what land was offered for sale, and was not sufficient to induce competitive bidding for such premises. 20

(g) Said sale on November 19, 1928, was ineffective, invalid and void because it attempted thereby to sell for taxes for the year 1927 subject to municipal liens accruing after July 1, 1927, whereas, as a matter of fact, the taxes for the year 1927 did not accrue as municipal liens until December 1, 1927, and, therefore, the attempt was made to sell for 1927 taxes subject to 1927 taxes. 30

Affidavit

(h) The certificate of sale referred to in paragraph 5 of the bill was ineffective, invalid and void because it does not contain a description of the property purported to be sold thereby sufficient to identify the said property and does not contain a description of the property sufficient to inform the owner thereof that his property was sold for taxes and because said description is not sufficient to enable the purchaser to procure title by said description.

(i) The certificate of sale referred to in paragraph 5 of the bill was ineffective, invalid and void because there is no showing therein or statement therein that there were no other bidders for such property than the Township of Long Beach. Said certificate was ineffective, invalid and void because the same does not set forth the name of the owner of the property proposed to be sold as required by the laws of the State of New Jersey applicable thereto.

(j) The certificate of sale referred to in paragraph 5 of the bill was ineffective, invalid and void because, while it therein is stated that said sale was for taxes for the year 1927, it is also therein stated that the said sale is subject to municipal liens accruing after July 1, 1927, and taxes for the year 1927 did not accrue as municipal liens until December 1, 1927, and said certificate, therefore, purports to sell for 1927 taxes and subject to said taxes.

(k) The certificate of sale referred to in para-

Affidavit

graph 5 of the bill was ineffective, invalid and void because the said sale was invalid for the reasons set forth in paragraphs a to g, inclusive, set forth hereinabove.

9. After the filing of said answer, notice was given to the Township of Long Beach that an application would be made for a bill of particulars, and on November 17th, 1931, an order was made directing the Township of Long Beach to furnish the prosecutor with certain particulars. Bill of particulars was furnished by the Township of Long Beach, but the same did not cover all of the matters called for by the order in the Court of Chancery and an additional bill of particulars was furnished the prosecutor on December 9th, 1931. In said bill of particulars it is stated that no resolution has been passed by the Township Committee of the Township of Long Beach, fixing the rate of interest to be charged on delinquent or unpaid taxes. 10 20

10. Deponent is advised that the defenses interposed are sound in law and believes same can be substantiated by the evidence, but the evidence necessary to be produced to a large extent is under the control of the Township of Long Beach, and, therefore, the prosecutor cannot attach hereto affidavits of persons familiar with all of the facts as to the situation and will have to rely upon examination of witnesses under subpoena in proceedings taken herein. 30

11. Daniel B. Frazier Co. prays that a writ of

Affidavit

certiorari may be allowed to review the validity of the aforementioned sale and of the certificate issued thereunder and of the proceedings to sell such lands, and also all matters and things touching and concerning the same and leading up to and in any way arising therefrom.

10

WILLIAM N. MATTIX.

Sworn and subscribed before me this 11th day of December, A. D. 1931.

EARLE W. WESCOTT,
Notary Public of N. J.

EXHIBIT "A."

20

H. Earle McConnell, Coll.

To

Twp. of Long Beach

I, H. EARLE McConnell, Collector of Taxes of the Taxing District of Long Beach, in the County of Ocean, State of New Jersey, do hereby certify that at a sale at public auction for unpaid municipal liens, duly held by me on November 19, 1928,
30 pursuant to the provisions of an act of the Legislature of the State of New Jersey entitled, "An Act concerning unpaid taxes, assessments and other municipal charges on real property, and providing for the collection thereof by the creation and enforcement of liens thereon (Revision of 1918)," and the acts supplementary thereto and amendatory

Affidavit

thereof, I sold in fee, to the Township of Long Beach, for \$115.51, the lands in said municipality described as:

12 36/100 Acres, South of Harvey Cedars, on the tax duplicate of said municipality and assessed thereon to George W. Evenson, as owner.

THE AMOUNT of sale was made up of the following items:

Taxes (1927)	\$105.86
Interest	6.23
Costs	3.42

Total	\$115.51
-------	----------

SAID sale is subject to redemption on repayment of the amount of the sale, together with interest thereon at the rate of eight per centum per annum from the date of sale, and the costs incurred by the purchaser. Said sale is subject only to municipal liens accruing after July 1, 1927. 20

THE right to redeem will expire in SIX MONTHS after the service of notice to redeem, except that the right to redeem shall in all cases extend for TWO YEARS from the date of sale.

WITNESS my hand and seal this 24th day of December, nineteen hundred and twenty-eight.

H. Earle McConnell (L.S.)
Collector of Taxes of the 30
Township of Long Beach.

WITNESS:

Edwin G. Scovel

Affidavit

STATE OF NEW JERSEY }
COUNTY OF CAMDEN } ss

BE IT REMEMBERED, that on this 24th day of December, 1928, before me, a *a* Master in Chancery of New Jersey, personally appeared H.
10 EARLE McCONNELL, Collector of Taxes of the Township of Long Beach, in the County of Ocean and State of New Jersey, who, I am satisfied is the person named in and who executed the above certificate of tax sale; 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 deed, for the uses and purposes therein expressed.

Edwin G. Scovel

20

A Master in Chancery of
New Jersey

Received and Recorded December 29, 1928: 9:15
A. M.

John A. Ernst, Clerk.

STATE OF NEW JERSEY }
COUNTY OF OCEAN } ss

30

I, JOHN A. ERNST, Clerk of the said County of Ocean, do hereby certify that the foregoing is a true, full and correct copy of a certain CERTIFICATE OF TAX SALE, recorded in my office in Book No. 223 of Mortgages, page No. 82 &c.

Affidavit

(SEAL) IN TESTIMONY WHEREOF, I have
hereunto set my hand and affixed the
official seal of said County at Toms
River, this Eleventh day of July, A. D.,
1931.

John A. Ernst

County Clerk of Ocean County 10

BY: LeRoy Grant

Deputy Clerk

Official

D 6

SALE OF LAND IN THE TOWNSHIP OF LONG BEACH OCEAN COUNTY, NEW JERSEY

PUBLIC NOTICE IS HEREBY GIVEN that the subscriber, Collector of Taxes of the Township of Long Beach, Ocean County, New Jersey, pursuant to the statute, will on

MONDAY, NOVEMBER 19, 1928

at the hour of 1 o'clock p. m., at the Township Hall, 16th Street and the Boulevard, at North Beach Haven in said Township, expose to public sale and sell to such person or persons as will purchase the same, subject to redemption at the lowest rate of interest or at the highest premium without interest, and pay the tax liens thereon including interest and costs, each of the parcels of lands in the Township of Long Beach, together with the tenements and hereditaments thereunto belonging, as described below.

No lands will be sold subject to redemption at a rate of interest higher than eight per centum per annum. Payment for lands purchased must be made before the conclusion of the sale or the lands will be immediately resold.

The parcels of lands and real estate to be sold; the names of the persons against whom the same are assessed as owners; and the amount of the delinquent taxes, together with interest to July 1, 1928, and costs thereon, are as follows:

		Tax.	Int.	Cost	Total	
<i>Paid</i> <i>10/31/28.</i>	La Rue Clayton, 10 Acres Part of McKinney tract south of Peahala, 1927.....	\$185.25	\$10.91	\$3.42	\$199.58	<i>Paid off</i>
<i>T</i>	George W. Evenson, 12 36-100 acres South of Harvey Cedars, 1927.....	105.86	6.23	3.42	115.51	
<i>T</i>	Daniel B. Frazier Co. South of Harvey Cedars, formerly R. R. property 18 35-100 A., 1927.....	95.27	5.61	3.42	104.30	
<i>T</i>	Daniel B. Frazier Co. 177 82-100 acres Sea Breeze tract, adjoining Surf City, 1927.....	2823.40	166.27	3.42	2993.09	
<i>T</i>	Daniel B. Frazier Co. 486.01 acres Between Harvey Cedars and Bar- negat City 1 house, 1927.....	7743.90	456.03	3.42	8203.35	
<i>T</i>	Daniel B. Frazier 24 52-100 acres Formerly Cassidy Est., 1927.....	389.32	22.93	3.42	415.67	
<i>Paid</i> <i>10/30/28</i> <i>Paid</i> <i>11/9/28</i>	Brant Beach Realty Co.—Brant Beach Block 7, lots 39-40, 1 house, 1927.....	99.00	2.01	0.42	99.43	<i>Paid off.</i>
<i>Paid</i> <i>11/6/28</i>	Brant Beach Realty Co.—Brant Beach From South line of Hardenberg tract to north line of Beach Haven Crest, Ocean to bay 47 acres, 1927.....	435.32	34.34	3.42	473.08	
<i>Paid</i> <i>11/9/28</i>	Brant Beach Realty Co.—Brant Beach West of R. R. from 31st St. to Beardslee ave. 24 39-100 acres 1927.....	158.78	12.53	3.42	174.73	
<i>Paid</i> <i>11/9/28</i>	Walter Cullen—Brant Beach Sec. A. A. block I, lot 22, 1927.....	5.30	.31	3.42	9.03	
<i>Paid</i> <i>11/9/28</i>	Joseph H. McGregor—Brant Beach Sec. A. blk. 6, lot 23, 1927.....	6.62	.39	3.42	10.43	
<i>Paid</i> <i>11/6/28</i>	Samuel H. Burkhart—Beach Haven Crest Block 26, lots 24-35, 1927.....	7.94	.47	3.42	11.83	
	James McMurray, Inc.—Beach Haven Crest Block 19, lots 15-17-19-20-23-25-26 Block 19, lots 31-32-33-34-35-36 Block 20, lots 1-7-9-11-13-15-19-21- 23-25 Block 20, lots 27-29-34-35-36.....					
	Block 26, lots 1-2-3-5-6-7-8-9-10-11 12-13-14-15-16-17-18-19-22-26-28- 29-30-31-41.....					
	Block 27, lots 1-2-3-4-9-11-13-15-17 -19-21-23-25, 1927.....	63.52	5.01	3.42	71.95	
<i>Paid</i> <i>11/9/28</i>	Harry M. Ellis—Beach Haven Crest Block 12, lots 16-18-20-22.....	25.72	1.51	3.42	30.65	
<i>T</i>	Domenico Frederico—Beach Haven Crest Block 9, lots 21-23 and part of 22- 24, 1927.....	23.82	1.40	3.42	28.64	

SALE OF LAND

IN THE TOWNSHIP OF LONG BEACH

OCEAN COUNTY, NEW JERSEY

PUBLIC NOTICE IS HEREBY GIVEN that the subscriber, Collector of Taxes of the Township of Long Beach, Ocean County, New Jersey, pursuant to the statute, will on

MONDAY, NOVEMBER 19, 1928

at the hour of 1 o'clock p. m., at the Township Hall, 16th Street and the Boulevard, at North Beach Haven in said Township, expose to public sale and sell to such person or persons as will purchase the same, subject to redemption at the lowest rate of interest or at the highest premium without interest, and pay the tax liens thereon including interest and costs, each of the parcels of lands in the Township of Long Beach, together with the tenements and hereditaments thereunto belonging, as described below.

No lands will be sold subject to redemption at a rate of interest higher than eight per centum per annum. Payment for lands purchased must be made before the conclusion of the sale or the lands will be immediately resold.

The parcels of lands and real estate to be sold; the names of the persons against whom the same are assessed as owners; and the amount of the delinquent taxes, together with interest to July 1, 1928, and costs thereon, are as follows:

—RESULT OF TAX SALE—

BOUGHT IN BY THE TOWNSHIP OF LONG BEACH:—

	Tax.	Int.	Cost	Total
George W. Evenson, 12 36-100 acres South of Harvey Cedars, 1927	105.86	6.23	3.42	115.51
Daniel B. Frazier Co. South of Harvey Cedars, formerly R. R. property 18 35-100 A., 1927	95.27	5.61	3.42	104.30
Daniel B. Frazier Co. 177 82-100 acres Sea Breeze tract, adjoining Surf City, 1927	2823.40	166.27	3.42	2993.09
Daniel B. Frazier Co. 486.01 acres Between Harvey Cedars and Bar- negat City 1 house, 1927	7743.90	456.03	3.42	8203.35
Daniel B. Frazier 24 52-100 acres Formerly Cassidy Est., 1927	389.32	22.93	3.42	415.67
Samuel H. Burkhart—Beach Haven Crest Block 26, lots 24-35, 1927	7.94	.47	3.42	11.83
Domenico Frederico—Beach Haven Crest Block 9, lots 21-23 and part of 22- 24, 1927	23.82	1.40	3.42	28.64
Rev. Francis P. Haltgreve—Beach Haven Crest Block 20, lot 6, 1927	3.97	.24	3.42	7.63
J O. Huber—Beach Haven Crest Block 20, lots 31-32-33, 1927	11.91	.70	3.42	16.03
I. Santaro—Beach Haven Crest Block 12, lot 6, 1927	6.62	.39	3.42	10.43
Leroy L. Vennell—Beach Haven Crest Block 31, lots 7-8, 1927	7.94	.47	3.42	11.83
Ellis L. Goodall—Brighton Beach Blk. 447, lots 22-23-24, 1927	15.88	.93	3.42	20.23
Harry F. Reinhardt—Brighton Beach Block 437, lots 14-15 Block 447, lots 4-5, 1927	14.56	.86	3.42	18.84
Wallace Royles—Beach Haven Terrace Tract 1, sec. D. lot 53, 1927	3.97	.24	3.42	7.63
Alex. R. Schuler—Beach Haven Terrace Tract 2, sec. D. lot 30, 1927	5.30	.31	3.42	9.03
Martin Wida—Beach Haven Terrace Tract 1, section A. lots 3-4 1 hotel 1927	116.44	6.86	3.42	126.72
Spray Beach Hotel Co.—Spray Beach Blk. E. lots 2-3, hotel annex and public garage, 1927	100.56	5.92	3.42	109.90
Spray Beach Hotel Co.—Spray Beach Blk. B. lots 1-2-3-4-5-6-7-8, Hotel Store, Poolroom, Apt. House and Engine House, 1927	449.88	26.49	3.42	479.79
Spray Beach Hotel Co.—Spray Beach Blk. H. lot 18, 1 garage, 1927	26.47	1.54	3.42	31.43
G. Earle Vogels—Spray Beach Blk. F. lots 1-2-3 and part of 6, 1 apartment house, 1927	230.23	13.56	3.42	247.21
James L. Heap Jr.—North Beach Haven Block 12, lot 16, 1927	5.30	.31	3.42	9.03
Realty Mart—North Beach Haven Block 6, lots 1 to 22 inc., 1927	116.44	6.86	3.42	126.72
Realty Mart—North Beach Haven Block F. lots 1 to 20 inc., 1927	105.86	6.23	3.42	115.51
Anthony Murphy—Beach Haven Heights Block 20, lots 36-38, 1927	5.30	.31	3.42	9.03
Dr. Mary E. Allen—St. Albans Sec. A. blk. 26, lots 1-3, 1927	1.33	.08	3.42	4.83
Albert L. Bemis—St. Albans Sec. B. blk. 47, lots 18-20, 1927	1.33	.08	3.42	4.83
Catherine A. Cole—St. Albans Sec. A. blk. 44, lot 25, 1927	.67	.05	3.42	4.14
Leora M. Dempsey—St. Albans Sec. B., blk. 78, lot 7, 1927	.67	.05	3.42	4.14
Jennie G. Felton—St. Albans Sec. B., blk. 40, lot 23, 1927	.67	.05	3.42	4.14
John L. Floyd—St. Albans Sec. A. blk. 34, lot 3 Sec. A. blk. 35, lots 6-7 Sec. A. blk. 36, lots 3-4, 1927	3.31	.20	3.42	6.93
Jos. S. Jacobowski—St. Albans Sec. B. blk. 52, lot 16, 1927	.67	.05	3.42	4.14
Minnie L. Joyce—St. Albans Sec. A. blk. 44, lot 6, 1927	.67	.05	3.42	4.14
Chas. N. Lang—St. Albans Sec. A. Blk. 12, lot 7, 1927	.67	.05	3.42	4.14
Florence M. Lloyd—St. Albans Sec. A., Blk. 44, Lots 1-2, 1927	1.33	.08	3.42	4.83
Walter E. Mallory—St. Albans Sec. B., Blk. 44, Lot 15, 1927	.67	.05	3.42	4.14
Dr. John Mellor Est.—St. Albans Sec. A., Blk. 61, Lot 7, 1927	.67	.05	3.42	4.14

Albany
Tax .67
Int. .05
Cost 3.42
Total 4.14

	Tax	Int.	Cost	Total
John F. Murray—St. Albans				
Sec. B., Blk. 106, Lot 16, 1927	.67	.05	3.42	4.14
Dr. James G. McCollen—St. Albans				
Sec. A., Blk. 29, Lots 15-17, 1927	1.33	.08	3.42	4.83
Marie F. O'Connor—St. Albans				
Sec. A., Blk. 19, Lot 32, 1927	.67	.05	3.42	4.14
Harry L. Overton—St. Albans				
Sec. A., Blk. 57, Lot 12, 1927	.67	.05	3.42	4.14
W. Scott Prickett—St. Albans				
Sec. A., Blk. 11, Lots 16-18, 1927	1.33	.08	3.42	4.83
Samuel Rawlinson—St. Albans				
Sec. A., Blk 57, Lots 4-5-7-9-11-13				
Sec. A., Blk. 36, Lots 5-7-9-11, 1927	6.62	.39	3.42	10.43
Dr. Wm. J. Ritter—St. Albans				
Sec. A., Blk 11, Lots 31-33, 1927	1.33	.08	3.42	4.83
Wm. E. Salmick—St. Albans				
Sec. A., Blk. 16, Lot 29, 1927	.67	.05	3.42	4.14
Herman R. Soder—St. Albans				
Sec. A., Blk. 16, Lot 17, 1927	.67	.05	3.42	4.14
Albert H. Weller—St. Albans				
Sec. A., Blk. 57, Lot 10, 1927	.67	.05	3.42	4.14
St. Albans Improvement Co.—St. Albans				
Sec. A., Blk. 3, Lot 5.				
Sec. A., Blk. 4, Lots 1 to 25, inc.				
Sec. A., Blk. 5, Lots 7-9 to 25 inc., 27.				
Sec. A., Blk. 6, Lots 15-17-18-19-20-22-24				
Sec. A., Blk. 6, Lots 25-26-27				
Sec. A., Blk. 7, Lot 26.				
Sec. A., Blk. 11, Lots 15-17.				
Sec. A., Blk. 13, Lot 29.				
Sec. A., Blk. 14, Lots 17-19-21-23-25.				
Sec. A., Blk. 16, Lots 7-10-11-14-16-31.				
Sec. A., Blk. 19, Lot 39.				
Sec. A., Blk. 20, Lots 10-12-22-23.				
Sec. A., Blk. 23, Lot 29.				
Sec. A., Blk. 24, Lot 26.				
Sec. A., Blk. 29, Lots 6-31-33.				
Sec. A., Blk. 36, Lot 13.				
Sec. A., Blk. 37, Lot 27.				
Sec. A., Blk. 40, Lot 8.				
Sec. A., Blk. 41, Lots 23-25.				
Sec. A., Blk. 42, Lot 29.				
Sec. A., Blk. 45, Lots 22-24.				
Sec. A., Blk. 59, Lots 1-15.				
Sec. A., Blk. 62, Lots 7-8.				
Sec. B., Blk. 34, Lots 5-6-7.				
Sec. B., Blk 38, Lot 6.				
Sec. B., Blk. 39, Lots 12-21.				
Sec. B., Blk 40, Lots 6-16.				
Sec. B., Blk 44, Lots 1-2-16-18-19.				
Sec. B., Blk. 44, Lots 20-21-23-25.				
Sec. B., Blk. 47, Lots 5-14-24.				
Sec. B., Blk. 51, Lots 19-21-23.				
Sec. B., Blk. 52, Lots 8-9-10-11-12-13				
Sec. B., Blk. 52, Lots 14-15-18-20-22.				
Sec. B., Blk. 56, Lots 2-3-5-7-9-11-13-17.				
Sec. B., Blk. 56, Lots 19-21-22-23.				
Sec. B., Blk. 59, Lots 11-12-13-14.				
Sec. B., Blk. 60, Lots 1 to 13 inc., 15.				
Sec. B., Blk. 62, Lots 10-11-12-13-14-16-18.				
Sec. B., Blk. 63, Lots 11-12-20-22-24.				
Sec. B., Blk. 64, Lots 1-2-3-4-5.				
Sec. B., Blk. 66, Lots 6-8-10-12-14-16-18.				
Sec. B., Blk. 66, Lots 20-21-22-23-24-25-26.				
Sec. B., Blk. 67, Lots 1 to 18 inc.				
Sec. B., Blk. 68, Lots 18-19-20-21-22-23.				
Sec. B., Blk. 72, Lots 16-18-22-24-26.				
Sec. B., Blk. 74, Lot 12.				
Sec. B., Blk. 76, Lots 12-14-15-16-17-18-19-20-22				
Sec. B., Blk. 77, Lots 2-10-22.				
Sec. B., Blk. 81, Lots 4 to 16 inc.				
Sec. B., Blk. 82, Lots 1-2-4-5-7-8-9-10.				
Sec. B., Blk. 83, Lots 10-13-15-17.				
Sec. B., Blk. 87, Lots 22.				
Sec. B., Blk. 88, Lots 9-11-12-13-14.				
Sec. B., Blk. 93, Lots 2-10-16-17-19.				
Sec. B., Blk. 94, Lot 8.				
Sec. B., Blk. 99, Lots 6-8.				
Sec. B., Blk. 101, Lots 5-7 to 12 inc.				
Sec. B., Blk. 105, Lots 14-15-16-17-18.				
Sec. B., Blk. 108, Lots 11-13.				
Sec. B., Blk 116, Lots 2-3-5-7-8-9-10-13.				
Sec. B., Blk. 120, Lots 1 to 11 inc., 13.				
Sec. B., Blk. 130, Lots 15 to 20 inc., 24.				
For the year 1922	85.21	39.00		
For the year 1923	91.33	34.00		
For the year 1924	117.37	35.00		
For the year 1925	145.64	32.00		
For the year 1926	157.02	23.00		
For the year 1927	204.98	14.00	30.00	1008.55

BOUGHT IN BY ELLEN C. FORD—No Interest

315 Spruce St., Philadelphia, Pa.				
John F. Ford—Beach Haven Crest				
Block 11, lot 40, 1927.....	6.62	.39	3.42	10.43

BOUGHT IN BY ANDREW V. HIBBS—8% Interest

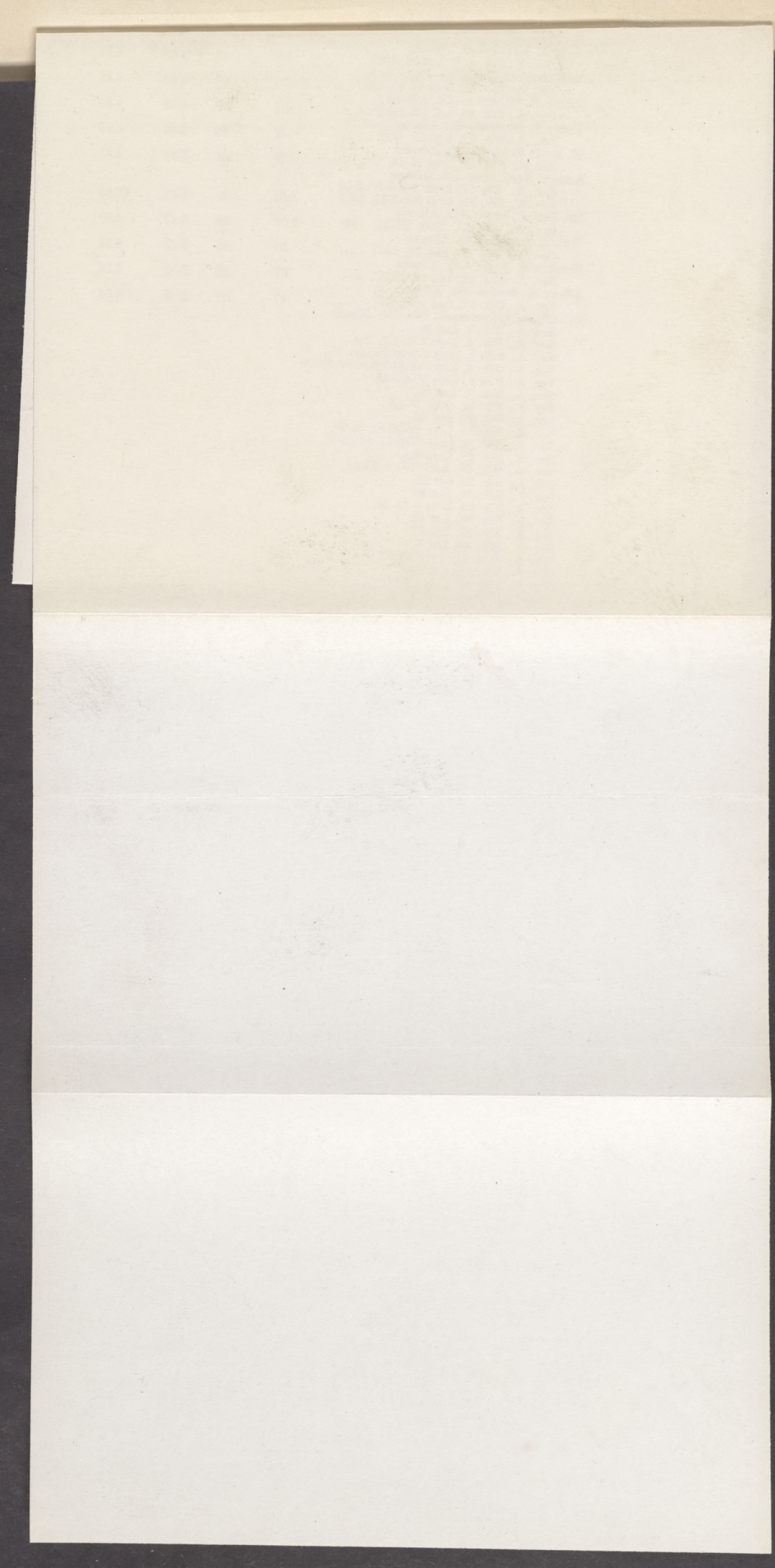
Beach Haven Terrace, N. J.				
Joseph Coyle—Beach Haven Terrace				
Tract 1, sec. A., lot 43, 1927	6.62	.39	3.42	10.43
Jessie McElroy—Beach Haven Terrace				
Tract 1, sec. A. lot 32, 1927.....	5.30	.31	3.42	9.03

This sale is made under the provisions of an Act of the Legislature known as the "Tax Sale Revision," being Chapter 237, P. L. 1918, and the several Acts amendatory thereof and supplemental thereto.

Any of the aforesaid parcels of lands and real estate may be redeemed by the owner prior to the sale by payment of the amount due thereon for taxes, interest and costs.

Dated: October 24, 1928.

H. EARLE McCONNELL,
Collector of Taxes of the Township
of Long Beach.



Order

Case No. 3.

177 82/100

ORDER.

10

NEW JERSEY SUPREME COURT.

DANIEL B. FRAZIER Co., a
corporation of New Jer-
sey,

Prosecutor,

v.

TOWNSHIP OF LONG BEACH,
in the County of Ocean,
a municipal corporation
of the State of New Jer-
sey; H. EARLE McCON-
NELL, Collector of Taxes
of the Township of Long
Beach, and AUGUSTUS L.
KEIL, Township Clerk of
the Township of Long
Beach,

Defendants.

On Certiorari.
Order.

20

30

This matter being opened to the Court by Howard
Ewart, attorney for defendants, and it appearing

Order

that on the 15th day of January, 1932, an allocatur was made to a writ of certiorari in the above-entitled matter, which said writ of certiorari was made returnable on the 4th day of February, 1932;

And cause being shown:

10 It is, on this 2nd day of February, 1932, ordered that the return day of the writ of certiorari in this matter be extended to the 15th day of February, 1932.

J. L. BODINE,
Judge, Supreme Court.

I hereby consent to the entry of the above order.

20 JOSEPH H. CARR,
Attorney for Prosecutor.

Notice

Case No. 3.

177 82/100

NOTICE.

NEW JERSEY SUPREME COURT.

10

DANIEL B. FRAZIER Co., a
corporation of New Jer-
sey,

Prosecutor,

v.

TOWNSHIP OF LONG BEACH,
in the County of Ocean,
a municipal corporation
of the State of New Jer-
sey; H. EARLE McCON-
NELL, Collector of Taxes
of the Township of Long
Beach, and AUGUSTUS L.
KEIL, Township Clerk of
the Township of Long
Beach,

Defendants.

20

On Certiorari.
Notice.

30

To Joseph H. Carr, Attorney for Prosecutor:

Sir:

Please take notice that on Monday, the 15th day
of February, 1932, at ten o'clock in the forenoon, or

Notice

as soon thereafter as counsel can be heard thereon,
at the State House in the City of Trenton, I shall
apply to his Honor, Joseph L. Bodine, Justice of
the Supreme Court, for a rule in the above-entitled
cause, vacating the allocatur on the writ of certi-
orari issued in this matter, on the following
10 grounds:

(1) That the prosecutor is in laches.

(2) That the tax sale proceeding, the legality of
which was questioned by the prosecutor, was valid.

(3) That the affidavit filed in this matter, under
which the allocatur to the writ of certiorari was
made, does not disclose reasonable cause for the is-
20 suance of the writ of certiorari.

Dated February 5, 1932.

HOWARD EWART,
Attorney for Defendants.

[ENDORSED]

30

Service of the within Notice is
hereby acknowledged this 6th day of
February, 1932.

Joseph H. Carr,
Attorney for Prosecutor.

Notice of Taking Depositions

Case No. 3.

177 82/100

NOTICE OF TAKING DEPOSITIONS.

NEW JERSEY SUPREME COURT.

10

DANIEL B. FRAZIER Co., a
corporation of New Jer-
sey,

Prosecutor,

v.

TOWNSHIP OF LONG BEACH,
in the County of Ocean,
a municipal corporation
of the State of New Jer-
sey; H. EARLE McCON-
NELL, Collector of Taxes
of the Township of Long
Beach, and AUGUSTUS L.
KEIL, Township Clerk of
the Township of Long
Beach,

Defendants.

On Certiorari.
Notice of Taking
Depositions.

20

30

To Joseph H. Carr, Attorney for Prosecutor:

Sir:

Please take notice that depositions to be read on
the hearing of the motion to vacate the allocatur on

Notice of Taking Depositions

the writ of certiorari issued in this matter will be taken before the Honorable George C. Low, a Supreme Court Commissioner, at his office in the Veeder Building, Main Street, Toms River, New Jersey, on Thursday, the 11th day of February, 1932, at 10:00 o'clock in the forenoon.

10 Dated February 6, 1932.

Yours respectfully,

HOWARD EWART,
Attorney for Defendants.

[ENDORSED]

20

Service of the within Notice is hereby acknowledged this 6th day of February, 1932.

Joseph H. Carr,
Attorney for Prosecutor.

30

Depositions

Case No. 3.

177 82/100

DEPOSITIONS.

The depositions taken in this matter were taken in four other cases at the same time. These depositions are printed in the State of the Case in the case marked No. 1, 12 36/100.

Order Vacating Allocatur

Case No. 3.

177 82/100

10

ORDER VACATING ALLOCATUR.

NEW JERSEY SUPREME COURT.

DANIEL B. FRAZIER Co., a
corporation of New Jersey,

Prosecutor,

v.

20

TOWNSHIP OF LONG BEACH,
in the County of Ocean,
a municipal corporation
of the State of New Jersey;
H. EARLE McCONNELL, Collector of Taxes
of the Township of Long Beach,
and AUGUSTUS L. KEIL, Township Clerk of
the Township of Long Beach,

30

Defendants.

On Certiorari.
Order Vacating
Allocatur.

This matter being opened to the Court by Howard Ewart, attorney for defendants, and Joseph H. Carr,

Order Vacating Allocatur

appearing as attorney for prosecutor, on motion to vacate the allocatur to a writ of certiorari in this cause allowed January 15th, 1932, and returnable February 4th, 1932; and it appearing that by order of this Court made February 2nd, 1932, the return day of the writ of certiorari was extended to February 15th, 1932; and the Court having considered 10 the depositions and evidence returned in support of the motion and having heard the arguments of counsel, and being of the opinion that the allocatur should be returned in support of the motion and having heard the arguments of counsel, and being of the opinion that the allocatur should be vacated;

It is, on this fifteenth day of February, 1932, ordered that the allocatur to the writ of certiorari allowed on January 15th, 1932, be and the same is hereby vacated, without prejudice to a renewal there- 20 of before the Court.

J. L. BODINE,
J. S. C.

Notice

Case No. 3.

177 82/100

10

NOTICE.

NEW JERSEY SUPREME COURT.

DANIEL B. FRAZIER Co., a
corporation of New Jer-
sey,

Prosecutor,

v.

20

TOWNSHIP OF LONG BEACH,
in the County of Ocean,
a municipal corporation
of the State of New Jer-
sey; H. EARLE MCCON-
NELL, Collector of Taxes
of the Township of Long
Beach, and AUGUSTUS L.
KEIL, Township Clerk of
the Township of Long
Beach,

30

Defendants.

On Certiorari.
Notice.

*To Howard Ewart, Esquire, Attorney for Defen-
dants:*

Notice

Sir:—

Take notice that I shall apply to part No. 2 of the New Jersey Supreme Court on Wednesday, March 2, 1932, at one o'clock in the afternoon, or as soon as the matter can be heard on that day, at the State House Annex in Trenton, for a rule requiring the defendants above-named to show cause why the writ of certiorari allowed on January 15, 1932, should not be renewed by the said Court, or in the alternative, shall apply for a rule to show cause why a writ of certiorari should not issue to review the matters set forth in the writ of certiorari issued on January 15, 1932. 10

Respectfully,

JOSEPH H. CARR,

Attorney for Prosecutor.

Dated: Camden, N. J.

February 25, 1932.

20

[ENDORSED]

Service of the within notice is hereby acknowledged this 25th day of February, A. D. 1932.

30

.....,
Attorney for Defendants.

Case No. 3.

177 82/100

10

ORDER.

NEW JERSEY SUPREME COURT.

DANIEL B. FRAZIER Co., a
corporation of New Jer-
sey,

Prosecutor,

v.

20

TOWNSHIP OF LONG BEACH,
in the County of Ocean,
a municipal corporation
of the State of New Jer-
sey; H. EARLE MCCON-
NELL, Collector of Taxes
of the Township of Long
Beach, and AUGUSTUS L.
KEIL, Township Clerk of
the Township of Long
Beach,

30

Defendants.

On Certiorari.
Order.

The prosecutor herein having given notice to the
defendants of an application to be made March 2,

Order

1932, for a rule requiring the defendants to show cause why the writ of certiorari allowed on January 15, 1932, should not be removed, or in the alternative, that the prosecutor would apply for a rule to show cause why a writ of certiorari should not issue to review the matters set forth in the writ of certiorari issued on January 15, 1932; and it appearing to the Court that the order vacating the allocatur on the said writ of certiorari provided that the same was without prejudice to a renewal thereof before the Court, and that an appeal was taken from the order vacating the allocatur, by notice duly filed; and the Court having heard Joseph H. Carr, attorney for the prosecutor, for the motion under the notice aforesaid, and Howard Ewart, for the defendant, opposed; and the Court being of the opinion that in view of the said appeal the Court is without jurisdiction to act upon the motion of March 2, 1932, and is without jurisdiction to grant the relief applied for;

It is, as of March 2, 1932, ordered that the motion of the prosecutor be and the same is hereby denied with costs.

By the Court,

THOMAS W. TRENCHARD,

J. S. C.

Notice of Appeal

Case No. 3.

177 82/100

NOTICE OF APPEAL.

10 NEW JERSEY SUPREME COURT.

DANIEL B. FRAZIER Co., a
corporation of New Jer-
sey,

Prosecutor,

v.

20 TOWNSHIP OF LONG BEACH,
in the County of Ocean,
a municipal corporation
of the State of New Jer-
sey; H. EARLE McCON-
NELL, Collector of Taxes
of the Township of Long
Beach, and AUGUSTUS L.
KEIL, Township Clerk of
the Township of Long
Beach,

Defendants.

On Certiorari.
Notice of Appeal.

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*To Howard Ewart, Esquire, Attorney for the Defen-
dants, Township of Long Beach; H. Earle Mc-
Connell, Collector of Taxes of the Township of
Long Beach, and Augustus L. Keil, Township
Clerk of the Township of Long Beach:*

Notice of Appeal

Sir:

Please take notice that the prosecutor in the above matter hereby appeals to the Court of Errors and Appeals from the whole of the judgment entered in the above-stated cause on the following ground:

1. The Supreme Court erred in its order vacating 10
the allocatur to the writ of certiorari allowed on
January 15, 1932.

Respectfully,
JOSEPH H. CARR,
Attorney for and of Counsel with
Daniel B. Frazier Co.

Dated February 23, 1932.

20

[ENDORSED]

Service of the within notice is hereby
acknowledged this 24th day of Feb-
ruary, A. D. 1932.

Howard Ewart,
Attorney for Township of Long
Beach, H. Earle McConnell,
Collector of Taxes of the
Township of Long Beach, and
Augustus L. Keil, Township
Clerk of the Township of Long
Beach.

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Grounds of Appeal

Case No. 3.

177 82/100

GROUNDS OF APPEAL.

10 NEW JERSEY COURT OF ERRORS AND
APPEALS.

DANIEL B. FRAZIER Co., a
corporation of New Jer-
sey,

*Prosecutor-
Appellant,*

v.

20 TOWNSHIP OF LONG BEACH,
in the County of Ocean,
a municipal corporation
of the State of New Jer-
sey; H. EARLE MCCON-
NELL, Collector of Taxes
of the Township of Long
Beach, and AUGUSTUS L.
KEIL, Township Clerk of
the Township of Long
30 Beach,

*Defendants-
Respondents.*

On Certiorari.
On Appeal.
Grounds of Appeal.

The appellant states the following ground of ap-
peal in this cause:

Grounds of Appeal

The Supreme Court erred in giving judgment for the defendants instead of for the prosecutor, and in vacating the allocatur and dismissing the writ of certiorari.

JOSEPH H. CARR,
Attorney for Prosecutor-
Appellant. 10

[ENDORSED]

Service of the within grounds of appeal is hereby acknowledged this 9th day of May, A. D. 1932.

Howard Ewart, 20
 Atty. for Defendants-
 Respondents.

Opinion

Case No. 3.

177 82/100

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OPINION.

(Filed Mar. 28, 1932.)

NEW JERSEY SUPREME COURT.

20	DANIEL B. FRAZIER Co., a corporation of New Jer- sey, <i>Prosecutor,</i> v. TOWNSHIP OF LONG BEACH, in the County of Ocean, <i>et als.,</i> <i>Defendants.</i>	}	Memorandum. (not for print in the official or unofficial reports)
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ON MOTION TO VACATE ALLOCATUR.

For the motion, HOWARD EWART.
Contra, JOSEPH H. CARR.

Opinion

BODINE, J.:

For all practical purposes all five cases involving the taxation of lands of the Daniel B. Frazier Company in Long Beach Township, Ocean County, New Jersey, stand on the same footing and are here dealt with.

The Township of Long Beach filed five separate 10
bills in equity to foreclose certain tax sale certificates acquired in December of 1928, covering lands of the prosecutor which had been sold pursuant to law for unpaid taxes. The answers in chancery challenged the validity of the tax sales. Under Chapter 202, Pamphlet Laws of 1925, page 480, the answer will be struck unless the defendant obtains a writ of certiorari to review the validity of the tax sale within four months from the date of the filing of the answer in the chancery proceeding. In order that the 20
defendant should not be deprived of such rights as might exist by the mere passage of time, the application being tardy, and because it was apparent that by reason of the delay a rule to show cause might not be effective, the writ was allowed on *ex parte* affidavits.

The rights of the municipality to move for the vacation of the allocatur is clear; also the right of the Justice granting the same to vacate the same. Rule 170, of the Supreme Court, *Winegrath v. Fair-* 30
view, 77 N. J. L. 448, where Justice Minturn said:

“The statute 5 and 6 W. & M. expressly established the practice of applying for the writ to the Justice at Chambers, and required him, if he allowed it, to endorse thereon his allowance, to which act the term allocatur was ap-

plied. It will be perceived, therefore, that the allocatur to the writ is, in effect, but a substitute for the earlier common law fiat, which, like all orders or rules made by a single justice of the King's bench, was, until return made to the writ, within the power of the Justice granting it to amend, modify or recall."

10 No return was made to any of the writs and counsel for the defendant asked for further time for this purpose, if the allocatur was not vacated, as he had a right so to do under Rule 170.

The application for the writ of certiorari was predicated upon the following grounds: (1) The tax sale was invalid; (2) The notice of the tax sale was invalid as it contained no statement of the years
20 the taxes became payable for which the sale was being made; (3) The amount of interest stated was excessive; (4) The description was insufficient; (5) The notice of sale was not posted in five of the most public places; (6) No list was made up pursuant to secs. 17, 18, 23 and 26 of Chapter 237 Pamphlet Laws 1918; (7) No record of the sale was made as required by law; (8) The sale was ineffective because the attempt was made to sell for 1927 taxes; (9) The certificate of sale contains no adequate description;
30 (10) The certificate contains no averment that there were no other bidders.

The facts developed by the defendants' depositions indicate that the Daniel B. Frazier Company is a persistent and continuous evader of tax obligations, and that the property in question is sand dunes held for speculative purposes. The assessment of

Opinion

the taxes in question was appealed to the County Board of Taxes and reductions secured.

The tax sale was held November 19, 1928. Previous to the sale, the collector of taxes made up a list in which the lands subject to sale were described according to the description set forth in the 1927 duplicate, together with the name or names of the owners of said premises and the amount of all taxes and assessments which were a lien on July 1, 1928. This list was subsequently turned over to the printer and a notice of sale made up. A copy of this notice of sale was thereafter used by the collector of taxes as his list and on it was noted the record of properties redeemed before or at the sale and the results of the sale itself. The notice of sale was published in the Tuckerton Beacon, a newspaper circulating in the Township of Long Beach, once in each of the four calendar weeks preceding the sale. Copies of the notice of sale were posted in seven public places with the township on or before October 27, 1928, and further copies of the notice of sale were mailed to each of the owners. 10 20

There were no other bidders than the township at the sales in question.

The tax sale certificates were made up for each of the properties sold and delivered to the Township of Long Beach subsequent to the sale and were recorded. Notations to the effect that sale was made to the township were made by the collector on the tax duplicates for 1927, and on the duplicates for 1928, 1929 and 1930. 30

The Tax Sale Revision Act of 1918 provides as follows:

Opinion

10 “‘No sale of lands for municipal liens heretofore or hereafter made, shall be set aside * * * because of insufficient description in the original entry of the lien, or in the list made up for the sale, or because of a mistake in or omission in the name of the owner, or because of the failure of the clerk or any municipal officer to record the proceedings relative to the sale, if it shall appear by other legal evidence that the land sold was, in fact, that assessed, and that the sale was made pursuant to law. * * *’” Com. State. 1924, p. 3538, Secs. 208-44a (56); P. L. 1918, C. 237, p. 898.

20 The proofs show that there was substantial compliance with the legislative requirements in that all acts necessary to be done by the collector of taxes were, in fact, done with the exception of actually making up a complete record of the proceedings. Such substantial compliance brings the proceedings within the terms of the statute and they were in all respects legal and binding on the prosecutor.

30 It was proved and not controverted that the township officers frequently requested the payment of the taxes in question and made known to the prosecutor the embarrassment incident to the delay in payment, because of the inability of the township to meet tax anticipation notes which it had negotiated and which were long over due to the great detriment of banks affording accommodation to the township.

 The delay in resorting to foreclosure proceedings was due to the repeated promises and assurances of the president of the Frazier Company that the taxes

Opinion

would be paid and that accommodation had been secured from out of town banks to refinance the Frazier Company and provide the money needed for settlement of the taxes.

The Frazier Company owes about 65 or 70% of the township's unpaid taxes. The attempt to challenge the validity of the taxes, in the light of the admission of liability frequently made, seems without merit. Having recognized the validity of the obligation and the manner in which the township's right has been asserted it is now too late to assert a right to a discretionary writ to review that which the Frazier Company has conceded imposed a valid and binding obligation upon it which it was more than willing to pay, if like Mr. MacCauber, it could have borrowed the money. 10

The fanciful irregularities suggested in the township proceedings for the collection and sale for taxes seem due to the circumstances that the township is not a large municipality with voluminous records kept by skilled clerks. The essential records were, however, kept. The precise form and style of writing the records is immaterial under the statute above referred to, but at all events since there was an absolute recognition of the obligation and the rights arising from the sale and repeated requests for further time to secure the funds to make the payments due, it would seem that the allocatur was improvidently granted. The power to vacate is clear. 20 30

The allocatur is, therefore, vacated with costs.

