

I N D E X

	PAGE
Writ of Certiorari	1
Return of Township Clerk	3
Assessment of Taxes	4
Resolution of Township Committee	7
Certificate of Collector of Taxes	7
Certificate of Collector of Taxes Due	9
Certificate of Township Clerk as to Amount Due	10
Report of Sale to the Township Committee....	12
Return of Valley Company	22
Certificate of Tax Sale	23
Reasons	28
Agreement	31
Notice of Appeal	33
Rule for Judgment	36
Certificate of Clerk	37
Affidavit	38
Opinion	41

WRIT OF CERTIORARI.

NEW JERSEY, ss.

The State of New Jersey to The Township of Woodbridge, in the County of Middlesex, and Valley Company, GREETING:

We being willing for certain reasons to be certified of a certain sale for taxes, 10
(L. S.) made, or said to have been made, by Leonard M. Campbell, collector of the township of Woodbridge, in the county of Middlesex, on the thirty-first day of July, 1916, of certain lands, assessed for taxes in said township, either to Charles S. Demarest, or to the estate of Samuel Dally, in the year 1914, and in other preceding years, and including certain tax sales made of said lands prior to the said thirty-first day of July, 1916, and which said lands were described as 20
House and plot Five, adjoining Osborn, Green Street, Woodbridge, and are more particularly described, in the certificate of said sale executed by the said collector, and of the said certificate of said sale executed by said collector.

We command you that the said certificate of sale, and the assessments of taxes, and certificates of tax sales, on which the said sale made by said collector as aforesaid, was founded, and all the proceedings, resolutions, advertisements, orders and re- 30
turns of the township committee of said township and the collector of said township, touching and concerning the said tax sale, certificate of sale and assessments, together with all things and concerning the same, as fully and entirely as before you they remain, to our Justices of our Supreme Court at

Trenton, on the twenty-fourth day of May, instant, under your seals, you do certify and send, together with this writ, that we may cause to be done thereon, what of right and according to the laws of this state, ought to be done.

Witness William S. Gummere, Esquire, Chief Justice of our Supreme Court at Trenton, this fifth day of May, nineteen hundred and seventeen.

WILLIAM C. GEBHARDT,

Clerk.

10

CHARLES C. HOMMANN,
Attorney.

[ENDORSED]

New Jersey Supreme Court.
Albert Martin & Ephraim Cutter, Ex-
ecutor of the Will of Samuel Dally,
Prosecutors,

20

vs.

The Township of Woodbridge, et als.,
Defendants.

On Certiorari.
Writ of Certiorari.

Returnable May 24, 1917.

30

Charles C. Hommann,
Atty. of Prosecutors,
137 Smith Street,
Perth Amboy, N. J.

This writ is allowed. Let it be sealed.

J. J. Bergen,
Jus. Sup. Ct.

To be argued June T., 1917.

J. J. Bergen,
Jus. Sup. Ct.

Service of copy of the within copy
of writ, is acknowledged May 8, 1917.

J. H. Thayer Martin,
Attorney of Defendants.

Compliance with this writ by the de-
fendants is shown by the annexed re-
turns.

10

J. H. Thayer Martin,
Attorney of Defendants.

RETURN OF CLERK.

NEW JERSEY SUPREME COURT.

ALBERT MARTIN and
EPHRAIM CUTTER, Exec-
utor of the Will of Sam-
uel Dally,

Prosecutors,

vs.

THE TOWNSHIP OF WOOD-
BRIDGE, in the County of
Middlesex, and VALLEY
COMPANY,

Defendants.

ON CERTIORARI.

RETURN OF THE

TOWNSHIP OF

WOODBIDGE.

20

30

*To the Honorable, the Justices of the Supreme
Court of New Jersey:*

In obedience to the command of the writ of cer-
tiorari hereto annexed, directed to the township of

Woodbridge, in the county of Middlesex, I, Andrew Keyes, clerk of said township, do hereby certify and send to the Honorable Justices of the Supreme Court of New Jersey, the assessments of taxes and the certificates of tax sales on which was founded the sale for taxes made by the collector of said township, July 31, 1916, of certain lands assessed for taxes in said township, either to Charles S. Demarest or the estate of Samuel Dally, in the year 10 1914, and in other preceding years on lands mentioned in said writ, and all the proceedings, resolutions, advertisements, orders, and returns of the township committee of said township, and the collector thereof, touching and concerning the said last mentioned tax sale and the certificate of sale thereof and the said assessments, together with all things concerning the same, as fully and entirely as before me they remain.

In Witness Whereof I have hereunto set my hand and the seal of said township, this 22d day of May, 20 1917.

(Seal)

ANDREW KEYES,
Township Clerk.

Township of Woodbridge Assessment of Taxes.

30 Charles S. Demarest, House and Plot 5 adjoining
Osborn, Green Street, Woodbridge.

Year	Tax
1894	48.00
1895	41.80
1896	31.30
1897	33.00

1898	39.40
1899	42.60
1900	43.45
1901	46.00
1902	42.90
1903	43.00
1904	44.70
1905	42.00
1906	49.20
1907	50.00
1908	57.50
1909	62.00
1910	58.00
1911	60.25

10

Est. Samuel Dally, same description.

1912	63.75
1913	68.64
1914	73.84
1915	70.46

Assessments for Benefit on Green Street Sewer. 20

Filed November 15, 1909, Est. H. N. Demarest,
same description, amount of assessment \$146.47.

Certificates of Sale:

Certificate dated September 5, 1895, of sale for taxes made by the Collector of Taxes of the Township of Woodbridge on August 27, 1895, for taxes of 1894, assessed to Charles S. Demarest, House and Plot 5 adjoining Osborn, Green Street, Woodbridge, taxes \$48. interest \$3.84, costs \$3.40, sold to the Township of Woodbridge for \$55.24 for 30 30 years, which certificate was recorded September 12, 1895, in Book 278 page 1 of Middlesex County Deeds.

Certificate dated September 6, 1898, of sale for taxes made by the said Collector on August 27, 1898, for taxes of 1897, assessed under the same

name and by the same description, taxes \$33. interest \$2.64, costs \$3.60, sold to the Township of Woodbridge for \$39.24 for 30 years, which certificate was recorded September 9, 1898, in Book 300 page 388 of Middlesex County Deeds.

10 Certificate dated August 25, 1900, of sale for taxes made by the said Collector on August 18, 1900, for taxes of 1899, assessed under the same name and by the same description, taxes \$42.60, interest \$3.41, costs \$3.60, sold to the Township of Woodbridge for \$49.61, for 30 years, which certificate was recorded August 29, 1900, in Book 319 page 131 of Middlesex County Deeds.

20 Certificate dated November 24, 1904, of sale for taxes made by the said Collector on November 14, 1904, for taxes of 1903, assessed under the same name and by the same description, taxes \$43.00, interest \$2.77, costs \$2.27, sold to the Township of Woodbridge for \$48.04, in fee, which certificate was recorded January 12, 1905, in Book 181 page 474 of Middlesex County Mortgages.

Certificate dated July 16, 1908, of sale for taxes made by the said Collector on June 25, 1908, for taxes of 1905, assessed under the same name and by the same description, taxes \$42. interest \$7.35, costs \$2.27, sold to the Township of Woodbridge for \$51.62, in fee, which certificate was recorded September 5, 1908, in Book 210 page 556 of Middlesex County Mortgages.

**Resolution of Township Committee.
Adopted March 15, 1916.**

Whereas, the premises known as house and plot adjoining Osborn, Green Street, Woodbridge, formerly assessed in the name of Charles S. Demarest, and now assessed in the name of Estate Samuel Dally, has been heretofore sold for taxes of several years, and has been purchased at such sales and is held by the Township of Woodbridge under such tax sales, and the same have not been redeemed, and subsequent taxes have been assessed against said premises and remain unpaid and in arrears. 10

Now, Therefore, be it resolved, that the Collector of Taxes of the said Township be directed to make sale of said premises for the taxes for the year 1914, together with all other arrears of taxes prior thereto as may be certified to said collector by the Township Clerk, as required by law. 20

Certificate of Collector of Taxes.

To Andrew Keyes, Clerk of the Township of Woodbridge, in the County of Middlesex, New Jersey:

I herewith return to you an account of my receipts and disbursements as Collector during the preceding year ending February 1, 1916, with a statement of the amount of taxes remaining unpaid, the names of the delinquents, and the amount due from each: 30

Charles S. Demarest, House and plot 5 adj. Osborn, Green St.

Year	Tax	Int.	Costs	Total
1895	41.80	58.40	.47	100.67

Return of Clerk

1896	31.30	41.61	.47	73.38
1898	39.40	46.75	.47	86.62
1900	43.45	45.60	.47	89.52
1901	46.00	45.08	.47	91.55
1902	42.90	39.00	.47	82.37
1904	44.70	34.32	.47	79.49
1906	49.20	30.96	.47	80.63
1907	50.00	28.00	.47	78.47
1908	57.50	28.21	.47	86.18
10 1909	62.00	26.04	.47	88.51
1910	58.00	20.30	.47	78.77
1911	60.25	16.88	.47	77.60
		Est. Samuel Dally.		
1912	63.75	13.38	.47	77.60
1913	68.64	9.60	.47	78.71
1914	73.84	5.17	.47	79.48
1915	70.46	—	—	70.46

L. M. Campbell
Collector of Taxes.

20

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

Leonard M. Campbell, being duly sworn according to law on his oath says: I am the collector of taxes of the township of Woodbridge, in the county of Middlesex. The foregoing is a true and competent account of my receipts and disbursements as collector during the preceding year ending February 1, 1916, with a statement of the amount of taxes remaining unpaid, the names of the delinquents and the amounts due from each.

30

L. M. CAMPBELL.

Sworn and subscribed before me, this 12 day of June, 1916.

J. E. HARNED,
Notary Public.

Certificate of Collector of Taxes.

To Andrew Keyes, Clerk of the Township of Woodbridge in the County of Middlesex, New Jersey:

I herewith return to you a list of the delinquents showing all the unpaid taxes on the tax duplicate of the preceding year 1915, stating the name of each delinquent, the description of the property assessed, the assessed valuation, and the amount of the tax in proper columns and the reason why the tax has not been collected. 10

Name of delinquent.	Description of property.	Assessed valuation.	
Est. Samuel Dally	House and plot 5 adj. Osborn, Green Street,	2600.	
			Reason for non-collection.
Amount of Tax.			Unpaid.
70.46			20
			L. M. Campbell Collector of Taxes.

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

Leonard M. Campbell, being duly sworn according to law, on his oath says: I am the collector of taxes of the township of Woodbridge, in the county of Middlesex. The foregoing return is just, true and complete, as shown by the tax duplicate of the said township for the year 1915. 30

L. M. CAMPBELL.

Sworn and subscribed before me this 12 day of June, 1916.

J. E. HARNED,
Notary Public.

Certificate of Township Clerk.

To Leonard M. Campbell, Collector of Taxes of the Township of Woodbridge, in the County of Middlesex:

I, Andrew Keyes, Clerk of the said Township of Woodbridge, in the County of Middlesex, do hereby certify to you as Collector that the Township Committee of the said Township has heretofore by resolution directed a further sale for taxes of the premises known as House and plot adjoining Osborn, Green Street, Woodbridge, formerly assessed in the name of Charles S. Demarest, and now assessed in the name of Estate of Samuel Dally, for that said premises have been heretofore sold for taxes of several years and have been purchased at such sales and are held by said Township under said tax sales, and the same have not been redeemed, and subsequent taxes have been assessed against said premises and remain unpaid and in arrears; and I do further certify, pursuant to said resolution, that the amount required to be paid to redeem the said land from the previous sales for taxes, and from the lien of the taxes subsequent thereto, and from any sale or sales for unpaid assessments for public improvements, and from any such assessment for which a sale has not been made, is as follows:

30	Under	For taxes as-				
	sale of	essed in	Amount	Int.	Costs.	Total
	1895	1894	55.24	78.68	1.00	134.92
	1898	1897	39.24	47.63	1.00	87.87
	1900	1899	49.61	53.25	1.00	103.86
	1904	1903	48.04	15.40	1.00	64.44
	1908	1905	51.62	27.07	1.00	79.69

Report of Sale to the Township Committee.

To the Township Committee of the Township of Woodbridge, in the County of Middlesex, and to the Clerk of Said Township.

I, Leonard M. Campbell, Collector of Taxes of the Township of Woodbridge, in the County of Middlesex, do hereby present my report of sales
10 containing a schedule of all the unpaid taxes on real property shown on my duplicates for the collection of which I have not been released, and my proceedings in making sales therefor. And I do certify that at a public sale held by me at the Township Hall, on July 31, 1916, at two o'clock in the afternoon, the premises assessed as House and plot 5 adjoining Osborn, Green Street, Woodbridge, and more particularly described as being that plot in the Township of Woodbridge, Middlesex County,
20 New Jersey.

Commencing at a point on the north side of Green Street formerly known as the road which leads from Woodbridge to Uniontown distant one hundred and twenty-five feet easterly along the northerly line of said road from the line of land formerly belonging to Samuel Barron and later belonging to J. M. Melick; thence running north and parallel with the line of land formerly belonging to said Melick one hundred and ninety-seven feet more or less to line of land formerly
30 belonging to Charles A. Campbell; thence easterly along said Campbell's line one hundred and fifty-five feet more or less to the line of land formerly belonging to Walter Brewster; thence southerly along said Brewster's line two hundred and ten feet more or less to the northerly line of said

Green Street; thence westerly along said northerly line of said street one hundred and fifty-seven and one-half feet more or less to the point or place of Beginning.

were sold by me for \$2077.13 to Valley Company, a corporation of New Jersey, for the term of in fee. Said land was last assessed in the name of Estate Samuel Dally, as delinquent owner. The amount of the taxes and assessments, with the items of interest and costs in detail and the year for which assessed and the name of the delinquent owner in which the same was assessed, as appears on the books of the taxing district for such respective years, was as follows: 10

Under	For taxes as-				
sale of	essed in	Amount	Int.	Costs.	Total
1895	1894	55.24	78.68	1.00	134.92
1898	1897	39.24	47.63	1.00	87.87
1900	1899	49.61	53.25	1.00	103.86
1904	1903	48.04	15.40	1.00	64.44
1908	1905	51.62	27.07	1.00	79.69
					470.78
					Total
				For'd	470.78

All of which were assessed in the name of Charles S. Demarest, together with the following taxes returned as unpaid and not sold, which were assessed in the years, for the amounts, and carrying interest and costs, all as shown in the following schedule: 30

First Assessed in Name of Charles S. Demarest:				
Year	Amount	Int.	Costs	
1895	41.80	58.40	.47	100.67
1896	31.30	41.61	.47	73.38
1898	39.40	46.75	.47	86.62

	1900	43.45	45.60	.47	89.52
	1901	46.00	45.08	.47	91.55
	1902	42.90	39.00	.47	82.37
	1904	44.70	34.32	.47	79.49
	1906	49.20	30.96	.47	80.63
	1907	50.00	28.00	.47	78.47
	1908	57.50	28.21	.47	86.18
	1909	62.00	26.04	.47	88.51
	1910	58.00	20.30	.47	78.77
10	1911	60.25	16.88	.47	77.60
	Later Assessed in the Name of Est. Samuel Dally :				
	1912	63.75	13.38	.47	77.60
	1913	68.64	9.60	.47	78.71
	1914	73.84	5.17	.47	79.48
	1915	70.46	—	—	70.46
	Under Green Street Sewer Assessment Made in the Name of H. N. Demarest, Est.				
	1909	146.47	57.12		203.59
20	Amount certified by Township Clerk				\$2074.38
	Less installments of Green Street sewer assessments, not yet payable,				33.
					<hr/>
					\$2041.38
	Printing		28.56		
	“ adjournment		5.58		34.14
					<hr/>
					\$2075.52
	Preparing and publishing		.25		
30	Selling		.25		
	Certificate,		.50		
	Acknowledgment,		.50		
	Clerk,		.10		
	Postage,		.01		1.61
					<hr/>
					\$2077.13

Said lands were sold to make the costs of sale and the amount of delinquent taxes and assessments thereon, including interest, as certified to me by the Township Clerk, as the amount required to be paid to redeem said lands from previous sales, together with all subsequent taxes and assessments for public improvements assessed thereon remaining unpaid and a lien thereon, pursuant to resolution of the Township Committee of said Township, which is the governing body of the taxing district, which resolution was duly adopted on the fifteenth day of March, 1916, and directed me to make sale of said premises for taxes, together with other arrears of taxes as might be certified to me by the Township Clerk, as required by law. 10

The right to redeem said sale will expire at the end of two years from the date of said sale, if notice to redeem is served more than sixty days before the end of the term, or within sixty days after the service of said notice if served later, or in case no notice is given, if there shall be no redemption within twenty years after the purchaser has entered into open possession since continued under the sale, then the right of redemption will be barred. 20

Said Valley Company was the highest bidder for said premises, and no other person bid for a shorter term than fee.

I gave public notice of sale of said premises to be held on the 17th day of July, 1916, by advertisement signed by me and published in a newspaper published in the taxing district where said land lies, to wit, in the Woodbridge Leader, one in each week for at least four weeks successively, next preceding the day appointed for the sale, to wit, on June 16, 23 and 30, and July 7 and 14, all in the year 1916; and I did also set up copies of said 30

notice in five of the most public places of the taxing district, for the same period; and I did mail a copy of said notice to the owner at his address, postage prepaid.

Copies of the notices which were published, posted and mailed, are hereto annexed with proofs of the publication, posting and mailing. At the time and place for which said sale was advertised, I did at the request of Ephraim Cutter, an interested party, 10 adjourn said sale for the space of two weeks, at the same time and place, and did give notice of said adjournment by advertisement, a copy of which, with proof of publication thereof is hereto annexed.

In Witness Whereof, I have hereunto set my hand and seal, this 18th day of October, 1916.

L. M. Campbell
Collector of Taxes.

Notice of Tax Sale.

20

Notice is hereby given that on Monday, the 17th day of July, 1916, at two o'clock in the afternoon, at the Township Hall, on Central Avenue or School Street, Woodbridge, in the Township of Woodbridge, Middlesex County, New Jersey, I will sell at public sale the lands, tenements, hereditaments and real estate hereinafter described, or any part thereof sufficient for the purpose, to satisfy the sum hereinafter mentioned for the shortest term for 30 which any person or persons will agree to take the same and pay the tax and assessment liens thereon as hereinafter mentioned, including interest and costs of sale. Said sale will be held to make the costs of sale and the sum of \$2074.38, the amount of delinquent taxes and assessments thereon, including interest, which sum is the amount certified to me by the Township Clerk as the amount required to be

paid to redeem said land from previous sales, together with all subsequent taxes and assessments for public improvements assessed thereon and remaining unpaid and a lien thereon, including the taxes and costs of the current year, as shown in detail in the certificate of said Clerk, a part of which liens were assessed against said land in the name of Charles S. Demarest and the remainder in the name of Est. Samuel Dally. The lands, tenements, hereditaments and real estate so to be sold have been assessed as House and plot 5 adjoining Osborn, Green Street, Woodbridge, and are more particularly described as being that plot in the Township of Woodbridge, Middlesex County, New Jersey. 10

Here follows a particular description in the same words as in the Report of Sale.

Dated June 15, 1916.

20

L. M. Campbell.
Collector of Taxes of the Township of Woodbridge, in the County of Middlesex.

Affidavit of Publication.

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

Lawrence McLeod, of full age, being duly sworn on his oath, saith, that he is one of the employees of "The Woodbridge Leader," a newspaper printed and published in the township of Woodbridge, Middlesex County, and state of New Jersey, and that a notice of which the annexed is a true copy, was published in said paper for the term of five weeks 30

successively, viz. on June 16th, 23rd, 30th, July 7th and 14th, 1916.

LAWRENCE McLEOD.

Sworn and subscribed before me this seventeenth day of July, A. D. one thousand nine hundred and sixteenth.

J. E. HARNED,
Notary Public, N. J.

10

Notice of Adjournment of Tax Sale.

Notice is hereby given that the tax sale heretofore advertised by me by advertisement dated June 15, 1916, of premises now assessed in the name of estate of Samuel Dally, and heretofore assessed in the name of Charles S. Demarest, as house and plot 5 adjoining Osborne, Green Street, Woodbridge, and more particularly described in said advertisement of sale, was at the time and place at which said sale was advertised to be sold, namely, on the seventeenth day of July, 1916, at 2 o'clock, at the Township Hall, duly adjourned by me at the request of a person interested, for the space of two weeks, at the same time and place, and that pursuant to such adjournment said tax sale will be held on Monday, the thirty-first day of July, 1916, at 2 o'clock in the afternoon, at the Township Hall, on Central Avenue or School Street, Woodbridge, Middlesex County, New Jersey. Such sale will be made in the manner and for the purpose set forth in said original advertisement of sale.

Dated July 17th, 1916.

L. M. Campbell,
Collector of Taxes of the Township of Woodbridge in the County of Middlesex.

Affidavit of Publication.

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

Lawrence McLeod, of full age, being duly sworn on his oath, saith, that he is one of the employees of "The Woodbridge Leader," a newspaper printed and published in the township of Woodbridge, Middlesex County, and state of New Jersey, and that a notice of which the annexed is a true copy, was published in said paper for the term of two weeks successively, viz. on July twenty-first and July twenty-eighth, 1916. 10

LAWRENCE McLEOD.

Sworn and subscribed before me this thirty-first day of July, A. D. one thousand nine hundred and sixteen.

J. E. HARNED, 20
 Notary Public, N. J.

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

Leonard M. Campbell, being duly sworn, on his oath says: I am collector of taxes of the township of Woodbridge, in the county of Middlesex. On the 16th day of June, 1916, I mailed at the post-office, Woodbridge, New Jersey, to Ephraim Cutter, executor of the estate of Samuel Dally, deceased, assessed as owner of the premises described in the annexed notice, a copy of said notice, which notice was enclosed in an envelope addressed with postage prepaid to said Ephraim Cutter, at his address, Woodbridge, New Jersey. 30

On the 16th day of June, 1916, I set up in five or more of the public places of said township like copies of said notice, said copies were set up as follows:

One on a pole on the north side of Green Street, Woodbridge, in front of the premises described in said notice.

One in the Woodbridge post-office on Main Street.

One in the office of the Woodbridge Printery.

10 One in the real estate office of Edward Harned.

One in the grocery store of Gustav Blaum.

and One in the public room of the hotel of Steven Galaida.

All on Main Street, Woodbridge, New Jersey.

LEONARD M. CAMPBELL.

Sworn and subscribed before me this 9th day of August, 1916.

J. E. HARNED,

Notary Public, N. J.

20

Copy of foregoing notice of June 15, 1916, attached.

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

30 Leonard M. Campbell, being duly sworn, on his oath says: I am the collector of taxes of the township of Woodbridge, in the county of Middlesex and state of New Jersey. The foregoing is a true report of sales containing a schedule of all the unpaid taxes on the property therein described, as shown on my duplicates for the collection of which I have not been released, and my proceedings for making sales thereof.

L. M. CAMPBELL.

Sworn and subscribed before me this 18 day of Oct., 1916.

J. E. HARNED,
Notary Public.

I hereby certify that the foregoing is a true copy of a report of tax sale filed with me 1916, and recorded in Book 2 of Tax Sales, page 254.

May 22, 1917.

10

ANDREW KEYES,
Township Clerk.

I, Andrew Keyes, Township Clerk of the Township of Woodbridge, in the County of Middlesex, hereby certify the foregoing to be true copies of the duplicate of the assessments of taxes for the several years above set out, relating to the property above described, and the certificates of sales thereof to the Township of Woodbridge above set forth, 20 and of the Collector's returns as the same are on file with me, and of the return of the Township Clerk made to the Collector of Taxes as filed with said Collector, and of the Collector's report of sale, as the same is on file with me and recorded in the record of Tax Sales of said Township.

Witness my hand and the seal of said Township, this 22d day of May, 1917.

(Seal)

Andrew Keyes
Township Clerk 30

RETURN OF VALLEY COMPANY.

NEW JERSEY SUPREME COURT.

10	ALBERT MARTIN and EPHRAIM CUTTER, Exec- utor of the Will of Sam- uel Dally, <i>Prosecutors,</i> vs. THE TOWNSHIP OF WOOD- BRIDGE, in the County of Middlesex, and VALLEY COMPANY, <i>Defendants.</i>	}	ON CERTIORARI. RETURN OF VALLEY COMPANY.
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20

*To the Honorable the Justices of the Supreme Court
of New Jersey:*

In obedience to the command of the writ of cer-
 30 tiorari hereto annexed, directed to the township of
 Woodbridge, in the county of Middlesex, and to
 this defendant, Valley Company, the defendant,
 Valley Company, does hereby certify and send to
 the Honorable Justices of the Supreme Court of
 New Jersey, the certificate of tax sale made by the
 collector of said township, July 31, 1916, to this
 defendant, mentioned in said writ.

In Witness Whereof, said Valley Company, has
 caused its corporate seal to be hereto affixed and
 these presents to be signed by its vice-president,

and attested by its secretary, this 23rd day of May, 1917.

VALLEY COMPANY,

By

HENRY W. TRIMBLE,
Vice-President.

(L. S.)

Attest:

M. C. DURR,
Secretary.

10

Certificate of Consolidated Tax Sale.

Know All Men by These Presents: That I, Leonard M. Campbell, Collector of Taxes of the Township of Woodbridge, in the County of Middlesex and State of New Jersey, do hereby certify that at public tax sale of real estate under the provisions of an act entitled "An Act for the assessment and collection of taxes," approved April 8, 1903, and the supplements and amendments thereto, held at the Township Hall, in said Township, on the 31st day of July, 1916, at 2 o'clock in the afternoon, the property hereinafter described was struck off and sold by me to Valley Company, a corporation of New Jersey, in fee, for the sum of \$2077.13, no one bidding for a term of years. 20

I do further certify that the premises so sold are now assessed in the name of Estate of Samuel Dally as the delinquent owner, as it appears on the books of the taxing district. 30

The lands, tenements, hereditaments and real estate so sold have been assessed as House and plot 5 adjoining Osborn, Green Street, Woodbridge, and

are more particularly described as being that plot in the Township of Woodbridge, Middlesex County, New Jersey,

10 Commencing at a point on the north side of Green Street formerly known as the road which leads from Woodbridge to Uniontown distant one hundred and twenty-five feet easterly along the northerly line of said road from the line of land formerly belonging to Samuel Barron and later
20 belonging to J. M. Melick; thence running north and parallel with the line of land formerly belonging to said Melick one hundred and ninety-seven feet more or less to line of land formerly belonging to Charles A. Campbell; thence easterly along said Campbell's line one hundred and fifty-five feet more or less to the line of land formerly belonging to Walter Brewster; thence southerly along said Brewster's line two hundred and ten feet more or less to the northerly line of said Green Street; thence westerly along said
30 northerly line of said street one hundred and fifty-seven and one half feet more or less to the point or place of Beginning.

I do further certify that said lands were sold to make the costs of sale and the amount of delinquent taxes and assessments thereon, including interest, as certified to me by the Township Clerk, as the amount required to be paid to redeem said lands
30 from previous sales, together with all subsequent taxes and assessments for public improvements assessed thereon remaining unpaid and a lien thereon; and the amount of the several items of interest and costs in detail, and the year for which assessed and the name of the delinquent owner in which the same was assessed, as appears on the books of the tax-

ing district for such respective years, is as follows:

(Here follows a statement of items of taxes and tax sales, and of costs of printing and other items of costs, and of the total amount for which the sale was made, \$2077.13, in all respects the same as the statement of such items and particulars contained in the above report of sale made by L. M. Campbell, collector.)

10

I further certify that said Valley Co. was the highest bidder for said lands and premises and that there were no bidders for a shorter term than the fee, and that said Valley Co. has paid therefor said sum of \$2077.13.

I further certify that said sale was made pursuant to resolution of the Township Committee of said Township, which is the governing body of the taxing district, which resolution was duly adopted on the fifteenth day of March, 1916, and directed to me to make sale of said premises for taxes, together with other arrears of taxes as might be certified to me by the Township Clerk, as required by law.

20

And I do further certify that the right to redeem said land will expire at the end of two years from the date of said sale, if notice to redeem is served more than sixty days before the end of the term, or within sixty days after the service of said notice, if served later, or in case no notice is given, if there shall be no redemption within twenty years after the purchaser has entered into open possession since continued under the sale, then the right of redemption will be barred.

30

And I further certify that I gave public notice

- of sale of said premises to be held on the 17th day of July, 1916, by advertisement signed by me and published in a newspaper published in the taxing district where said land lies, to wit, in the Woodbridge Leader, once in each week for at least four weeks successively next preceding the day appointed for the sale, to wit, on June 16, 25 and 30 and July 7 and 14, all in the year 1916, as appears by the affidavit of publication annexed hereto; and that
- 10 I did also set up copies of said notice in five of the most public places of the taxing district, for the same period, as appears by the affidavit of posting hereto annexed; and that I did mail a copy of said notice to the owner at his address, postage prepaid, as appears by said affidavit of posting; and that at the time and place fixed for said sale, I did adjourn the sale at the request of Ephraim Cutter, Executor of the estate of Samuel Dally, a person interested, for a period of two weeks, to the same time and
- 20 place, and did publish in said newspaper a short notice of such adjournment, as appears by the affidavit of publication thereof hereto annexed; and that said sale was made at the time and place to which the same was so adjourned.

In Witness Whereof, I have hereunto set my hand and seal, this ninth day of August, Nineteen Hundred and Sixteen.

L. M. Campbell, (L.S.)
Collector.

- 30 State of New Jersey, }
County of Middlesex, } ss.

Be It Remembered, That on this ninth day of August, 1916, before me, the undersigned, personally appeared Leonard M. Campbell, collector of taxes of the township of Woodbridge, in the county of Middlesex, and state of New Jersey, who, I am

satisfied, is the individual described in and who executed the within Certificate of Sale; and I having first made known to him the contents thereof, he thereupon acknowledged that he signed, sealed and delivered the same as his voluntary act and deed, for the uses and purposes therein expressed.

J. E. HARNED,
Notary Public of N. J.

(Here follows a copy of a notice of tax sale and affidavit of publication thereof, and a notice of adjournment of tax sale and affidavit of publication thereof, and an affidavit of posting and mailing, in the same form and wording as those annexed to the above report of sale, and being in all respects the same as those annexed to said report of sale.) 10

[ENDORSED]

“Received in the Clerk’s Office of the County of Middlesex, on the 9th day of August, A. D. 1916, at 8:25 o’clock in the forenoon, and Recorded in Book 303 of Mortgages for said County on pages 608 &c.

20

Bernard M. Gannon,
Clerk.”

I, M. C. Durr, secretary of Valley Company, hereby certify that the foregoing is a true copy of the certificate of tax sale now in the possession of Valley Company, mentioned in the foregoing return. 30

In Witness Whereof, I have hereunto set my hand and affixed the seal of said company, this 23rd day of May, 1917.

(Seal)

M. C. DURR,
Secretary.

3. Because the certificate of the township clerk included \$33.00 due upon two installments of a sewer assessment, not yet payable, which assessment was payable in installments.

4. Because the certificate of the township clerk was illegal and defective, and included sums for which said lands could not be sold.

5. Because said certificate of the township clerk included taxes and tax sales, assessed or made prior to the year 1903. 10

6. Because the township clerk did not certify the correct amount required to be paid to redeem said lands from the previous sale or sales made on or after the twentieth day of December, 1903.

7. Because said certificate of the township clerk included certain amounts for costs which were greater than were allowed by law, or were unauthorized by law. 20

8. Because said certificate of the township clerk included the taxes assessed in the year 1915.

9. Because the advertisements of the sale of said lands did not state that said lands would be sold in fee, if no one would bid for a shorter term.

10. Because it was not necessary to sell the whole of the said lands in order to raise the amount of the tax lien, with interest and costs of sale. 30

11. Because said lands were sold for an amount different from that certified to be due by the town-

ship clerk, and mentioned in the advertisements of sale, with costs of sale.

12. Because no copy of the advertisement of sale was mailed to the owner of said lands as directed by the statute under which said sale was made.

13. Because copies of the notice of sale of said lands were not set up in five of the most public places of the taxing district for at least four weeks
10 successively, next preceding the day of sale.

14. Because the advertisements of sale did not mention that said lands would be sold for the amount certified by the township clerk, added to the tax and costs of the current year.

15. Because the said lands could not be advertised for sale for the taxes of the year 1915, before the first day of July, 1916, and the said sale was for that reason illegal.

20 16. Because no return was made by the collector of the sales of November 14, 1904, and June 25, 1908, of said lands, as required by law, and such sales were therefore illegal.

17. Because the advertisements of sale of said lands, did not mention that the sale had been directed to be made by resolution of the governing body of the taxing district, and was otherwise defective and insufficient.

30 18. Because for other reasons the said tax sale and the other proceedings, were illegal, unauthorized, void, and not in accordance with the laws and statutes of this state.

CHARLES C. HOMMANN,
Attorney of Prosecutors.

AGREEMENT.

(Filed June 8, 1917)

NEW JERSEY SUPREME COURT.

ALBERT MARTIN, *et al.*,
Prosecutors,

vs.

THE TOWNSHIP OF WOOD-
BRIDGE in the County of
Middlesex, *et al.*,
Defendants.

ON CERTIORARI. 10
AGREEMENT.

It is hereby agreed between the attorney of the prosecutors in the above-stated cause and the attorney of the defendants as follows:

First. That it shall be admitted on the argument 20
of the above-stated cause that the said township of Woodbridge prior to the date of sale of the said lands in the year 1916, had never taken possession, or attempted to take possession, of the said lands under any tax sales theretofore made to said township and, that said lands had been in the actual and visible possession, prior to that time, of persons not claiming under the said township.

Second. That the office of the Woodbridge Print- 30
ery, one of the places at which the notice of sale was posted, is a printing office in the village of Woodbridge, New Jersey, and was frequently during the year 1916 between the hours of 9 o'clock in the forenoon and 5 o'clock in the afternoon, of week days, closed for several hours to the public; but was fre-

quently open evenings, and was the office of the Woodbridge Leader, a legal newspaper.

10 Third. That the office of J. Edward Harned, at which one of the notices of sale was posted, is a real estate office in the said village of Woodbridge and was not during the year 1916 always open to the public during business hours, the said J. Edward Harned being clerk of the county board of taxation, and said office being frequently closed three days in the week on week days, for at least 5 hours, between the hours of 9 o'clock in the forenoon and 5 o'clock in the afternoon; but was open almost every evening for two hours or more, and was resorted to daily by many people.

20 Fourth. That the certificate of sale of said lands made in the year 1916, and the certificate of the township clerk as to the amount of taxes due, shall be considered to have been duly and legally returned in said cause with the writ of certiorari.

Fifth. That the writ of certiorari in said cause shall be considered as amended by striking out all reference to certificates of sale, except the certificate made in the year 1916 and duly returned into said court.

30 Sixth. That the collector of taxes on June 16, 1916, set up copies of the notice of June 15, 1916, referred to in the collector's affidavit of August 9, 1916, in additional public places in the township of Woodbridge, besides those mentioned in said affidavit.

Dated June 2, 1917.

J. H. THAYER MARTIN,
Attorney of Defendants.

C. C. HOMMANN,
Attorney of Prosecutors.

NOTICE OF APPEAL.

(Filed July 23, 1917)

NEW JERSEY SUPREME COURT.

ALBERT MARTIN and EPHRAIM CUTTER, executor of SAMUEL DALLY, deceased,
Prosecutors,

vs.

THE TOWNSHIP OF WOODBRIDGE in the County of Middlesex & Valley Co.,
Defendants.

10

ON CERTIORARI.

20

To J. H. T. Martin, Esq., Attorney of Defendants:

Please take notice that the prosecutors in the above-stated cause appeal to the Court of Errors and Appeals in the last resort in all causes of the state of New Jersey, from the whole of the judgment entered in the above-stated cause, on the following grounds:

30

1. That the Supreme Court affirmed the certificate of tax sale made in the year 1916, and the proceedings in relation to such sale, removed into said court, although there was error in so doing, and the said certificate and proceedings should have been set aside.

2. That the said certificate of sale and proceedings should have been set aside because there was included in the sum for which the lands described in said certificate were sold, taxes, and the amount of certain tax certificates, assessed or made, prior to the year 1903.
- 10 3. That the said certificate of sale and proceedings should have been set aside, because said lands were sold for a sum which included the amount of a tax sale, and also taxes, made or assessed more than twenty years before the date on which said lands were sold.
4. That the said certificate of sale and proceedings should have been set aside, because the certificate of the township clerk included instalments of a sewer assessment which were not yet due.
- 20 5. That the said certificate of sale and proceedings should have been set aside, because the certificate of the township clerk did not certify the correct amount required to be paid to redeem said lands from the previous sale or sales, made on or after the twentieth day of December, 1903, and included certain amounts for costs which were greater than those allowed by law, and also included the taxes assessed in the year 1915.
- 30 6. That the said certificate and proceedings should have been set aside, because the certificate of the township clerk included other sums for which the said lands could not legally be sold, and was otherwise illegal and defective.
7. That the said certificate and proceedings should have been set aside, because the advertisements of the

sale of said lands did not state that said lands would be sold in fee, if no one would bid for a shorter term, and did not state that said lands would be sold for the amount certified by the township clerk, added to the tax and costs of the current year, and did not state that the said sale had been directed to be made by the township committee.

8. That the said certificate and proceedings should have been set aside, because said lands were sold for an amount different from that certified to be due by the township clerk, and mentioned in the advertisements of sale, with costs of sale. 10

9. That the said certificate and proceedings should have been set aside, because the copies of the notice of sale were not set up in five of the most public places of the taxing district, for at least four weeks successively, next preceding the day of sale, and no copy of the advertisement of sale was mailed to the owner of said lands. 20

10. That the said certificate of sale and proceedings should have been set aside, because the said lands could not legally be advertised for sale, before the first day of July, 1916, for the taxes of the year 1915.

11. That the said certificate of sale and proceedings should have been set aside, because it was not necessary, so far as appeared, to sell the whole of the said lands in order to raise the amount claimed to be due, with interest, and costs of sale. 30

12. That the said certificate of sale and proceedings should have been set aside, because for other reasons the said tax sale and the said proceedings,

were illegal, and void, and not in accordance with statutes of this state.

Dated July 12, 1917.

C. C. HOMMANN,
*Attorney of Prosecutors and
Appellants.*

[ENDORSED]

10 Due and legal service acknowledged
this 20th day of July, 1917.

J. H. Thayer Martin,
Atty. of Defts.

COPY OF RULE FOR JUDGMENT.

(Filed July 26, 1917)

NEW JERSEY SUPREME COURT.

20

ALBERT MARTIN and EPH-
RAIM CUTTER, executor of
the last will and testa-
ment of SAMUEL DALLY,
deceased,

Prosecutors,

vs.

THE TOWNSHIP OF WOOD-
BRIDGE in the County of
Middlesex & Valley Co.,

30

Defendants.

ON CERTIORARI.
RULE FOR JUDGMENT.

This cause having been argued at the June Term, 1917, of this court by Charles C. Hommann, of counsel for prosecutors, and J. H. Thayer Martin, of counsel for the defendants, and the Court having con-

sidered the same, and finding no error in the taxes or proceedings for sale in this cause:

It is thereupon ordered and adjudged, that the assessments of taxes and certificates of tax sale, and the proceedings of the township of Woodbridge in the county of Middlesex, and of its officers, removed by the writ of certiorari in this cause, be affirmed with costs.

Dated June 29, 1917. 10

Entered June 29, 1917.

On motion of

J. H. THAYER MARTIN,
Of Counsel for Defendants.

CERTIFICATE OF CLERK OF SUPREME COURT 20

(Filed July 26, 1917)

I, William C. Gebhardt, clerk of the Supreme Court of the state of New Jersey, do certify that the foregoing is a true copy of the notice of appeal filed, and also of a rule entered in the minutes of the court, in the above-entitled cause.

In testimony whereof I have set my hand and the seal of said court at Trenton, this twenty-third day of July, A. D. nineteen hundred and seventeen. 30

(L. S.)

WILLIAM C. GEBHARDT,
Clerk.

AFFIDAVIT OF PROSECUTOR.

(Filed May 7, 1917)

NEW JERSEY SUPREME COURT.

10 ALBERT MARTIN, *et al.*,
Prosecutors,
 vs.
 THE TOWNSHIP OF WOOD-
 BRIDGE in the County of
 Middlesex, *et al.*,
Defendants. } ON CERTIORARI.

20 STATE OF NEW JERSEY, }
 MIDDLESEX COUNTY, } ss.

Albert Martin, of full age, being duly sworn, on his oath says: I am the prosecutor in the above-stated cause; I reside at Woodbridge in said county. On July 31, 1916, certain lands situate in said township were sold for taxes by the collector of said township, for \$2077.13 to Valley Company, a corporation of New Jersey, in fee, under Section 53 of the Tax Act of April 8, 1903; a certificate of such sale was executed by the said collector, bearing date the ninth day of August, 1916, and recorded in the office of the clerk of Middlesex County, on the same day, in Book 303 of Mortgages, on pages 608, &c., said lands were assessed for taxes, as a house and plot 5,

adjoining Osborn, Green Street, Woodbridge, and are more fully described in the advertisement of sale and tax certificate; the amount certified by the township clerk to the collector as due and owing, was \$2074.38; this sum included \$33.00 for two instalments not yet due, of a sewer assessment against said lands, which was payable in instalments; on the day of sale the amount of said two assessments was deducted from the amount certified by the township clerk, and the said lands were sold for the reduced amount, with costs of sale, but the advertisements of sale stated that the lands would be sold for \$2074.38, the amount certified by the township clerk as due, and which was greater than the amount due, and by reason thereof, was greater than the sum for which said lands were liable to be sold. 10

In the amount certified as due by said clerk, was included taxes assessed in a number of years prior to the year 1903, and these tax sales made prior to the year 1903, as well as taxes assessed in and after the year 1903. 20

In the amount certified by said clerk was included the sum of 47 cents for costs in a number of years, which was added to the amount of the taxes, with interest, whereas, only seven cents for costs in each year, was legally due under said Tax Act, at the time said certificate was made.

In the amount certified by said clerk was included the sum of \$1.00 for costs in five years in which said lands had been sold for taxes, in addition to the amount of the tax sales with interest, although no such sum of costs was legally collectible. 30

Included in the sum certified by said clerk were a tax sale made in the year 1895, and taxes assessed in the year 1895, said tax sale and said assessment having been made or assessed, more than twenty years before the date of the sale in question.

On the thirtieth day of August, 1908, I rented said lands, which consisted of a house and plot of land, from the executors of Samuel Dally, deceased, by the month, at a rental of \$7.00 a month, and have been in possession of said lands since that time, under the said lease; on the twenty-second day of December, 1916, said Valley Company began an action of ejectment in the Supreme Court of New Jersey against me, to recover possession of said land sold to said
10 company as aforesaid, in which suit I filed an answer, and the suit is still pending and undetermined.

ALBERT MARTIN.

Sworn and subscribed the 4th day of May, A. D. 1917, before me. The word "sale" was interlined on 4th page, before execution.

20

JOHN L. DUNN,
Justice of the Peace.

30

OPINION.

(Filed June 19, 1907)

NEW JERSEY SUPREME COURT.

ALBERT MARTIN and EPH- RAIM CUTTER, executor of the last Will and Testa- ment of SAMUEL DALLY, Deceased, <i>Prosecutors,</i>	}	ON CERTIORARI.	10
vs.			
THE TOWNSHIP OF WOOD- BRIDGE in the County of Middlesex & Valley Co., <i>Defendants.</i>	}		20

1. Where lands have been sold by the proper officer to make taxes in arrears levied against land, under the provisions of Section 53 of the Act of 1903, C. S. 5134, it is lawful to add to the taxes in arrears for the current year, to make which a sale has been ordered, all arrears of taxes for which the land has been sold and purchased by the taxing district to the extent necessary to pay the cost of redemption whether the taxes accrued prior to that date when the Act of 1903 went into effect or thereafter. 30

2. The fact that the township clerk in furnishing the collector with a statement of all taxes in arrears,

erroneously included an instalment of a sewer assessment not yet due, will not vitiate the sale when it appears that the collector before making the sale corrected the error by deducting the instalment and did not include it in the amount for which the sale was made, nor will the fact that the clerk included in the amount certain costs not properly chargeable, make the sale illegal if in fact the sum for which the land was sold was not more, excluding the fees, than
10 the true amount due.

3. Proof by the collector making the sale that he posted advertisements thereof in five of the most public places of the taxing district, is not overcome by the fact that two of the places were sometimes closed during business hours.

4. It is not necessary that the notice of sale for unpaid taxes put up by the collector shall contain
20 a statement that the land will be sold in fee if no one should bid for a shorter term. The statute makes it the duty of the officer to make the sale in fee if no one shall bid for a shorter term and it is not necessary to advertise the terms of the statute.

Argued June Term, 1917, before Justices Swayze, Bergen and Black.

Charles C. Hommann, for prosecutors.

J. H. T. Martin, for defendants.

30 The opinion of the Court was delivered by BERGEN, J.:

On the thirty-first day of July, 1916, the collector of the township of Woodbridge in the county of Middlesex sold at public auction a parcel of real estate for unpaid taxes to the defendant, Valley

Company, in fee, for the sum of \$2077.13 and thereupon issued to the purchaser a certificate of the sale as authorized by statute. The prosecutors were allowed a writ of certiorari to review the proceedings upon which the tax certificate is based and also for an order setting aside the sale and certificate. The material facts, which are not in dispute, are as follows: The land was assessed in the name of the owner Charles S. Demarest, for the years 1894 to 1911, inclusive, and in the name of the estate of Samuel Dally for the years 1912 to 1915, inclusive; that in 1895, the land was sold for taxes assessed for the year 1894, and were also sold in 1898, 1900 and 1908, for the taxes of the next preceding year, the township of each case being the purchaser. The sales in 1895, 1898 and 1900, being for the period of thirty years, and those of 1904 and 1908, being in fee. After the foregoing sales the township continued to levy the taxes against the land in the name of the owner and no taxes being paid after the sale of 1908, nor the land redeemed from the effect of the prior sales, the township committee, March 15, 1916, adopted a resolution directing the collector to sell the land to raise the taxes levied for the year 1914, and for all other taxes in arrears.

The township clerk certified to the collector the amount of unpaid taxes for the years 1894 to 1915, inclusive, and also an unpaid sewer assessment. When the collector came to make the sale it was found that of the sewer assessment \$33 was not then due and the collector deducted that sum from the amount certified and added to the balance thus ascertained, the expenses and costs of the sale, making a total of unpaid taxes, interest, sewer assessment and expenses of \$2077.13 for which the land was sold and purchased by the Valley Company.

The sale was made by virtue of Section 53 of the Tax Act of 1903, C. S. 5134, which provides that where land has been sold and purchased by a taxing district the subsequent taxes shall be levied as if no sale had been made and shall remain a paramount lien on the land, and that no further sale shall be made unless directed by the governing body of the municipality assessing the taxes, in which case the clerk of the taxing district shall certify to the collector the amount required to be paid to redeem the land from the previous sales, and that the collector shall sell the land for the amount thereof to be added, to the tax for the current year. In the present case the sale was made for taxes levied in the year 1915 and to it was added all unpaid taxes, the result being to raise a sufficient sum to pay all taxes in arrears and also to redeem the land from the prior sales to the taxing district.

The first reason which the prosecutor argues why this tax sale should be set aside, is that the certificate of the township clerk of the amount to be added to the current taxes included the tax for the years between 1894 and 1903, the date of the act which permitted the adding of anterior unpaid taxes to those of the current year for which the sale was to be made, it being urged that the Act of 1903 had no application to taxes accrued previous to that date, because although Section 53 of the Act of 1903 declares that "Where a parcel of land has been purchased and is held by the taxing district under a tax sale not redeemed all subsequent taxes * * * shall be and remain a paramount lien on the land and be added to the purchase money and shall be paid before the land can be redeemed from the sale," it is provided by Section 66, C. S. 5141. "This act shall take effect on the twentieth day of December, 1903, and

its provisions shall extend to proceedings on and after that date relating to taxes assessed in the year 1903, but not to proceedings relating to taxes assessed in prior years."

Section 66 appears to be a legislative declaration that the Act of 1903 shall not apply to proceedings relating to taxes theretofore assessed, and that the collection of prior unpaid taxes cannot be enforced in the method provided by Section 53 which relates to cases where, at a prior tax sale, the taxing district became the purchaser. By the statute of 1902 P. L. 447, all unpaid taxes assessed after the first day of January, 1898, were made a first lien for and during the period of five years next after the date on which they become delinquent, and by Section 2 of the same act taxes thereafter assessed were made a paramount lien for five years, but this act was repealed in 1903 P. L. 446 with the proviso that the repealer should not effect the proceedings or remedies relating to taxes assessed prior to 1903. The effect of this repealer was to restore the status existing prior to its adoption, the limitation of five years being removed, and the proceedings and remedies relating to taxes assessed prior to December 20, 1903, restored.

By the Statute of 1879 P. L. 298, C. S. 5188, it was enacted that where real estate theretofore or thereafter sold, for non-payment of taxes, assessments or water rents was purchased by the taxing district, or by any person in its behalf, subject to the right of redemption, the taxes, assessments and water rents should continue to be assessed upon the land for subsequent taxes, but that it should not be necessary to sell the land for non-payment and that such taxes and assessments should remain a first lien upon the lands to be paid before it could be redeemed, but this does not provide for a sale for un-

paid taxes for which a sale had been made, so the situation is, that as to taxes assessed prior to 1903 and for which the land assessed had been sold and purchased by the taxing district, the right of redemption and not of resale existed, and the only question now presented is whether in making a sale under Section 53 of the Tax Act the cost of redemption may be added to the amount of the current taxes for which a sale is to be made. We do not perceive any
10 difference between selling to make a current tax subject to a right of redemption from a prior sale, and a sale to make current taxes which shall include the amount necessary to pay the redemption fee. The sale made under the Act of 1903 is in fee unless the bidder will take it for a shorter term, and the purchase of a fee subject to the cost of redemption would require the payment of the latter cost, for it cannot be assumed that the legislature ever intended by implication, what it has not expressly declared, viz.,
20 that a sale of land for unpaid taxes, for a current year, under the Act of 1903 would deprive the taxing district of its right to claim, and be paid, the taxes in arrears for which it had purchased the land and was holding subject to the owner's right of redemption. We are, therefore, of opinion that when a sale of land is made under the Act of 1903 the taxing district may add to the current tax, for which a sale is about to be made, the amount required to be paid to redeem the land from the effect of all prior sales
30 at which a taxing district became the purchaser. In matters of taxation all doubtful questions must be resolved in favor of the right of the state to enforce the payment of taxes levied to sustain the government.

The next point is that as some of these taxes are more than twenty years in arrears there is a pre-

sumption that the tax has been paid. In support of this we are referred to: *In re Commissioners of Trenton*, 17 N. J. L. J. p. 23, in which it is reported that Mr. Justice Abbett said that as to taxes "A presumption of payment arises after an absence of twenty years, if there is no evidence to repel it, and to show that the debt is still unsatisfied." Without conceding that such a presumption arises against the state, it is a sufficient answer in this case to say that such a presumption, if it exists, is rebutted by the admitted fact that none of the taxes now in dispute have ever been paid. But aside from this all of these taxes beyond the twenty year limit have been enforced by a sale and purchase by the taxing district for the period of thirty years which has not yet expired and, therefore, it is still the owner subject to the owner's right of redemption if that right has not yet expired. 10

The next reason argued is that the certificate of the clerk included an instalment of a sewer assessment amounting to \$33 not yet payable, and that this amount, although deducted by the collector before the sale, was included in the certificate of the clerk. It is not denied that this amount was not included in the sum for which the sale was made, and the mere fact that there was a mistake in the amount claimed in the certificate of the clerk which was corrected before the sale and it made for the true amount, will not vitiate the sale, for the owner was in no way injured because he could have redeemed before the sale by paying the correct amount for which the sale was made. 20 30

Another reason urged is that the certificate of the clerk included certain items of cost which were greater than that allowed by law, that is, that forty cents was charged in each case as a fee in excess of

the legal amount. This does not make the sale illegal when it appears, as it does here, that the amount for which the property was sold, owing to other slight miscalculations, was not more than was due the township excluding these alleged illegal fees, there being nothing to show that the owner offered to redeem for any sum due less these fees or that he made any objection thereto prior to the sale, or that he is now willing to redeem by paying the amount
10 due.

The next reason urged is that the lands could not be advertised for sale to make the taxes of 1915 until after July first, 1916, prior to which time the land could not be sold for unpaid taxes for the year 1915. This claim is not sound for there is nothing in the statute which prevents the advertising of the land for sale prior to the first day of July in each year, all that the statute forbids is a sale prior to that date, and in this case a sale was not made until after that
20 date.

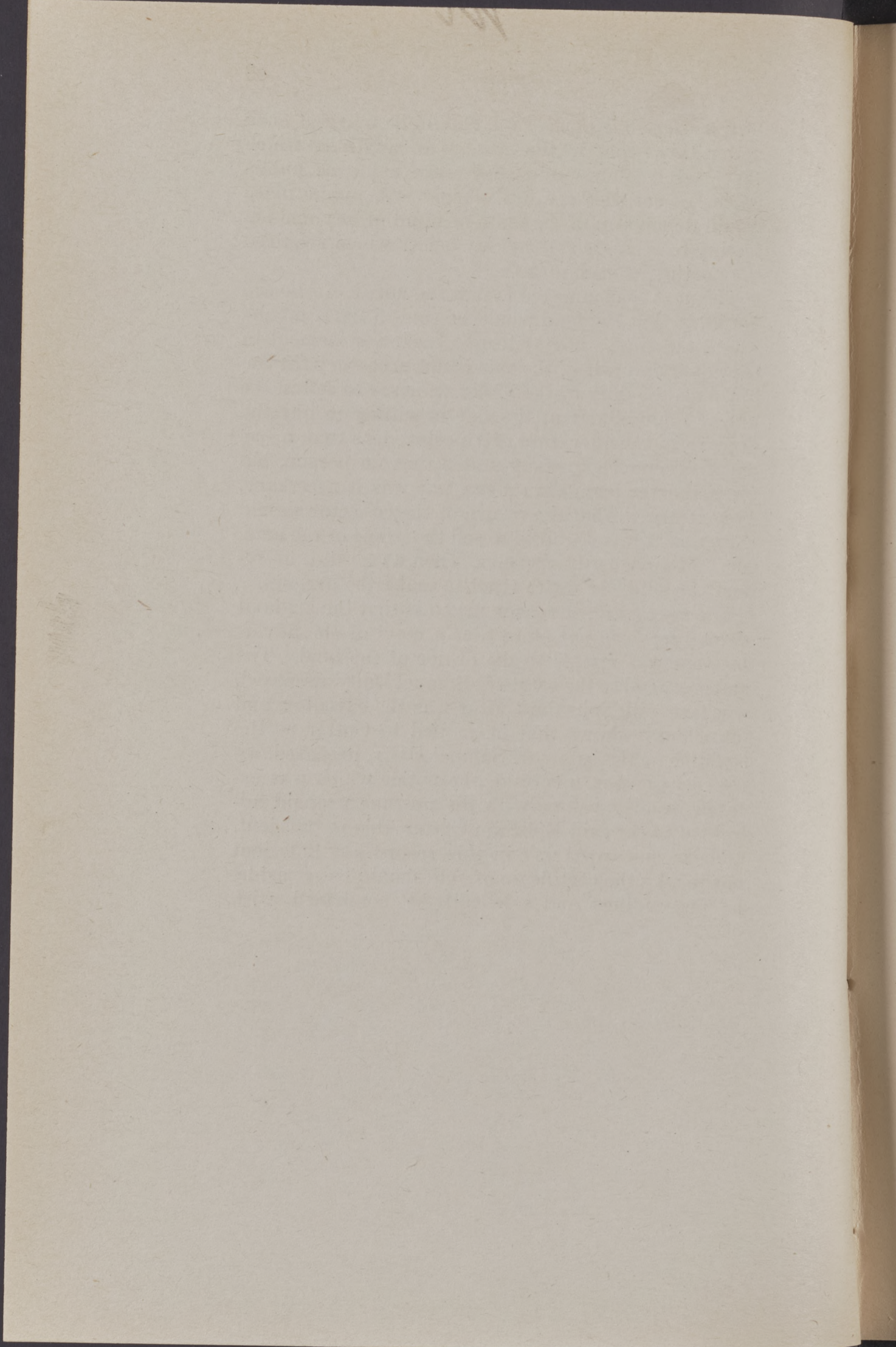
The next reason urged is that the advertisements of the sale were not put up in five of the most public places of the taxing district. It is not urged that the places were not public in the general sense of that word, but that two of the places were sometimes closed during business hours. The affidavit of the collector sets out that they were set up "In five or more of the public places of said township" as follows, one on a pole on the north side of Green St., "In
30 front of the premises described in said notice," one in the post-office, one in the printing office, one in a real estate office, one in a grocery store, and one in the public room of a hotel, giving the name of each. We think this is sufficient proof, and must be taken as true, unless it is rebutted in a more substantial manner than appears in this case. They are all in a

fair sense public places, and should be taken as such under this proof in the absence of anything which conclusively shows that they were not such public places as satisfies the law. What is a public place would depend upon the state of mind of any one objecting to a public sale by any officer which required the posting of such notices.

The next reason urged is that the notice of sale did not state that the land would be sold in fee if no one would bid for a shorter term. Such a statement in the advertisement of the sale is not necessary for the law fixes the duty of the officer which is to sell in fee unless some bidder at the sale is willing to pay the arrears in consideration of an estate less than a fee, and the report expressly states that no person, bid for a shorter term than a fee, nor was it necessary, as next urged, that the return of the collector should state that it was required to sell the whole of the land, for that sufficiently appears, when as he did, he reports he sold the entire tract to make the arrears.

The next and last reason urged is that the affidavit of mailing does not state that a copy of the advertisement was mailed to the owner of the land. The land belonged to the estate of Samuel Dally, deceased, of whose will Ephraim Cutter was the executor, and his affidavit shows that he mailed to Cutter as the executor of the estate of Samuel Dally, deceased, assessed as owner, a copy of the notice which was enclosed in an envelope with the postage prepaid addressed to the said Ephraim Cutter, this is sufficient.

There not appearing in this record any sufficient reason why the certificate of sale should be set aside, the proceedings and sale will be confirmed with costs.



New Jersey Court of Errors and Appeals

Albert Martin, et al.,
Prosecutors and
Appellants,

vs.

The Township of Wood-
bridge, in the County of
Middlesex, et al.,
Defendants and
Respondents.

On Appeal from Su-
preme Court in
matter of certio-
rari.

BRIEF FOR APPELLANTS

A writ of certiorari removed into the Supreme Court, a certain tax sale certificate, bearing date the ninth day of August, 1916, made by the collector of the township of Woodbridge to the Valley Company, certifying to the sale of certain lands in fee for taxes, and a certain certificate made by the clerk of said township, certifying the amount necessary to be paid to redeem said lands from previous sales. (Case pp. 1-10, 23.)

The sale purported to be made under Section 53 of the revised Tax Act of April 9, 1903 (C. S. 5134), providing for a sale of lands for subsequent taxes, in cases where lands had been purchased by the taxing district, under a tax sale, and the lands had not been redeemed.

It was claimed by the reasons filed in the Supreme Court, that the proceedings were illegal and defective in a number of respects. (Case, p. 28.)

The tax sale and proceedings were affirmed in the Supreme Court, and an appeal has been taken from the judgment of that Court. (Case, p. 33.)

The opinion of the Supreme Court is found on page 41 of the Case.

It is claimed that the tax sale should have been set aside by the Supreme Court, for the following reasons:

1. That there was included in the sum for which the lands were sold, and also in the certificate of the township clerk, taxes and the amount of certain tax certificates, assessed or made prior to the year 1903.
2. That said lands were sold for a sum which included the amount of a tax sale made in the year 1895, which was more than twenty (20) years before the date of sale.
3. That said lands were sold for a sum which included taxes assessed in the year 1895, more than twenty (20) years before the date of sale.
4. That the certificate of the township clerk on which the sale was based included two instalments of a sewer assessment, amounting to \$33.00, which were not yet due.
5. That said certificate of said clerk included certain amounts for costs which were greater than those allowed by law, or were unauthorized.
6. That the taxes of 1915 were improperly included in the certificate of said clerk.

7. That the notices of sale were defective in not stating that the lands would be sold in fee, if no one would bid for a shorter term, and in not mentioning the amount of the tax and costs of the current year.

8. That the sale was illegal because copies of the notice of sale were not set up in five of the most public places of the taxing district, as required by law.

9. That no copy of the notice of sale was mailed to the owner of the lands, as shown by the return of the collector, and the said return not showing that the post-office address of the owner was not known to said collector.

10. That said lands were sold for an amount different from that certified to be due by the clerk, and mentioned in the notices of sale.

11. That said sale was illegal because said lands were advertised for sale before the first day of July, 1916.

12. That it was not necessary, so far as the return of the collector shows, to sell the whole of said lands, in order to raise the amount claimed to be due, with interest and costs of sale.

I.

Section 53 of the Tax Act of 1903 (C. S. p. 5134) under which the sale purported to be made, as amended in 1915 (Laws of 1915, p. 78), reads as follows:

“53. Where a parcel of land has been purchased and is held by the taxing district, under

a tax sale not redeemed, all subsequent taxes shall be assessed in the name of the owner, as if no sale had been made, and shall be and remain a paramount lien on the land, and be added to the purchase money, and shall be paid before the land can be redeemed from the sale, and no further sale for taxes of said parcel while held by the taxing district, shall be made by the collector, unless directed by resolution of the governing body of the taxing district, in which case the clerk shall certify to the collector the amount due to the taxing district upon and required to be paid to redeem the land from the previous sale or sales for taxes, and from the lien of the taxes subsequent thereto, and from any sale or sales for unpaid assessments for public improvements, and from any such assessment for which a sale has not been made; and the collector shall advertise and sell the land for the said amount, added to the tax and costs of the current year; the taxing district may sell any land purchased by it for taxes, and direct the transfer of the certificate of sale subject to the right, if any, to redeem, to any person paying not less than the amount for which sold, and interest and subsequent taxes."

Section 66 of the Tax Act of 1903 is as follows:

"66. This act shall take effect on the twentieth day of December, nineteen hundred and three, and its provisions shall extend to proceedings on and after that date, relating to taxes assessed in the year nineteen hundred and three, but not to proceedings relating to taxes assessed in prior years; all acts, general and special, inconsistent with the provisions of this act are hereby repealed, but this repealer shall

not extend to proceedings or remedies relating to taxes assessed prior to the year nineteen hundred and three.”

There was included in the sum for which said lands were sold taxes assessed in a number of years prior to 1903, as well as three tax sales made prior to 1903. (Case, pp. 10 and 12.)

While Section 53 of the act says that the clerk shall certify the amount necessary to redeem from the previous sale or sales, this it is claimed, refers to sales made under the Act of 1903, and taxes subsequent to any such sale. Until a sale is made under the Act of 1903, the provisions of Section 53 would not apply, and Section 66 of the act says, that “its provisions shall extend to proceedings on and after that date, relating to taxes assessed in the year 1903, but not to proceedings relating to taxes assessed in prior years.”

The clerk, therefore, it is claimed, certified taxes that could not be included in his certificate, and the lands were sold for such taxes. Both the certificate of the clerk, and the sale of the certificate of sale, for this reason were illegal.

“The sale of land for taxes or assessments is the execution of a naked power. Every requirement of the statute imposing the liability and prescribing the procedure to enforce it, which tends to the security of the owner, or is for his benefit, must be strictly conformed to. No intendment will be made in favor of the legality of the proceedings. To support the title, the burden of showing compliance with the law is on the purchaser. *Baxter vs. Jersey City*, 36 N. J. L. 188; opinion by Depue, J. See also *Allen vs. Woodbridge*, 43 N. J. L. 263.

“Statutes purporting to confer the authority

to sell land for taxes, being in derogation of the right of property, must be strictly construed." 27 A. & E. Encyc. of Law (second edition) 816.

And the Courts have uniformly held that in the absence of a clear legislative intent statutes granting the power to sell land, should not have a retroactive operation, a prospective operation alone will be given them. *Nowlen vs. Hall*, 128 Mich. 274; *Dallan vs. Oliver*, 3 Gill. (Md.) 445.

In the case of *Dixon vs. Jersey City*, 37 N. J. L. 39, it was held in the Supreme Court, that when in 1871, a new charter was passed for the city, and the former charter repealed, the provisions of the new charter for the collection of delinquent taxes did not apply to taxes assessed before the repealer.

In the opinion of the Court below it is said, "We do not perceive any difference between selling to make a current tax, subject a right of redemption from a prior sale, and a sale to make current taxes which shall include the amount necessary to pay the redemption fee." But the rights of the property owner are injuriously affected by such a sale in a number of ways. For instance, his land under a sale prior to 1903, had been sold for not more than thirty (30) years, and not in fee. Failure to redeem did not involve a total loss of the property.

Again, such sales prior to 1903, may have been illegally made. By the new sale any illegalities in the former sales probably would be cured. Many other disadvantages to the property owner from such a procedure might be mentioned.

It seems to us that the Supreme Court have put a construction upon Section 53 of the Tax Act of 1903, not intended by the legislature, and a construction in conflict with the express provisions of Section 66 of the act.

In the late case of *Cahill vs. Harrison*, 100 Atl. 625, it was held by Vice-Chancellor Lane, that the effect of a sale under the Act of 1903, is to put the title of the property in the purchaser at the sale, free, clear and discharged of all liens prior to the sale, including rights obtained by the municipality under a tax sale.

If this interpretation of the law is correct, a sale of lands under the Act of 1903, whether for the tax of a single year, or for several years' taxes under Section 53, would not be subject to any tax sales made in years prior to 1903.

II.

The certificate of the clerk included a tax sale made in 1895, for taxes of 1894, more than twenty years before the date of sale, and the lands were sold for an amount which included this sale. (Case, pp. 10 and 12.)

It was admitted in the written agreement signed by the attorneys of the respective parties, that the township had never taken possession of said lands under any of the sales. (Case, p. 31.)

Any action, therefore, brought under that sale, to obtain possession of the lands, would have been barred by the statute of limitations. It would not seem, therefore, that any proceeding attempting to resell under that tax sale, would be valid. The sale of 1895, would also, we think, be presumed to be paid, for the same reasons which are discussed in the next ground of appeal, in relation to the tax of 1895.

III.

One of the sums for which the sale was made was the tax assessed and payable in 1895, more than

twenty years before the date of the sale. (Case, pp. 10 and 12.)

It is claimed that this tax is presumed in law to have been paid.

In the case of *In re Commissioners*, 17 N. J. Law Journal, 23, on an application in the Mercer Circuit Court, to confirm the report of adjustment commissioners Mr. Justice Abbett held that a presumption of payment of certain taxes and assessments arose from the fact that over twenty years had expired since they were imposed. He says:

“Under the authority of these cases I hold that all these matters in which the commissioners have sustained taxes or assessments that have existed for over twenty years prior to their appointment, be referred back to them, with this view of the law for their guidance: That as to each of those that are over twenty years, the presumption of payment arises after a lapse of twenty years, if there is no evidence to repel it, and to show that the demand is still unsatisfied. In other words that it is a *prima facie* presumption of payment after twenty years, but that it is a presumption that can be repelled by the city by evidence.”

“A presumption of payment arises in relation to bonds, mortgages, judgments, &c., after a lapse of twenty years, if there is no evidence to repel it, and to show that the debt is still unsatisfied. Taxes cannot have any higher character in this respect than debts due by specialty, and of record. * * * There is no reason that we can discover, why the same principle should not be applied to them.” *Hopkinton vs. Springfield* 12 N. H. 328. See also *Fisher vs. Mayor, &c.*, 67 N. Y. 73: *Lawson's Law of Presumptive Evidence* (2nd Edit.) p. 370.

In the opinion of the Court below it is stated that "such a presumption, if it exists, is rebutted by the admitted fact that none of the taxes now in dispute have ever been paid."

The counsel of the defendants in his brief in the court below claimed that such an admission had been made. This claim must have been based on the fact that the reasons filed did not allege that the tax had been paid, but that it was assessed more than twenty years before the date of the sale. This was equivalent to alleging that the tax was presumed to have been paid. It was not an admission that the tax had not been paid. No such admission has ever been made by the appellants, and as they are not the owners of the property, it is not probable that they have any positive knowledge as to the matter.

IV.

The certificate of the clerk on which the sale was based, included two instalments of a sewer assessment which were not yet due.

As appears from the collector's return, this amount was deducted at the time of sale, and the lands sold for the amount certified by the clerk, less \$33.00 with costs of sale, but no deduction was made for the interest on this sum, included in the clerk's certificate. (Case, p. 14, l. 21.)

There was an error in the certificate and in the advertisement.

It is claimed that this error renders the sale in question void.

The certificate of the clerk takes the place of the warrant which under prior statutes was issued to the collector. It is the foundation on which the proceedings rest.

"If the tax warrant is void, any sale made, or deed

given, by virtue of it, will be void also." *Black on Tax Titles* (2nd edition, Sect. 201.

It is attempted by the respondents to show by a calculation of interest, that too little interest was included in the clerk's certificate, and that it should have been for an amount about \$60.00 greater.

In this calculation, however, the fact is overlooked, that on taxes prior to 1903, interest should have been charged at the rate of six, instead of seven, per cent. under the Act of March 14, 1879. (3 Gen. Statutes, p. 3359, par. 368), *Landis vs. Vineland*, 43 At. 569; *Rellstab vs. Belmar*, 58 N. J. Law, 489. It has not been shown, therefore, that the amount certified by the clerk was not greater than the amount required to be paid to redeem the land.

V.

The certificate of the clerk included certain amounts of costs which it is claimed were greater than those allowed by law.

In sixteen cases forty-seven cents costs is added to the amount of the taxes. (Case, pp. 10 and 11.)

This was forty cents more, in each case, than the legal costs. Under Section 50 of the Act of 1903, the fees are seven cents to the collector and county clerk, in relation to the return of the taxes. Twenty cents must be paid to the collector, if a certificate is required for filing with the county clerk, to obtain cancellation of the tax, and the county clerk is entitled to twenty cents for cancelling. But it is not necessary to pay these fees in order to redeem the property, and the fee to the collector is not payable unless such a certificate is asked for, after the tax has been paid, and the fee to the county clerk is not payable unless he is asked to cancel the tax.

"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." *Dixon vs. Jersey City*, 37 N. J. Law, 39; *Rellstab vs. Belmar*, 58 N. J. Law, 489. In that case too high a rate of interest had been charged. See also cases of *Landis vs. Vineland*, 43 At. 569; *Hopper vs. Malleson*, 16 N. J. Equity, 382; *Milledge vs. Coleman*, 47 Wis. 184; *Black on Tax Titles*, Secs. 233 and 237.

VI.

It is claimed that the taxes of 1915 were improperly included in the certificate of the clerk.

The resolution of the township committee, passed in March, 1916 (Case, p. 7), directed the collector to make sale for the taxes of the year 1914, together with the arrears, regarding that as the current year. We think that the intention of the act was that the arrears should be certified, not including the taxes of the year for which the collector was authorized to sell at the time of the resolution. If 1915 be regarded as the current year, the taxes of that year should have been excluded.

Section 53 of the act provides,

"in which case the clerk shall certify to the collector the amount required to be paid to redeem the land from the previous sale or sales, and the collector shall advertise and sell the land for said amount, added to the tax and costs of the current year."

This was not done in the case of the sale in question.

The certificate should not have included the current year, and the advertisement of sale should have stated that the land would be sold for the amount certified, added to the amount of the tax and cost of the current year, stating the amount of such tax.

Whatever the law requires to be done for the protection of the taxpayer is mandatory, and cannot be regarded as merely directory. *Black on Tax Titles*, Sect. 198.

VII.

The notices of sale were defective in not stating that the lands would be sold in fee, if no one would bid for a shorter term, and in not mentioning the amount of the tax and cost of the current year.

The matter of the said tax and cost has been discussed in the preceding paragraph, in connection with the certificate of the clerk. Section 52 of the act provides that the lands are to be sold in fee, where no one will bid for a shorter term."

It would seem that the notice of sale should state fully in what manner the sale is to be made, so that bidders might be induced to come to the sale. Persons might attend a sale where property was to be sold in fee, who otherwise would not attend. The giving of notice in the form and manner required by the statute is an essential jurisdictional fact. *Sharp vs. Johnson*, 4 Hill, 92; *Flint vs. Stewart*, 30 Me. 226.

VIII.

The copies of the notice of sale were not, it is claimed, set up in five of the most public places of the taxing district.

By Section 54 of the Act of 1903, a report or return must be made by the collector, setting forth his proceedings in making sales.

In the case of *Jones vs. Landis Township*, 50 N. J. L. 374, it was held in the Supreme Court, that the return of the collector must show a compliance with

all the requirements of the law, and that it cannot be added to by the testimony of the collector. See also case of *Landis vs. Vineland*, 43 At. 569 as to the importance of the return.

It is not conclusive, however, upon the persons interested in the land.

It is admitted in the stipulation entered into between the attorneys of the respective parties (Case, p. 31) that the office of the Woodbridge Printery, one of the places at which the notice of sale was posted, was frequently closed for several hours between the hour of nine in the forenoon, and five in the afternoon, of week days; and that the real estate office of Mr. Harned was frequently closed three days in the week, on week days, for at least five hours, between the hours of nine in the forenoon, and five in the afternoon, although it was open almost every evening, for two hours or more.

If the other places at which the notice was posted, complied with the statute, the two places above specified, can hardly be termed three "of the most public places of the taxing district."

A public place must clearly be a place accessible to the public, because otherwise the notice would remain comparatively secret, and the very object of posting would be defeated. *Prince George's Company vs. Clark*, 36 Md. 206; *Russell vs. Dyer*, 40 N. H. 173, 27 A. & E. Encyc. of Law (2nd Edit.), p. 828.

IX.

No copy of the notice of sale is shown by the return of the collector to have been mailed to the owner in compliance with Section 51 of the Act of 1903 and the said return not showing that the post-office address of the owner was not known to the collector.

The affidavit of the collector (page 10), states that

a copy of the notice was mailed to the executor of the estate of Samuel Dally "assessed as owner," but does not state who the owner of the property was.

If an estate was the owner, we think the notice should have been mailed to the heirs or devisees.

X.

The lands were sold for an amount different from that certified to be due by the collector, and different from the amount mentioned in the notices of sale.

As stated above the amount of two instalments of a sewer assessment was deducted at the time of sale. This is shown by the return of the collector. (Case p. 14, line 21.)

Section 53 of the Act of 1903 directs that "the collector shall advertise and sell the land for the said amount added to the tax and costs of the current year." *Black on Tax Titles*, Sect. 207; *Alexander vs. Pitts*, 7 Cush, 503.

XI.

The sale was illegal because the lands were advertised for sale for the taxes of 1915, before the first day of July, 1916. The advertisement of sale began on June 16, 1916.

Section 51 of the Act of 1903 provides that if taxes on real property remain in arrears on the first day of July in the year following the levy, the collector shall enforce the tax lien by selling the land.

Under Section 53, after one sale to the taxing district, no further sale shall be made unless directed by resolution of the governing body of the district. But this does not mean that a sale can be made for the taxes of any year before the first day of the

year following. *Flint vs. Sawyer*, 30 Me. 226; *Poken-
dorf vs. Taylor*, 4 Pet. 489.

XII.

It was not necessary so far as the return of the collector shows, to sell the whole of said lands, in order to raise the amount claimed to be due, with interest and costs of sale.

The return of the collector should have stated that it was necessary to sell the whole of the lands. *Schmoele vs. Galloway Township*, 44 N. J. Law, 145.

The collector is not to sell the whole under Section 52, if part will be sufficient.

“Where such a provision exists, authorizing a sale of such fractional part as may be sufficient, it must be strictly followed, and the evidence of a compliance with the law in this regard, is required to be furnished in the first instance by the officer’s return of the sale, or the certificate given to the tax purchaser, or the tax deed.” *Crowell vs. Goodwin*, 3 Allen, 535; *Jaquith vs. Putney*, 48 N. H. 138; *Brooking vs. Woodin*, 74 Me. 222; *Hall vs. Collins*, 117 Mich. 617.

For the above reasons it is respectfully submitted that the judgment of the Supreme Court should be reversed.

E. M. Teohie

CHARLES C. HOMMANN,
Of counsel with appellants.

SECTIONS OF THE REVISED TAX ACT OF
1903

“50. On or before the first Tuesday of February in each year the collector of each taxing district, except cities having charter provisions for a public record of tax liens on land, shall file with the clerk of this county a list of all unpaid taxes assessed the preceding year on real estate in his taxing district, setting forth against whom assessed * * * * * for which service he shall be paid by his taxing district two cents for each name returned; * * * * * the county clerk shall record the list and affidavit in a separate book for each taxing district, and properly index the same, and shall receive for his services from the taxing district five cents for each name in the list; * * * * * the lien shall include seven cents for each name for the cost of listing and recording, and shall be marked satisfied by the county clerk on the tax record on payment to the collector of the total amount due, together with a fee of twenty cents for a certificate to the county clerk that the tax has been satisfied, and on the filing with the county clerk of the collector's certificate, and on payment to the clerk of twenty cents for his services.

“51. When taxes on real property remain in arrears on the first day of July in the year following the levying thereof; the collector or other officer charged by law in the taxing district with that duty, shall enforce the tax lien by selling the land, or any part thereof sufficient for the purpose; he shall give public notice of the time and place of such sale, stating the names of the delinquents, and the land to be sold, amplifying the description in the duplicate, if necessary to better identify the parcel, and the amount of the delinquent taxes thereon, by

advertisement signed by him, in a newspaper published in the taxing district, or county where said land lies, once in each week, for at least four weeks successively next preceding the day appointed for the sale; and in all taxing districts, except cities, shall cause copies of such notice to be set up in five of the most public places of the taxing district for the same period, one of which must be on or near the premises to be sold, and when the post-office address is known to him, shall mail a copy of such notice to the owner at such address, postage prepaid; * * * * *

“52. At the time and place specified in the notice of sale or adjournment, the collector shall sell at public auction, each parcel of real property on which the tax is in arrear, or any part thereof sufficient for the purpose, to such person as will purchase the same for the shortest term, and pay the tax lien, including interest and costs of sale, or in fee where no one will bid for a shorter term within ten days after the sale, the collector shall deliver to the purchaser a certificate of sale, under his hand and seal, and duly acknowledged by him as a conveyance of land, which shall set forth that the property therein to be described, has been sold by the collector to the purchaser, the name of the delinquent owner, term for which sold, the amount of the tax, with the items of interest and costs in detail, the year for which assessed, and the time when the right to redeem will expire; * * * * * the collector shall strike off and sell to the taxing district any parcel of real property for which there shall be no other purchasers, and the taxing district shall have the same remedies and rights as other purchasers, and may sell the land purchased, or any part thereof, for not less than the price paid therefor, together with subse-

quent taxes and interest, or may let the land and collect the rental; * * * * .”

“54. On the first Tuesday of February following the sale, the collector shall present to the governing body of the taxing district, and file with the clerk or other custodian of the record of delinquent taxes, an account in detail of all taxes collected by him without sale since the filing of his list of delinquents on the first Tuesday of February preceding, and at the same time the officer making the sale shall file with the clerk of the taxing district, his report of sales under oath, containing a schedule of all of the unpaid taxes on real property shown on his duplicate from the collection of which he has not been released, and his proceedings in making sales therefor, and stating all the particulars above required to be set forth in the certificates of sale to purchasers, to which he shall annex copies of the notice required to be published, posted and mailed, with proofs of such publication, posting and mailing * * * .”

New Jersey Court of Errors and Appeals

ALBERT MARTIN, *et al.*,
Prosecutors and Appellants,

vs.

THE TOWNSHIP OF WOODBRIDGE,
IN THE COUNTY OF MIDDLESEX,
et al.,

Defendants and Respondents.

*On Appeal
from
Supreme
Court in
Matter of
Certiorari.*

Replying Brief for Appellants

The brief of defendants-respondents to which we are replying, fails to recognize that this certiorari is prosecuted in aid of an action of ejectment pending in the Supreme Court, Case, p. 40, ll. 8, 9 and 10, based on a certificate of sale for taxes now attacked. Under a certiorari in aid of an action of ejectment based on a tax title, the prosecutor can attack the tax certificate and the proceedings underlying the same, as fully as he could under the old practice in defense of an action of ejectment, prior to the enactment in the statutes that the tax certificate should be presumptive evidence of the regularity of the proceedings. The enactment of these statutes compelled the defendant in ejectment to proceed by certiorari, and the writ of certiorari became a writ of right in such cases.

This is the settled law of the State. *Baxter, Pros. v. Jersey City*, 36 N. J. L. 188, where at page 191 Justice Depue says:

“The writ, when prosecuted under such circumstances and for such purposes, *will*

bring up for review only such defects as would previously have been available in an action of ejectment." (Italics are ours.)

He then proceeds to state that the power of sale for taxes or assessments is the execution of a naked power, and says:

"Every requirement of the statute imposing the liability and prescribing the procedure to enforce it, which tends to the security of the owner, or is for his benefit, must be strictly conformed to. No intendment will be made in favor of the legality of the proceedings. To support the title, the burden of showing compliance with the law, is on the purchaser." (Italics are ours.)

This Court in *Woodbridge v. Allen*, 43 N. J. L. 262, opinion by Justice Depue, affirmed that doctrine. It is the unquestioned law of this State. Therefore, the requirements of the statute "imposing liability and prescribing the procedure to enforce it, which tend to the security of the owner * * * must be strictly conformed to" and defects of the character above specified will be fatal on a certiorari prosecuted in aid of an action of ejectment. See *Drew v. Flynn*, 83 N. J. L., p. 1.

The respondents' brief under Ninth Objection, p. 13, refers to the property in accordance with the fact, as "an entire house and plot." The sale was in fee, and therefore if the certificate of sale should be sustained, there would be a forfeiture of this house and lot by virtue of the certificate of sale attacked; it is settled law that there will be no legal intendment in favor of proceedings which work a forfeiture.

In the third paragraph of the respondents' brief, p. 2, l. 1, they state that this suit "Chal-

lenges not merely irregularities in the conduct of the sale but the very lien of the township, and its ability to enforce collection of the arrears for which this sale was made." Such is not the contention. On the contrary we insist that the township, upon the setting aside of this certificate of sale, still has not only a lien, but the right to enforce that lien for all taxes against the property, except such as it has lost by its own negligence.

The respondents' brief constantly refers to "revised reasons." There is but one set of reasons filed, and they are the reasons set forth in the case. There were preliminary reasons submitted to the Justice of the Supreme Court to whom the application for the writ was made, and we assume that the brief refers to the reasons filed pursuant to the statute, after the return was made, as revised reasons, only in contrast to the preliminary reasons thus presented on the application for the writ.

REPLYING TO THE FIRST OBJECTION IN THE RESPONDENTS' BRIEF:

The essential of a valid tax sale is clear legislative authority to make the sale. The record shows, Case, p. 4, *et seq.*, also p. 10, *et seq.*, that the property sold for taxes for the year 1894, was sold to the township for a period of thirty years; that the property was again sold to the township for a period of thirty years for the taxes of 1897. It was again sold to the township for a period of thirty years for the taxes of 1899. These sales were under the Act of 1879, P. L. 1879, p. 340, G. S. 3353. By Sec. 12 of the supplement of that act passed in 1880, lands could be sold thereunder for no longer than thirty years. The taxes for which the sale in

question took place, covered from 1894 to 1915 inclusive, and the sale is made by virtue of the act of 1903, referred to in both the brief for the appellants, and the brief for the respondents.

The respondents claim that the sale is authorized by Sec. 53 of that Act. But the last section of the Act, Sec. 66, sets forth the application of the act, and also its effect as a repealer, and under the established rules of statutory construction controls all the rest of the act. The section expressly defines the scope of the act both affirmatively and negatively. After stating that it is to take effect on the 20th day of December, 1903, it adds:

“And its provisions shall extend to proceedings on and after that date, *relating to taxes assessed in the year 1903, but not to proceedings relating to taxes assessed in prior years.*”

It then, for the purpose of protecting the taxes to which it did not relate, namely, those assessed in prior years, repeals all acts, general and special, inconsistent with its provisions, and adds the words:

“But this repealer shall not extend to proceedings or remedies relating to taxes assessed prior to the year nineteen hundred and three.”

As this language is perfectly clear and definite, and is in that portion of the act which defines its scope, it is impossible to so construe it that a sale under it can be made for taxes assessed prior to the year 1903, as is attempted in this case.

Section 53 is capable of a construction that in no wise conflicts with Section 66. It is applicable to all taxes which may be in arrears

after a sale under the act of 1903, and authorizes a sale pursuant to the provisions of Section 53 for the taxes in arrears after 1903, reported by the clerk pursuant to the requirement of that section.

The result is that the township of Woodbridge, had the power to sell for the taxes for the year 1903, and succeeding years under the provisions of the Act of 1903, and that it retains all the rights it ever had, save as it may have lost them by negligence, to sell for the taxes prior to 1903, under the provisions for the sale of property for taxes contained in the statutes relating to such prior taxes, and it has full power to enforce prior taxes under the provisions of such statutes. Such a sale under the Act of 1903, for taxes assessed for that year and thereafter, where there existed uncollected taxes for prior years, would, by the terms of the Act of 1903, be subject to the right to sell to enforce the prior taxes, and to prior tax sales.

We have discussed in our principal brief the Supreme Court's view that there was no difference between selling under the Act of 1903, *subject* to the right to enforce the taxes *for years prior to 1903*, and the selling in one sale *for* taxes for 1903 and subsequent years, and also *for* arrears for prior years. We would only add that a purchaser under a sale, under the Act of 1903 might decide not to redeem from sales the term for which had nearly expired, whereas he would be very unwilling to pay as a purchase price the whole of the taxes prior to 1903, plus the taxes for 1903 and afterward. In this case the premises were sold for thirty years in 1895, for the taxes of 1894. That period has only a few years more to run, and a purchaser might very well hesitate to redeem for that period.

We have referred to the loss of the municipality of taxes by negligence. In this case they have sold three different times for thirty years. It is stipulated, Case, p. 31, that the township has never taken possession or attempted to take possession of the premises so purchased for these taxes. It has suffered loss by this plain negligence.

A consideration of the Act of 1903, and the law referred to in our principal brief, will make it clear that a fundamental objection to this tax sale is that it is made without statutory warrant. It could not be made under the Act of 1903.

REPLYING TO THE SECOND OBJECTION IN RESPONDENTS' BRIEF:

Besides the fundamental lack of legislative authority to make this tax sale, there are further objections set forth in the reasons, and in appellants' principal brief, which under the cases require that this certificates of sale should be set aside. We think the point is well taken that where a municipality, as in this case, purchased property in 1895, more than twenty years before the tax sale in 1916, and took a certificate of sale for the premises, and has never undertaken to take possession of the property under that certificate of sale, or to enforce it, that the municipality has lost its right. If it has lost the right to include in this sale the taxes for the year 1894, covered by the certificate of sale to the township in 1895, more than twenty years before the tax sale in 1916 for the same taxes, then the taxes for 1894 could not, on any theory, be included, as they were, in this tax sale. * We do not think there can be any doubt that the right to enforce these taxes of 1894, under

* The Amount^{xxx} of the taxes for 1894, was \$34.92 in certificate of Township Clerk. Case p. 10. l. 32.

the sale made in 1895, is lost by virtue of the statute of limitations, and the adverse possession of the premises against the township. The municipality has its own supineness to blame for this situation. There is authority, as quoted in our principal brief, for the reasonable doctrine that the taxes over twenty years old and not enforced, are presumed to be paid, and unenforceable under that presumption, except it be proved on the part of the municipality, that the taxes are unpaid, and there is no proof whatever, much less any admission to that effect, as suggested in the brief of respondents, and the burden is upon the municipality to prove that they are unpaid.

REPLYING TO THE THIRD OBJECTION IN RESPONDENTS' BRIEF:

The warrant for the collector to sell, under Sec. 53 of the Act of 1903, if the sale could be made thereunder, rests upon the certificate of the clerk as to the amount of money to be raised on the sale. The inclusion in such certificate of the clerk of an erroneous amount, in excess of that due, must necessarily invalidate the sale, since he can only sell as a sheriff can on execution, to raise the amount called for by his warrant. Two instalments of the assessment in question were admittedly not due at the time of the sale. They were deducted by the collector. He had no authority to make the deduction as his warrant was to sell for the amount reported by the clerk. We therefore pass over all the calculations in this section attempting to show that the clerk made a mistake in his interest calculations and that the clerk omitted sums he should have included, and that in point of fact the sale was for less than was really due. It is

all covered by our statement above that the warrant for the sale is the certificate of the clerk. The language of Sec. 53 is:

“The clerk shall certify to the collector the amount required to be paid to redeem the land from the previous sale or sales, and the collector shall advertise and *sell the land for said amount* added to the tax and costs of the current year.”

The mandate is statutory and it is not in the power of the collector to modify the certificate of the clerk, either by addition or subtraction. The collector made the deduction at the time of the sale, Case, p. 14, l. 21.

As sustaining these views see the well considered cases of *Alexander v. Pitts*, 7 Cush. 505, and *Shurtheff v. Potts*, 92 N. E. (Mass.) 331; also *Drew v. Flynn*, *supra*, passing on language practically the same as that of Sec. 52, Act 1903, as to the amount for which the sale must be made.

*
REPLYING TO THE FOURTH OBJECTION IN RESPONDENTS' BRIEF:

The tax for the year 1915 was wrongfully included in an advertisement of the sale which was begun before July 1, 1916. There could be no sale for the taxes for 1915 until after July 1. See our principal brief, p. 16, quoting Sec. 51 of the Act of 1903 as amended. Therefore, the advertisement was bad, either because it included taxes for 1915 in an advertisement begun before July 1, of taxes which could not be advertised for sale before that date, or if the taxes for 1915 could properly be included, then the advertisement was bad because, so far as taxes for the year 1915 are concerned, it was not advertised

* The Respondents claim an error in interest of \$70. or thereabouts, but that is much less than the tax for 1915, wrongfully included amounting to \$134.92. See p. 6, this brief, note in ink.

four weeks after the same became subject to sale. The advertisement began on June 16, 1916, and was continued to July 14, 1916. Case, p. 17, l. 30; p. 8, l. 1.

THE FIFTH OBJECTION in respondents' brief is sufficiently met by the discussion in our principal brief.

THE SIXTH OBJECTION in respondents' brief is sufficiently met by the discussion in our principal brief.

THE SEVENTH OBJECTION in respondents' brief is sufficiently met by the discussion in our principal brief. There is a suggestion on page 12 of respondents' brief, at the bottom of the second paragraph, that they may amend their proof by showing outside of the record, the posting of additional copies of the notice, besides those mentioned in the return. We respectfully submit that they are bound by their return, under the cases in this State.

THE EIGHTH OBJECTION in respondents' brief is not responsive to anything in our principal brief.

THE NINTH OBJECTION in respondents' brief is sufficiently met by the discussion in our principal brief.

Under the heading of GENERAL OBJECTIONS, respondents' brief refers to several matters, among others Sec. 60 of the Act of 1903. The provision therein that a tax sale will not be set aside when invalid except upon condition that the amount due be paid to the holder of the tax lien, has no applicability except to a sale that could be *lawfully* made under the Act of 1903 containing that provision. We have shown that this sale could not lawfully be made under the

provisions of the Act of 1903; therefore the provision has no applicability, the sale being made for a much larger amount than it could be lawfully made for, under that act. *Brooks v. Township of Union*, 68 N. J. L. 133. The respondents go even to the extent of saying, that the provision of Sec. 60 would include the taxes prior to 1903, even though over twenty years old, and "even though as to those taxes the township was technically without authority to make a sale." We insist that such a claim as this demonstrates the unsoundness of the position taken, and that there can be no sale except that which is clearly within the power conferred by the legislature to that end.

The municipality is fully protected if this certificate of sale is set aside, it "may readvertise and sell if the tax lien remains in force." See P. L. 1903, p. 433, last portion of Sec. 60. Of course the sale could only be for taxes authorized to be sold under the Act of 1903, that is taxes assessed in 1903 and subsequent years. As to prior taxes the acts under which they were assessed are applicable, together with the acts similar to the Martin Act, relating to townships, P. L. 1896 and 1898.

Respectfully submitted,

C. C. HOMMANN,
EDWARD M. COLIE,
Of Counsel with Appellants.

New Jersey Court of Errors and Appeals

ALBERT MARTIN, and EPHRAIM
CUTTER, executor of the will
of Samuel Dally,

Prosecutors-Appellants,

vs.

THE TOWNSHIP OF WOODBRIDGE
IN THE COUNTY OF MIDDLESEX,
and VALLEY COMPANY,

Defendants-Respondents.

On Certiorari.

Brief for Defendants-Respondents.

This is a suit to set aside a consolidated tax sale made by the Collector of Taxes of Woodbridge, under Section 53 of the Tax Act of 1903, as amended. The original section is found in 4 C. S. 5134. This was amended P. L. 1911, p. 728, and P. L. 1915, p. 78. The amendment of 1911 consisted of adding a proviso permitting a transfer of a certificate of sale for less than the total amount of the tax lien. The amendment of 1915 omitted this proviso, but added a clause permitting the consolidated sale to include unpaid assessments for public improvements.

The Township is the only defendant substantially interested in these proceedings. The other defendant, the purchaser at the tax sale, is protected under Section 60 of the Tax Act, providing that in case such sale is set aside the purchaser shall be refunded the price paid by it with interest; and the purchaser therefore will lose only such expenses as it may incur.

The Township, however, is vitally interested in this proceeding because this suit challenges not mere irregularities in the conduct of the sale, but the very lien of the Township and its ability to enforce collection of the arrears for which this sale was made. The prosecutors are not seeking to be relieved of the effect of some forfeiture, or other unfair use of the process of sale, but they are in fact attempting to escape the payment of a large amount of arrears of taxes justly due the township.

The revised reasons filed by the prosecutors after the return was made may be classified in nine divisions:

1. Because the sale covers taxes prior to 1903 (when the revised tax act was passed). This covers revised reasons 1, 5 and 6, and number 1 of the original reasons. (Number 1 in Prosecutors' brief.)

2. Because the sale included taxes more than twenty years old. This is set up in revised reason number 2 and number 5 of the original reasons. (Numbers 2 and 3 in Prosecutors' brief.)

3. Because the original computation included the entire amount of a sewer assessment payable in installments, two of which were not yet payable, although at the time of sale these installments were deducted and sale made only for the amount actually in arrears. This covers revised reasons numbers 3 and 11, and number 4 of the original reasons. (Numbers 4 and 10 in Prosecutors' brief.)

4. Because the sale although actually made after July 1, 1916, was advertised before that date and included the taxes of 1915. This cov-

ers revised reasons numbers 8 and 15. (Numbers 6 and 11 in Prosecutors' brief.)

5. Because the calculation on which the sale was advertised included some unauthorized items of cost. This covers revised reasons number 7, and numbers 2 and 3 of the original reasons. (Number 5 in Prosecutors' brief.)

6. Because of alleged defects in the notice of sale. This covers revised reasons numbers 9, 14 and 17. (Number 7 in Prosecutors' brief.)

7. Because sufficient notice was not given. This covers revised reasons numbers 12 and 13. (Numbers 8 and 9 in Prosecutors' brief.)

8. Because certain proceedings relating to prior sales were defective. This covers revised reason number 16. (Not mentioned in Prosecutors' brief.)

9. Because more land was sold than necessary. This covers revised reason number 10. (Number 12 in Prosecutors' brief.)

The remaining revised reasons numbers 4 and 18 are general, and are not mentioned in Prosecutors' brief, except as treated under specific reasons.

FIRST OBJECTION: (Prosecutors' Point I.)

The objection first mentioned comprising the reasons above specified is without foundation. The language of Section 53 is broad and covers all arrears whether assessed under the act of 1903 or previously.

53. Where a parcel of land has been purchased and is held by the taxing district under a tax sale not redeemed, all subsequent taxes shall be assessed in the name of the owner, as if no sale had been made, and

shall be and remain a paramount lien on the land, and be added to the purchase money and shall be paid before the land can be redeemed from the sale, and no further sale for taxes of said parcel while held by the taxing district shall be made by the collector unless directed by resolution of the governing body of the taxing district, in which case the clerk shall certify to the collector the amount due to the taxing district upon and required to be paid to redeem the land from the previous sale or sales for taxes and from the lien of the taxes subsequent thereto, and from any sale or sales for unpaid assessments for public improvements and from any such assessment for which a sale has not been made; and the collector shall advertise and sell the land for the said amount added to the tax and costs of the current year; the taxing district may sell any land purchased by it for taxes, and direct the transfer of the certificate of sale subject to the right, if any, to redeem, to any person paying not less than the amount for which sold and interest and subsequent taxes. P. L. 1915, p. 78.

The provision in Section 66 that the act shall not affect proceedings relating to taxes in prior years cannot affect a consolidated sale under Section 53. If a consolidated sale were held without including taxes prior to 1903, the lien of those prior taxes would be wiped out and the amount would be lost to the municipality. It is impossible to attribute any such intention to the Legislature and Section 66 should therefore not be construed as limiting the broad language in which consolidated sales are authorized under Section 53.

SECOND OBJECTION: (Prosecutors' Points II. and III.)

The second class of objections is likewise without merit. The lien of the Township as against an innocent purchaser might have expired by reason of the lapse of twenty years. The sale of 1895 was for thirty years, and the certificate was duly recorded, so even as against an innocent purchaser there is record notice of the existence of the liability for taxes of 1894 and the succeeding years supported by the sale. It is not claimed that the present prosecutors are in any sense innocent purchasers, the fact being that the Estate of Samuel Dally, by Ephraim Cutter, as executor, took possession of the premises under a mortgage antedating the year 1894. This objection of prosecutors, therefore, is based on the bare claim that taxes are outlawed in twenty years, unless within that time the municipality or a purchaser from it takes possession. There is no authority for such a contention and the language of Section 53 is broad enough to authorize sale for all unpaid taxes. There is no claim that any of these old taxes were in fact paid, so the prosecutor's contention is that if the owner of the property can induce the municipal officers not to compel him to pay for taxes within twenty years, he can thereby escape liability altogether.

Defendants concede that statutory provisions relating to sales must be strictly complied with. Most of the cases cited by prosecutors are quoted to establish that point and therefore need no reply.

Prosecutors under Point III. cite a decision in *17 N. J. L. J. 23* that after twenty years there is a presumption that a tax has been paid. Assum-

ing that case to be an authority, it expressly holds that the presumption may be rebutted. In the present case, if prosecutors should claim that the taxes over twenty years old had been paid, the Township could readily furnish absolute proof of non-payment, but there is no such claim. There is no express admission in writing by prosecutors that these taxes were unpaid, but they dare not deny it. No attempt was made in the Court below to introduce proof, because no issue was raised.

THIRD OBJECTION: (Prosecutors' Points IV. and X.)

The third objection has even less merit. The whole amount of the sewer assessment in question even though payable in installments was a lien from the time it was imposed, so that the language of Section 53 as amended in 1915, is broad enough to warrant a sale for the installments which were not yet payable. The sale, however, was not made for those unpaid installments, but they were deducted from the amount before the sale. This contention of prosecutors, therefore, is that if an advertisement of sale or the proceedings prior thereto recite too large an amount, the sale is void, even though actually made for the correct amount. This seems altogether too considerate of the taxpayer. It is settled that his lands cannot be sold for more than the proper amount, but it is going too far to say that the sale for the proper amount should be set aside because by inadvertence too large an amount was mentioned in some earlier proceedings. Moreover, the actual amount due at the date of the advertisement and at the date of the certificate of the Township Clerk and Treasurer on June 12, 1916, was in

fact greater than the totals certified by them respectively, disregarding all questions of cost. The computation of interest on every item was about \$2 less than the true amount, except in respect to the tax sale of 1904, where the true interest is approximately \$23 greater than is stated. This one item was evidently a mistake in calculation. The uniform shortage in all the others was due to the computation having been made some months before it was certified.

The following is a table of interest on each item in the clerks certificate, calculated at 7%, the minimum rate fixed in Section 43 of the Act of 1903 (4 C. S. 5126), although this section amended P. L. 1915, p. 608, provides for 8%, and although the old tax act provided for 12% up to 1903. The calculation in case of the sales is made from the date of sale to June 12, 1916, and in the items not sold from December 20 of the year in which assessed. The sewer assessment in this table is calculated at 6% from the date of filing. Opposite each calculation of interest is set the corresponding interest item as reported in the clerk's certificate, and in another column the difference by which the interest below calculated exceeds that set out in the clerk's certificate. This difference amounts to a total of over \$60, and so largely exceeds the \$33 of the sewer installments which had not yet fallen due.

Date of Sale	Amount	Int. to June 12, 1916	Int. as in Clerk's Cer- tificate	Difference
Aug. 27, 1895	55.24@7%	80.40	78.68	1.72
" " 1898	39.24 "	48.87	47.63	1.24
" 18, 1900	49.61 "	54.28	53.25	1.03
Nov. 14, 1904	48.04 "	38.92	15.40	23.52
June 25, 1908	51.62 "	28.60	27.07	1.53
Tax of 1895	41.80 "	59.92	58.40	1.52
" 1896	31.30 "	42.67	41.61	1.06
" 1898	39.40 "	48.20	46.75	1.45
" 1900	43.45 "	47.07	45.60	1.47
" 1901	46.00 "	46.62	45.08	1.54
" 1902	42.90 "	40.47	39.00	1.47
" 1904	44.70 "	35.91	34.32	1.59
" 1906	49.20 "	32.64	30.96	1.68
" 1907	50.00 "	29.67	28.00	1.67
" 1908	57.50 "	30.09	28.21	1.88
" 1909	62.00 "	28.11	26.04	2.07
" 1910	58.00 "	22.24	20.30	1.94
" 1911	60.25 "	18.88	16.88	2.
" 1912	63.75 "	15.52	13.38	2.14
" 1913	68.64 "	11.90	9.60	2.30
" 1914	73.84 "	7.63	5.17	2.46
" 1915	70.46 "	2.35		2.35
Sewer assessment				
Nov. 15, 1909	146.47 6%	57.76	57.12	.64
		\$828.72	\$768.45	\$60.27

Therefore, although the clerk's certificate perhaps should have arranged the figures differently, it should actually have been for a larger sum, and the prosecutors have no real grievance. Moreover, no interest was added by the collector at the time of the sale for the period from June 12, to July 31, 1916. This month and a half of additional interest would have exceeded \$10, so that the property was actually sold for very much less than the correct amount of the liens.

At the end of Point IV. prosecutor quotes 3 Gen. Stat., p. 3359, par. 368, for the proposition that interest should be charged at 6% because that section uses the words "lawful interest." But in the same volume, p. 3354, par. 338, the statute expressly provides for 12% as above mentioned, the language being:

338. Sec. 9. That the owner or owners, mortgagee, occupant or any other person

having a legal or equitable interest in any lands, tenements, hereditaments or real estate sold for taxes as aforesaid, may redeem the same at any time within two years from the date of such sale by paying to the purchaser, or his legal representative, the amount of purchase money set out in detail in said certificate, with twelve per centum interest thereon, together with such other fees, costs, expenses and charges as may have been incurred by the purchaser under the provisions of this act. * * *

As to arrears not covered by sales, 12% is fixed by 3 G. S., p. 3300, par. 87.

In the portion of prosecutors' brief numbered X., the sole objection is that the land was sold for less than the preliminary proceedings called for. It certainly seems as if only the Township could take advantage of this.

FOURTH OBJECTION. (Prosecutors' Points VI. and XI.)

The fourth objection has no merit. It may be admitted that the property could not have been sold for the taxes of 1915 before July 1, 1916, but the sale was advertised to be held on July 16, and there is nothing whatever in the tax act to require that the advertisement of sale be deferred until after July 1. Section 51 of the Tax Act (4 C. S. 5132) providing for the giving of notice, does not require the advertisement to be deferred until July 1, and by implication would permit a sale on that date.

In the portion of prosecutors' brief numbered VI., it is claimed that the sale should not have included the tax of 1915. It is submitted that on the date for which the sale was advertised, July 17, 1916, as well as on the ad-

journe'd date when it was actually held (July 31, 1916) the tax of 1915 was the tax of the current year under the provisions of section 53 of the Tax Act (4 C. S. 5134); therefore that the inclusion of the 1915 tax in the sale was in strict accordance with the statute.

FIFTH OBJECTION: (Prosecutors' Point V.)

The fifth objection is unfounded. As to the item charged for costs in connection with the prior sales, there is no basis for claim that the amount is improper. The Township was entitled on redemption to the amount it expended in recording in the clerk's office each of the old certificates of sale, and those amounts were certainly more than the \$1.00 included in the clerk's certificate.

With respect to the costs for the years unsold, the various items of cost authorized in the tax act, particularly in Section 44, exceed the 47 cents shown in the proceedings, and it does not appear that those 47 cents of costs were not properly incurred. The costs which are specifically made a lien by Section 50 of the Tax Act only include 7 cents, and the 20 cents each to the county clerk and collector for services in satisfying the lien are perhaps not proper items to include in the sale. If they were the items included in the clerk's calculation and in the advertisement in this sale, still the total amount included for these costs and for costs on the sales is more than covered by the shortage in the interest calculations before referred to, so that the property was really advertised for a less amount than it should have been, as shown in the argument addressed to the third objections.

All the proceedings stated a smaller total than the correct amount, while in all the cases cited by prosecutors, lands were sold for more than the correct amount. Prosecutors' argument, therefore, is in effect that if the municipal officials make an error in a single figure, however slight, the proceedings are vitiated, even though the total is less than it ought to be.

SIXTH OBJECTION: (Prosecutors' Point VII.)

Three separate defects are alleged in the form of the notice of sale. Revised reason 9, because the advertisement did not state that the lands were to be sold in fee; revised reason 14, because the advertisement did not mention that the lands would be sold for the amount certified added to the current year; revised reason 17, because the advertisement did not refer to the resolution of the governing body. There is nothing in the statute which requires any of these things to be mentioned in the notice of sale. The notice of sale does refer to the certificate of the Township Clerk and to the tax of the current year. It is therefore submitted that these objections are without merit.

SEVENTH OBJECTION: (Prosecutors' Points VIII. and IX.)

The seventh objection relating to the manner of giving notice is clearly frivolous. The collector's certificate of sale and his report of sale and his affidavit attached to each, all show that he did mail a copy of the notice to the prosecutor, Ephraim Cutter, and that he set up the required number of copies thirty days before the sale in five or more of the public places of the township.

In the portion of the brief numbered VIII, prosecutors contend that no other proof of posting notice can be offered except that comprised in the collector's return, and cite two N. J. cases. In the case of *Brooks v. Union*, 68 N. J. L. 133, cited by prosecutors on the oral argument below on other grounds, the Court said, in the middle of page 135:

“The sales were probably adjourned, but if they were it should be shown by the record or by evidence *aliunde*.”

Assuming, however, that under the cases cited by prosecutors, the defendants are limited to the proof accompanying the return, the return does show (p. 16, line 1 of the Case) that the notices were set up in five of the most public places of the Township. Prosecutors argue that some of the places mentioned in the return were not sufficiently public. It is submitted that the printing office of the local newspaper, and the real estate office of a man who is prominent enough to be Secretary of the County Tax Board are sufficiently public within the meaning of the statute. It is also submitted that if the prosecutors can go outside of the record (by the stipulation in this case) to attack the character of the places mentioned in the record, that the defendants can likewise show by proof outside the record the posting of additional copies of the notice besides those mentioned in the return.

Under number IX, prosecutors claim that the record does not show notice was mailed to the owner. The collector's report (p. 16, line 3 of the Case) sets up the mailing of notice to the owner; and the affidavit of mailing (as printed on p. 19, line 30 of the Case) expressly shows mailing of notice to the prosecutor, Ephraim Cutter, himself.

If Mr. Cutter, who is the owner as executor, as stated in the argument under the heading Second Objection, is not the owner for the purpose of receiving notice, then he has no standing as prosecutor; and the other prosecutor being only a tenant, the writ should be dismissed. The suggestion that Mr. Cutter was not the proper party to be served was not made in the court below.

EIGHTH OBJECTION:

The eighth objection based on alleged defects in prior sales is equally frivolous. The present sale does not depend in any way on the validity of the previous sales, but only on the existence of a tax liability; and even if because of a defect in the sales mentioned in revised reason number 16 the Township had no right to claim anything for the costs connected with those sales, nevertheless the amount of these costs is less than the deficiency in the interest calculated, as already pointed out.

NINTH OBJECTION: (Prosecutors' Point XII.)

The ninth objection that it was unnecessary to sell the whole property is equally without merit. There is no evidence to support it. The fact that no one bid more than the amount of arrears indicates that the required amount could not have been made by a sale of any less than the whole; and the assessed valuation in 1915 as shown in the collector's return was only \$2600. for the entire house and plot, so that it is fairly inferable therefrom that a sale of part could not have produced the required amount.

The *Galloway Township* case, 44 N. J. L. 145, does not hold that the collector's return should state it was necessary to sell the whole of the lands, as contended in prosecutors' brief under number 9. In the printed case, the notice of sale (p. 16, line 27) expressly stated that the collector would sell any part sufficient for the purpose; there is no claim that the sale of a part would be sufficient, and the statute does not require the collector's return specifically to state that no one would pay the required amount for part.

GENERAL OBJECTIONS.

The general reasons do not bring up any points not already referred to.

It is therefore submitted that the sale should be sustained, and the writ dismissed.

It is highly important to the taxing district that there be an early determination of the case, as it has large amounts of other taxes prior to 1903, and some more than twenty years old, to be enforced; and if there are any errors in the proceedings in question, they should be settled as a guide to future proceedings. The attention of the Court is especially directed to the fact that no claim is made in the proceedings that any of the assessments are invalid. All of the taxes in question are justly due. If, therefore, any defect in the proceedings is disclosed, whereby the sale might be set aside, section 60 of the Act (4 C. S. 5138) provides that where the assessment is valid and the tax is justly due, no sale shall be set aside except upon condition that the amount due be paid the holder of the tax lien.

Therefore, if the sale in this case is set aside, it must be on condition that the amount justly due as found by the Court be paid by the prosecutors. It is submitted that the language in Section 60 would include the taxes prior to 1903, even though over twenty years old, and even though as to those taxes the Township was technically without authority to make the sale.

This amount with interest at 8% under P. L. 1915, p 608, computed up to the present time, would amount to over \$2300. The amount required to redeem from the sale would not be greater than this and might be less. Unless this Court allows the prosecutors to escape payment of part of the money clearly owing the Township, prosecutors would derive no financial benefit from setting aside the sale.

Respectfully submitted,

J. H. THAYER MARTIN,
Of Counsel with Defendants.

Prosecutors did not print in the case the original reasons, served, and presented to Justice Bergen May 5, 1917. In case they should become material, they are here copied.

NEW JERSEY SUPREME COURT.

ALBERT MARTIN,

Prosecutor,

vs.

THE TOWNSHIP OF WOODBRIDGE, *et al.*,

Defendants.

On Certiorari.

The following are the reasons on which a writ of certiorari is asked in the above stated cause.

1. Because the said lands were sold for taxes assessed in a number of years prior to 1903 and for three tax sales, that had been made prior to 1903, as well as for taxes assessed in and after the year 1903.

Section 53 of the tax act of 1903 authorizes a sale for a number of years' delinquent taxes at one time, in certain cases on request of the township committee, but it clearly refers only to cases where the lands have once been sold under the act of 1903, and section 66 expressly says that the provisions of the act shall not extend to proceedings relating to taxes assessed in prior years to 1903.

2. Illegal costs were included in the amount certified by the Township Clerk. Forty-seven cents were included in a number of years in addition to the tax and interest, whereas only 7 cents was due for costs at the time the certificate was made, viz: 2 cents for each year to the Collector for making a return to the County Clerk and 5 cents in each year, to the County Clerk, for recording the return (Section 50).

3. In the case of five tax sales the Clerk included in the amount certified as due \$1.00 as costs in each year, in addition to the amount of the tax sale, whereas no such costs are allowed by law to be added to the amount of the tax sale.

4. The amount certified by the Township Clerk to the Collector, as due and owing (\$2,074.38), included \$33.00 for two installments of a sewer assessment not yet due against said lands, which amount was payable in installments. On the day of sale this amount (\$33.00) was deducted, and the land was sold for the reduced amount, with costs of sale, but the advertisements of sale stated that the lands would be sold for the whole amount certified, and it is claimed that this error in the advertisements rendered the sale void, notwithstanding the making of such reduction.

5. Included in the amount certified by said Clerk were a tax sale made in the year 1895 for taxes of 1894 and taxes assessed in the year 1895, but said tax sale was made, and said tax was assessed in 1895 more than 20 years before the date of the sale in question.

For the above reasons it is claimed that the tax sale made to the Valley Company of said lands is null and void, and that a writ should be granted to review such sale.

Endorsed.

CHARLES C. HOMMANN,
Attorney of Prosecutors.

