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## Property—Former Owner of Realty Lacked Standing to Apply for Cancellation of Tax Sale

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FORMER OWNER OF REALTY LACKED STANDING TO APPLY FOR CANCELLATION OF TAX SALE

A county treasurer shall not convey lands sold for taxes if he discovers that the sale was invalid for any reason or ineffective to give title to the real property sold.<sup>68</sup> If the defect is discovered after the conveyance, on application of any person having an interest therein at the time of the sale, he shall cancel the sale.<sup>69</sup>

In *Saxton v. Hose*,<sup>70</sup> the former owner sued the county treasurer to cancel the sale. Special Term granted summary judgment dismissing the action for failure to join the purchasers at the tax sale as necessary parties.<sup>71</sup> The Appellate Division affirmed, stating as an additional ground for affirmance that the alleged defect, failure to designate a newspaper for publication of the notice of sale, was a defect in the original levy of the tax and the period for contesting the validity of the levy had expired.<sup>72</sup>

In a per curiam decision, the Court of Appeals held that although a triable issue was presented because the record did not contain evidence conclusively establishing the purchasers to be necessary parties,<sup>73</sup> and although the alternative basis for decision relied upon in the Appellate Division was incorrect, the order should be affirmed. Applying decisions under Section 40-c of the Tax Law, identical to Section 40-c of the Suffolk County Tax Law here in question, holding that only the purchaser at the tax sale had an interest in the property,<sup>74</sup> the Court held that only the purchaser could apply to cancel a defective sale. Therefore, the former owner had no standing under the statute to apply for cancellation.

*Bd.*

LEASE OF INCOMPETENT'S REAL PROPERTY MUST NOT BE MORE THAN FIVE YEARS FROM THE EXECUTION DATE

The committee of an incompetent leased certain real property to the defendant. The first five-year lease, to commence on the expiration of an existing lease, May 1, 1955, was entered into on December 22, 1953 without court approval. A second five-year lease, to commence on August 1, 1958, was entered into on June 26, 1958 without court approval. The present action, *Vernon v. Sarra, Inc.*,<sup>75</sup> was instituted to have the leases declared invalid on the ground that the termination dates of the leases were more than five years from

68. N.Y. Tax Law § 140 (now N.Y. Real Prop. Tax Law § 1026); Suffolk County Tax Act § 40-c.

69. *Ibid.*

70. 8 N.Y.2d 335, 207 N.Y.S.2d 661 (1960).

71. 15 Misc. 2d 392, 179 N.Y.S.2d 419 (Sup. Ct. 1958).

72. 9 A.D.2d 778, 193 N.Y.S.2d 152 (2d Dep't 1959).

73. See *People ex rel. Cooper v. Registrar of Arrears*, 114 N.Y. 19, 20 N.E. 611 (1889).

74. *People ex rel. Staples v. Sohmer*, 206 N.Y. 39, 99 N.E. 156 (1912); *People ex rel. Witte v. Roberts*, 144 N.Y. 234, 39 N.E. 85 (1894).

75. 9 N.Y.2d 94, 211 N.Y.S.2d 180 (1961).