In the Court of Errors and Appeals.

Between GEO. H. BARKER, Adm., &c., Complainant, and FURMAN L. RICHARDSON, Defendant.	ORDER SETTING ASIDE SALE. GEO. HILDRETH, APPELLANT.

MR. S. H. GREY,
For Appellant.
MR. C. G. GARRISON,
For Appellee,

MR. GREY'S BRIEF.

In this case the Master advertised by specific description and sold to appellant *two* separate and distinct tracts of land. 10

The *first* was a messuage and town lot in Cape May, at the corner of Mansion and Jackson streets, forty feet front on Jackson by fifty feet on Mansion street. On this there was a mortgage of $2,000, subject to which the Master sold, and $70 of interest in arrear on it, (p. 34, l. 25.)

The *second* lot was a piece of meadow in Cape May, on Bank street, spoken of by complainant's witness, Edmunds, as the "barn property," (p. 15, l. 4.)

The first lot brought $60, subject to the mortgage of $2,070. The last brought $210.

No objection was made to the sale of the *second* lot, but a petition setting up a misunderstanding as to the size of the *first* lot, by the bidders, and an unexpected confirmation of the sale of that lot was filed by complainant's solicitor, June 6, 1885, (pp. 3 to 7.)

10 Upon this petition testimony was taken before Mr. Bird, V. C., who set aside sale of *both* lots upon proof of some misconception, *before the sale*, as to the frontage of the *first* lot. From this decree the appellant, who bought, and, *after confirmation* of the sale, received a deed for *both* lots, appealed.

The case presents these questions:

1. Did the petition, and proofs under it, justify any interference with the sale?

2. If so could the V. Chancellor set aside sale of *second* 20 lot upon proofs affecting the sale of the *first* only?

I.

The evidence offered by complainant did not justify any interference with the sale.

This was a judicial sale, with which, after confirmation, it is not the policy of the Courts to interfere, unless under very extraordinary circumstances.

In this case Edmunds, the only witness for complainant, who attended the sale, was the agent and representative of complainant's solicitor, to whom the solicitor 30 wrote, April 21st, (nine days before sale, which occured May 1) two letters urging upon him the necessity of finding a purchaser, and who, the day after the sale, reported in writing to the solicitor what had occurred, which he subsequently, on the Tuesday following, repeated orally

to the solicitor whom he represented (Garrison, p. 22, l. 20 to 30). The testimony of this witness, then, is to be considered in the light of his relations, confidential ones, to his employer.

His testimony is to the effect that he had known the property for twenty years (p. 9, l. 20 to 28) and in pursuance of written instructions sought a bidder, Phileus Barr, whom he, Edmunds, represented at the sale (p. 10, l. 1 to 20). Edmunds also advertised the property in the *Ledger* and referred persons to himself (p. 11, l. 10). It may be observed that although he claimed to believe that the first lot to be sold was fifty-eight feet front he did not so state in his advertisement soliciting inquiries and bidders.

This witness, strongly inclined from his position and surroundings against the confirmation of the sale to Hildreth, describes the conduct of the sale by the Master. The *advertisement* and conditions were read (p. 11, l. 35-6). He knew that the Master was not selling more than forty feet. What Mr. Scovel "*represented* was not the whole amount * * * * I said that represented only forty feet." The Master never offered to sell more than forty feet, and what Richardson or Mr. Taylor may have said was of no significance and *did not influence* Edmunds' conduct at the sale. It was *after* he had bid his highest bid, upward of $1,500, that he spoke to Mr. Scovel, who said "we will put up the property and sell the whole of it, whether forty feet more or less" (p. 13, l. 8-9-10). At this time Edmunds had bid as much as he intended to; he so stated to Hildreth, "I am done now, if you want it bid $10 more" (p. 48, l. 21; Taylor, 53–4). *After* Hildreth had bid $10 over Edmunds' bid "they got in an argument and concluded to measure the store" (p. 13, l. 35–36), which Edmunds and Richardson did and found fifty-eight feet. When they so reported to the Master, no further bids were made, Hildreth's bid being at that

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At this period it is clear that whatever misapprehension may have before existed as to the size of the lot, for which the Master was in no sense responsible, and which, if any such there was, resulted wholly from the wilfulness or dullness of the bidders, had been entirely removed by the declaration of the Master that he would sell the *forty feet only*, which was all, in fact, he had ever advertised or offered to sell. From this point on it was a new sale, as much so as if it had then for the first time been offered. There was then a clear and distinct understanding of the area of the lot proposed to be sold, and of the existence of the $2,000 mortgage lien upon it. No confusion reigned. No misconception existed. No interruption occurred. The fact that it brought only $2,130 ($2,000 mortgage, $70 interest, p. 34, l. 25,) instead of $3,580 simply shows that the forty feet was not considered worth as much as fifty-eight feet would have been. If we

take the $3,585 bid for the whole fifty-eight feet as as basis, it yields an average of about $61.75 per lineal foot front, which gives for the forty feet $2,470, or $340 in excess of the bid of Hildreth, as the value of the property. This shows, I think, quite clearly that there was no such gross inadequacy of price as to justify disturbing the sale on that ground. Indeed, no effort was made to show that the price paid was inadequte for the land sold. Edmunds himself, if you believe the petition, (p. 4, l. 18), 10 was limited for the whole fifty-eight feet to $4,000, a fact not proved, and at the sale when he pretends he thought he was buying it *all* he bid $3,575 only as his measure of its value.

Sawyer (p. 39, l. 20,) says *anything above the mortgage* would be "a fair value," and Hand, (p. 44, l. 20,) says $2,500 would be "a good price." They both think the price of Cape May property "is a fancy. It all depends on fancy of the people a good bit," (p. 43, l. 32.) There was then a fair price,—a fair sale, and a clear understanding of what was sold and bought.

It is to be observed that Edmunds, the only witness 20 for complainant, nowhere says that any "confusion" existed, yet this was the ground on which the petition attacks the sale, (p. 4-5.) The testimony of the Master, (p. 34-35-36); Sawyer, (p. 40); Hildreth, (p. 46); Mr. Taylor, the Solicitor, (p. 52-53,) shows there was none at all.

It seems to me that no one can read the evidence and receive the impression that there was or could have been any misconception or misapprehension as to what was 30 being sold, or that anyone, after the property was put up a second time had the least idea that it contained more than forty feet front. Neither on the ground of "confusion" or inadequacy of price should the sale have been disturbed. The first was alleged but not proved and the last was neither alleged nor proved.

It was claimed that complainant's solicitor was not heard on the confirmation of sale. If his case against the confirmation was put in before the Vice-Chancellor on the petition to set aside sale, as it undoubtedly was, the Court will see from that case, if the views above presented have weight, that there was nothing in it, and hence as it could have availed him nothing to be heard on it, he lost nothing by his absence; suffering no wrong he is entitled to no redress.

10 But if sale is set aside nothing is gained. No one has yet appeared who is willing to buy the forty foot lot at any higher price than Hildreth paid, to-wit: $2,130, including mortgage and interest. Edmunds came there to buy the *whole store*, fifty-eight feet. He had no desire to have the forty feet only. (pp. 14, 16, 17, 18, 19.) The eighteen feet lot is not partnership property and cannot therefore be treated as partnership assets. No evidence is offered to show that it was an asset of the firm. The title by the search in Mr. Garrison's hands was held by Richardson & Farrow as tenants in common—not as 20 partners; whereas, the forty foot lot and the barn property was conveyed to and held by them as a *firm*. Mr. Garrison knew this; he had a search which showed it, and he had this search *before* the sale, (p. 26, l. 20 to 26.) He has no doubt now that it is a separate property from that of the firm, (p. 49, l. 20.) Whether he has or not, the testimony clearly shows that it was *not* partnership property. (pp. 31, 41, 42, 43, 49, 50.)

II.

30 Whatever misunderstanding existed at the first sale was caused, not by the Master, nor by lack of opportunity by bidders to obtain accurate information, but by their utter failure to seek information, or to heed it when given, as it was, by the reading of the notice of sale.

The Court will not exert its power to relieve against the result of a mistake of fact when it appears that the error, if any, arose from the negligence of the party complaining. A purchaser at a judicial sale, who voluntarily abstains from all effort to get correct information, and deliberately assumes the hazard of making a purchase ignorantly, must, as a general rule, bear the consequences of his own negligence.

Hayes v. Stiger, 2 Stew., 196, and cases cited.

Where an erroneous impression existed in the minds of persons attending sale by Sheriff under fi-fa, that a house on the land sold must come down, the Court declared that it was, although coupled with other matters, an insufficient reason to set aside a sale, even when made under process of the Court of Chancery.

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The decree, order of sale, writ or advertisement of sale are the true sources of accurate information and should control, unless the officer conducting the sale make misleading or erroneous statements which prejudice the sale and deceive bidders. This is, I take it, is the true principle, and as such is recognized in *Vanarsdalen vs. Vail* (5 Stew., 189–192) as I read that case.

The cases in our books where sales have been set aside are numerous, but I know of none where, as here, the sale actually made was successfully attacked after *confirmation*, because of a misunderstanding among bidders *anterior* to the sale, and which was entirely *corrected* before the sale complained of was made.

No charge of fraud is made against this purchaser. He has paid his money, taken his deed, and paid for the drawing and recording of it. By the order of the Court appealed from, his deed is declared void, it is ordered to be surrendered, he is deprived of his title and no order for

the restoration of the consideration money or refunding of his expenses is made. Truly "the last state of this man is worse than the first." In this respect the decree is wrong.

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III.

Whatever may be the result as to the sale of the forty
10 foot lot, it is clear beyond controversy that the sale of the *second* lot or "barn property," as Edmunds calls it, (p. 15, l. 4,) cannot be assailed. No one pretends that any misunderstanding or inadequate price affected that sale. The land was "away from this" first lot, (p. 15, l. 8,) and it was competed for by Edmunds, who bid on it, but, as on the other lots, did not go high enough.

If a sale of land made by judicial order, reported to and *confirmed* by the Court, as this was—not attacked, impeached or even questioned—can be set aside simply because another sale of another distinct property is un-
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While the power of the Court over sales under its order is far reaching, "it cannot rescind them without an equitable or legal reason sufficient to justify its action."

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S. H. GREY,
Of Counsel with Geo. Hildreth, Appellant.

Dated March 2, 1886.

N. J. Court of Errors and Appeals.

Between George H. Barker, Adm'r., &c., Complainant, and Furman L. Richardson, Defendant.	Order Setting Sale Aside. Points for Complainant, who is Appellee.

POINTS.

I. The Vice Chancellor having set aside an order made by himself, because he realized, from facts within his own personal knowledge, that it had been obtained from him by fraud, (see Conclusion, page 63, line 21) this Court will not interfere.

Note that the conclusions of the Vice Chancellor proceed largely upon matters which occurred between him and counsel and which are not otherwise in evidence. 10

II. A deed of a Master or other officer having been delivered to a purchaser, at a sale made by order of the Court of Chancery, is subject to the power of the Chan-

cellor, and may be set aside and declared void, and this is equally true whether the purchaser is a party or a stranger.

In the latter case "the deed is taken subject to the jurisdiction of the Chancellor over the sale.

Collier vs. Whipple, 13 Wend. 224.

The principle being as stated by the Chancellor, that
10 " Where a person becomes a purchaser under a decree,
" he submits himself to the jurisdiction of the Court in
" that suit as to all matters connected with that sale or
" relating to him in the character of a purchaser."

Regina vs. Rea, et ux., 2 Paige, 339.

Chancellor Williamson cites this with approval in Cambert vs. Gardner, 3 Stock. 423, as also does Vice Chancellor Van Fleet in The Ins. Co. vs. Goddard, 6 Stew. 482, both saying that it is a doctrine which is perfectly established and universally followed.

20

III. Apart from the fraud in obtaining the order confirming the sale, the sale itself was not one which should stand.

A. Because the irregularity, uncertainty and mistake which existed confused those present and deterred bidders.

The course of things was this:

1. The Receiver included the **store** as an **asset** of the firm.

30

2. This **store** he was ordered to sell.

3. It was this that he obtained an order for the Master to sell.

4. Under this order the Master advertised.

5. At the sale every person connected with the sale **understood** that the **whole store** was being sold, and it was so **announced.**

6. Even after **questions** were asked **this** was the **decision** of those making sale.

7. In the **midst** of the sale the decision was reversed.

8. **$3,585** had been bid.

9. The Master then said he would sell the **part** of the store that was in his advertisement. 10

10. The bidding on it was confined to the **Receiver** and his **father-in-law.**

11. It was knocked down to the latter for **$60**.

12. The bona fide bidder, who had bid $3,585, was **deterred** from bidding by the uncertainty.

13. The Master did not consider is as an actual sale. He sent up his report solely for the purpose of the **taxation of costs.** 20

14. The solicitor for the purchaser **admitted** that the sale could not stand, and stated the same to the **Vice-Chancellor** and **joined** in application for **order to re-sell.**

B. Because the Receiver was the real purchaser.

1. He is a **partner.**

2. He is the **Receiver.** 30

3. He obtained an order for sale to be made by Master.

4. He bids $50 and permits an **unknown** person to buy the store at $60.

5. His interest as **partner** is to set aside this sale **unless** he is **interested** as **purchaser.**

6. His solicitor appeared and **consented** to **re-sale**. This he could only do if his client were the **purchaser.**

7. This same solicitor obtained the order confirming the $60 sale from the Court by by the methods detailed by the Vice-Chancellor. Conduct explainable only upon the ground that **Richardson** was interested as **purchaser.**

10 8. Both Richardson and his solicitor appear here seeking to uphold a sale which they would not do unless the interest of Richardson as **purchaser** overshadowed his opposing interest as **partner.**

9. At the sale **Richardson** dictated his father-in-law's bid, and after the sale the father-in-law said **Richardson** had done well.

10. The Vice-Chancellor, who saw these parties, and their appearance on the witness stand, was satisfied that **Richardson** was the **real** purchaser.

20 A trustee cannot become directly or indirectly a purchaser of the property which constitutes part of his trust. This doctrine is too familiar to require citation of cases.

C. The price was shockingly inadequate. R. Richardson himself placed **$8,000** as the value of the store. The part sold was the corner 40x50. Granting that city corner property is of no greater value than that in centre of block the 40x50 store would be

30 worth **$5,520.** It sold for $60, subject to the $,2,000 mortgage; **not half its value. The inadequacy of price after there had been a bid of $3,585 at the same sale for the whole store would, standing alone, be ground upon which to vacate the sale.**

IV. As to the point that the order of Vice-Chancellor set aside the sale of another lot of land, this is to be said, that no facts relating to this other lot were before the Vice-Chancellor; it was not within the knowledge of the petitioner that any such sale had been made; if it was within that of the Receiver or purchaser it was suppressed.

Furthermore the order of the Vice-Chancellor setting aside the sale was, at the request of counsel for purchaser, submitted to him before it was presented to the Vice-Chancellor if it was broader than it should have been counsel should then have called the attention of the Chancellor to that fact. 10

It is a matter which is susceptible of correction by the Court below upon application.

GARRISON & FRENCH,
Of Counsel with Petitioner.

EXHIBITS.

THIS INDENTURE, made this twenty-first day of May, in the year of our Lord one thousand eight hundred and eighty-five, between Philip S. Scovel, one of the Special Masters in Chancery of the State of New Jersey, of the first part, and George Hildreth, of Cape May City, county of Cape May and State of New Jersey, of the second part; Whereas, a certain order of the Court of Chancery was lately made and issued out of said Court to the said Philip S. Scovel as Special Master aforesaid, in the following words, to-wit:

IN CHANCERY.

Between GEORGE H. BARKER, Admr., Complainant, and FURMAN L. RICHARDSON, Defendant.	ON BILL.

10

Upon application to me by Furman L. Richardson, Receiver in the above cause, and upon good cause shown, it is, on this eighth day of July, A. D. 1884, on motion of Marmaduke B. Taylor, solicitor of said Receiver, ordered, that all and singular the lands, tenements and hereditaments belonging to and of which Furman L. Richardson and John H. Farrow, late trading, &c., were seized, be sold at public sale under the

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direction of Philip S. Scovel, one of the Special Masters of this Court.

And it is further ordered, that said Master sell the same by giving public notice of the time and place of said sale, and in all respects conduct the same according to the provisions of the statutes in such cases provided; and that he forthwith, after such sale, make report thereof to this Court, and after his report of sale shall have been confirmed by this Court, make and execute
10 unto the purchaser or purchasers a good and sufficient conveyance or conveyances in the law for the said real estate, upon their complying with the conditions of such sale, and that such sale and conveyance or conveyances, duly executed as aforesaid, be valid and effectual forever and operate as an effectual bar, both in law and in equity, against the parties, complainant and defendants, and all persons claiming by, from or under them, or any of them.

And it is further ordered, that the said parties, or either of them, be at liberty to apply to this Court for further directions if occasion shall require.

20 THEODORE RUNYON, C.

Respectfully advised.

JOHN T. BIRD, V. C.

As by reference to said order, remaining of record in our said Court of Chancery, will more fully appear. And to the end that a sale of the said lands and premises should be made, pursuant to the statute in such case made and provided, the said Special Master as aforesaid, by public advertisements signed by himself, and set up in five or more public places in the said county of Cape
30 May, one whereof was in Cape May City, where such lands and real estate are situate, at least two months before the time appointed for selling the same, and also published in *The Cape May Wave* and *Star of the Cape*, two of the newspapers printed and published in said

Cape May City and county of Cape May and State aforesaid, and circulating in the neighborhood in which said lands and real estate are situate, at least four weeks successively, once a week, next preceding the time appointed for said sale, did give public notice that the said lands and premises would be exposed to sale at public vendue, on Saturday, the twentieth day of December, eighteen hundred and eighty-four, at the hour of one o'clock in the afternoon, at Sawyer's Chalfonte Hotel, in Cape May City, in the county of Cape May and State aforesaid; and at the time and place so appointed and advertised did publicly adjourn the said sale until the third day of January, eighteen hundred and eighty-five, at the hour of one o'clock, at the place aforesaid; and at the time and place to which the said sale was adjourned, as aforesaid, did again publicly adjourn the said sale until the thirty-first day of January, in the year last aforesaid, at the hour of one o'clock in the afternoon, at the place aforesaid.

And at the time and place to which the said sale was adjourned, as aforesaid, did again publicly adjourn the said sale until the twenty-eighth day of February, in the year last aforesaid, at the hour of one o'clock in the afternoon, at the place aforesaid.

And at the time and place to which the said sale was adjourned, as aforesaid, did again publicly adjourn the said sale until the twenty-eighth day of March, in the year last aforesaid, at the hour of one o'clock in the afternoon, at the place aforesaid.

And at the time and place to which the said sale was adjourned, as aforesaid, did again publicly adjourn the said sale until the twenty-fourth day of April, in the year last aforesaid, at the hour of one o'clock in the afternoon, at the place aforesaid.

And at the time and place to which the said sale was adjourned, as aforesaid, did again publicly adjourn the

sale until the first day of May, in the year last aforesaid, at the hour of one o'clock in the afternoon, at the place aforesaid. All of which adjournments were duly advertised in *The Cape May Wave* and *Star of the Cape*, being the same two newspapers in which the aforesaid notice of sale was published. And at the time and place to which said sale was adjourned, as aforesaid, did expose the said lands and premises to sale by public vendue, and the said George Hildreth being the highest bidder for the first tract hereinafter described, the same was then and
10 there, between the hours of twelve and five o'clock in the afternoon of the day last aforesaid, struck off and sold to him for the sum of sixty dollars, according to the form of the statute in such case made and provided. And the said George Hildreth being the highest bidder for the second tract hereinafter described, the same was then and there, between the hours of twelve and five o'clock in the afternoon of the day last aforesaid, struck off and sold to him for the sum of two hundred and ten dollars, according to the form of the statute in such case made and provided.

20 And whereas, the said Special Master did afterwards report the said sale to the said Court of Chancery, the same was by order of said Court duly confirmed, and the said Master was directed to execute a deed to the purchaser for the same.

Now this indenture witnesseth, that the said Philip S. Scovel, Special Master as aforesaid, for and in consideration of the sum of two hundred and seventy dollars to him paid, the receipt whereof is hereby acknowledged, hath granted, bargained and sold, and by these presents
30 doth grant, bargain, sell and convey unto the said George Hildreth, his heirs and assigns, all that certain messuage and premises situate at the westwardly corner of Jackson and Mansion streets, in the aforesaid Cape May City, and bounded as follows, viz: Beginning at the afore-

said corner of streets; thence along the nortwestwardly side line of said Mansion street, south sixty-three and one-quarter degrees west, fifty (50) feet to a line of land of Mrs. Bickom, (formerly Edmund L. B. Wales); thence by said Bickom's land, north twenty-five degrees and fifty minutes west, forty (40) feet to a corner of land conveyed by Samuel R. Magonagle to George Hildreth and Clinton H. Hand; thence thereby north sixty-three and one quarter degrees east, fifty (50) feet to the southwest side line of said Jackson street; thence along said side line of street south twenty-five degrees and fifty minutes east, forty (40) feet to the place of beginning. Containing two thousand square feet of land, be the same more or less. Being the one-half part of the premises conveyed by Coleman F. Leaming and Hannah, his wife, to Samuel R. Magonagle in fee, by deed bearing date the twenty-fifth day of September, A. D. eighteen hundred and sixty-five, recorded in the Clerk's office of the aforesaid county of Cape May, in Book No. 32 of Deeds, pages 85, 86 and 87. Being the same premises which Mary E. Magonagle, by deed dated November 19, A. D. 1873, and recorded in the Clerk's office of Cape May county, in Book No. 38 of Deeds, pages 639, &c., granted and conveyed to Furman L. Richardson and John H. Farrow, trading, &c., as Richardson & Farrow, in fee. Also all that certain lot of land and meadow lying in Cape May City, county and State aforesaid, bounded and described as follows, to wit: Beginning in the easterly side line of Bank street, at the southwest corner of lot No. 36 belonging to Eldredge Johnston, party hereto, and running by said lot north sixty-five degrees and fifteen minutes east (N. 65° 15 min. E.) one hundred and twenty-four and seven-tenths ($124\frac{7}{10}$) feet to a corner; thence at right angles south twenty-four degrees and forty-five minutes east (S. 24° 45 min. E.) fifty (50) feet; thence at right angles

south sixty-five degrees and fifteen minutes west (S. 65° 15 min. W.) one hundred and twenty-four and seven-tenths ($124\frac{7}{10}$) feet to Bank street; thence by said street north twenty-four degrees and forty-five minutes west (N. 24° 45 min. W.) fifty (50) feet to the beginning, within which bounds are contained six thousand two hundred and thirty-five square feet of land. Being the same premises which Eldredge Johnston and wife, by deed dated February 27, A. D. 1877, and recorded in the Clerk's office aforesaid, in Book No. 42 of Deeds, pages
10 113 and 114, granted and conveyed to said Furman L. Richardson and John H. Farrow, trading, &c. as Richardson & Farrow, in fee.

Together with the hereditaments and appurtenances thereunto belonging or appertaining. To have and to hold the said two tracts of land and premises, with the appurtenances, unto the said George Hildreth, his heirs and assigns forever, as fully and absolutely as the said Philip S. Scovel, the said party of the first part, Special Master as aforesaid, can, may or ought, by virtue of the order aforesaid, and of the statute in such cases made and
20 provided, to grant, bargain, sell and convey the same.

In witness whereof, the said Philip S. Scovel, Special Master as aforesaid, hath set his hand and seal the day and year first above written.

PHILIP S. SCOVEL,
Special Master in Chancery.

Signed, sealed and delivered in the presence of
JAMES E. HAYS.

30 STATE OF NEW JERSEY, }
CAMDEN COUNTY, } SS.

Be it remembered, that on this twenty-second day of May, in the year of our Lord one thousand eight hundred and eighty-five, before me, the subscriber, one of the Masters in Chancery of said State, personally appeared

Philip S. Scovel, who is, I am satisfied, the grantor named in the foregoing conveyance, and I having first made known to him the contents thereof, he acknowledged that he signed, sealed and delivered the same as his voluntary act and deed. All of which is hereby certified.

JAMES E. HAYS,
Master in Chancery.

STATE OF NEW JERSEY, }
CAMDEN COUNTY, } SS. 10

PHILIP S. SCOVEL, being duly sworn, on his oath saith, that the land and real estate described in the above deed of conveyance made by him to George Hildreth, was by him sold by virtue of an order of the Court of Chancery of the State of New Jersey, as therein recited; that the time and place of the sale of said land and real estate was by him duly advertised, as required by law, and that the same was cried off and sold to a *bona fide* purchaser for the best price that could be obtained.

PHILIP S. SCOVEL.

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Sworn and subscribed before me, one of the Masters in Chancery of said State, on this twenty-second day of May, A. D. 1885, and I having examined the deed above mentioned, do approve the same and order it to be recorded as a good and sufficient conveyance of the land and real estate therein described.

JAMES E. HAYS,
Master in Chancery.

30

SPECIAL MASTER'S SALE.

By virtue of an order of the Court of Chancery of New Jersey, in a certain cause therein depending, wherein George L. Barker, administrator of John H. Farrow, is

complainant, and Furman L. Richardson is defendant, the subscriber, one of the Special Masters of said Court, will expose to sale at Public Vendue, on

SATURDAY, THE 20TH DAY OF DECEMBER, 1884,

in Cape May City, in county of Cape May and State of New Jersey, at the hour of one o'clock in the afternoon of said day, at Sawyer's Chalfonte, Cape May City.

All the following described tracts of land and premises, to wit: That certain messuage and premises situate at the westwardly corner of Jackson and Mansion streets, in the aforesaid city of Cape May, and bounded as follows, viz: Beginning at the aforesaid corner of streets, thence along the northwestwardly side line of said Mansion street, south sixty-three and one-quarter degrees west, fifty (50) feet to a line of land of Mrs. Bickom, (formerly Edmund L. B. Wales); thence by said Bickom's land north twenty-five degrees and fifty minutes west, forty (40) feet to a corner of land conveyed by Samuel R. Magonagle to George Hildreth and Clinton H. Hand; thence thereby north sixty-three and one-quarter degrees east, fifty (50) feet to the southwest side line of said Jackson street; thence along said side line of street south twenty-five degrees and fifty minutes east, forty (40) feet to the place of beginning. Containing two thousand square feet of land, be the same more or less.

Being the one-half part of the premises conveyed by Coleman F. Leaming and Hannah H., his wife, to Samuel R. Magonagle in fee, by deed bearing date the twenty-fifth day of September, A. D. eighteen hundred and sixty-five, recorded in the Clerk's Office of the aforesaid county of Cape May, in Book No. 32 of Deeds, pages 85, 86 and 87. Being the same premises which Mary E. Magonagle, by deed dated November 19, A. D. 1873, and recorded in the Clerk's Office of Cape May county, in Book No. 38 of Deeds, page 639, &c., granted and con-

veyed to Furman L. Richardson and John H. Farrow, trading, &c., as Richardson & Farrow, in fee.

Also all that certain lot of land and meadow lying in Cape May City, county and State aforesaid, bounded and described as follows, to wit: Beginning in the easterly side line of Bank street, at the southwest corner of lot No. 36 belonging to Eldredge Johnson, party hereto, and running by said lot north sixty-five degrees and fifteen minutes east (N. 65° 15 min. E.) one hundred and twenty-four and seven-tenths (124 7-10) feet to a corner; thence at right angles south twenty-four degrees and forty-five minutes east, (S. 24° 45 min. E.,) fifty (50) feet; thence at right angles south sixty-five degrees and fifteen minutes west, (S. 65° 15 min. W.,) one hundred and twenty-four and seven-tenths, (124 7-10) feet to Bank street; thence by said street north twenty-four degrees and forty-five minutes west, (N. 24° 45 W.) fifty (50) feet to the beginning, within which bounds are contained six thousand two hundred and thirty-five square feet of land.

Being the same premises which Eldredge Johnson and wife, by deed dated February 27, A. D. 1877, and recorded in the Clerk's office aforesaid, in Book No. 42 of Deeds, pages 113 and 114, granted and conveyed to said Furman L. Richardson and John H. Farrow, trading, &c., as Richardson & Farrow, in fee.

PHILIP S. SCOVEL,
Special Master.

M. B. TAYLOR,
Solicitor.

IN CHANCERY OF NEW JERSEY.

BETWEEN GEORGE H. BARKER, Administrator, &c., Complainant, and FURMAN L. RICHARDSON, Defendant.	ORDER CONFIRMING SALE OF LAND.

Upon reading and filing a report made by Philip S. Scovel, Esquire, one of the Special Masters of this Court, bearing date the sixth day of May, eighteen hundred and eighty-five, and the affidavit thereto annexed, whereby it appears that on the first day of May, eighteen hundred and eighty-five, he sold at public vendue at Sawyer's Chalfonte Hotel, in the city and county of Cape May, (having first duly advertised the same) the lands and premises mentioned in the order for the sale of said lands heretofore made in this cause as follows, to wit:

Lot first set out and described in the advertisement of sale to George Hildreth, of the city and county of Cape May and State of New Jersey, for the sum of sixty dollars, and Lot secondly set out in said advertisement to said George Hildreth, for the sum of two hundred and ten dollars, he being the highest bidder for both said lots, and that said land and premises were so sold at the

highest price the same would bring in cash, and no cause being shown or appearing to the contrary:

It is, on this thirteenth day of May, eighteen hundred and eighty-five, ordered, that the said sale be and the same is hereby confirmed as valid and effectual in law. And it is further ordered, that the said Special Master do execute good and sufficient conveyance in the law to the said George Hildreth, for the said mortgaged premises so sold.

10 THEODORE RUNYON,
C.

Respectfully advised.
JOHN T. BIRD,
V. C.

A true copy,
G. S. DURYEE,
Clerk.

IN CHANCERY OF NEW JERSEY.

Between GEORGE H. BARKER, ADMINISTRATOR OF JOHN HENRY FARROW, DEC'D, Complainant, and FURMAN L. RICHARDSON, Defendant.	PETITION.

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The petition of George H. Barker, administrator of John Henry Farrow, deceased, respectfully shows that said defendant, Furman L. Richardson, was by the order of this Court made Receiver of the partnership effects of late firm of Richardson & Farrow; that said partnership property consists of one large store building fifty-eight feet front by fifty feet in depth, and some personal effects in Cape May; that said estate and property was ordered to be sold by said Receiver, and that said Receiver obtained an order directing that said sale might be made by Philip S. Scovel, Special Master, in order, as alleged, that he, said Receiver, might carry out his intention of buying at his said sale; that said sale was advertised as follows in respect to said lands, viz: "That certain "messuage and premises situate at the westwardly "corner of Jackson and Mansion streets, in the afore-"said city of Cape May, and bounded as follows, viz: "Beginning at the aforesaid corner of streets; thence

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"along the northwestwardly side line of said Mansion "street, south sixty-three and one-quarter degrees west "fifty (50) feet to a line of land of Mrs. Bickom, (for- "merly Edmund L. B. Wales); thence by said Bickom's "land, north twenty-five degrees and fifty minutes west "forty (40) feet to a corner of land conveyed by Samuel B. "Magonagle to George Hildreth and Clinton H. Hand; "thence thereby north sixty-three and one-quarter de- "grees east fifty (50) feet to the southwest side line of "said Jackson street; thence along said side line of street "south twenty-five degrees and fifty minutes east forty "(40) feet to the place of beginning. Containing two "thousand square feet of land, be the same more or less.

That at the time advertised, to wit: Friday, May 1st last, said property was exposed for sale by said Special Master, at the city of Cape May; that at said sale one Felix Barr, Esq., of Philadelphia, was represented by James H. Edmunds, real estate agent, who had instruction from said Barr to bid four thousand dollars for said store, said Barr being a man of means and financial responsibility; that the bidding progressed until said Edmunds had bid the sum of thirty-five hundred dollars and upwards when he asked of said Receiver the question, are you selling the whole store; said Receiver assured him that they were. A few minutes afterward said Edmunds was again told by said Special Master that the whole of said store was being sold. It was then discovered that the sale advertised forty feet front, which Edmunds declared was not the width of the store. Both the Receiver and the Special Master said that the intention of the sale was to sell the whole store, let the width be as it might, and the bidding was resumed. Again a dispute arose between the Receiver, the Special Master and Edmunds as to whether the sale would give a good title to the store sold. And said Edmunds and said Richardson measured the store buildings and found it to be fifty-

eight feet. Further confusion ensued, and the property was put up for sale again, he and no one bidding but said Receiver and his father-in-law for him; fifty dollars was bid and the sale was ended.

Your petitioner further shows, that the next morning this state of affairs was communicated to Messrs Garrison & French, petitioner's solicitors, by said Edmunds, and that said solicitors sent for said Edmunds and at once disposed said Edmunds to draw and take the necessary affidavits for having said sale set aside; that said M. B. Taylor also came to the office of said Garrison and said that he at once consented to have said sale set aside and the property re-sold, and went with said Garrison up stairs into the chambers of the Vice Chancellor, John T. Bird, to whom said Garrison stated the matter as above set forth, and that he had just telegraphed to the Vice Chancellor that application would be made to set said sale aside for gross irregularity, and that Mr. Taylor had come in and consented to a re-sale, and that the only question was, whether a full two months advertisement was necessary; that said Taylor admitted that the intention had been to sell the whole store, but that by oversight the Receiver had transmitted to him only one deed. This he repeated to said Garrison time and time again.

And said Garrison and said Taylor had a complete and entire and unmistakable agreement and understanding that said re-sale should take place at the earliest possible day, since which time said Garrison has frequently met and spoken with said Taylor, who has always spoken of the re-sale, and of matters connected therewith. Said Garrison also at once saw the Special Master and informed him of the agreement made in the premises by counsel and of the statement made of it in court. The Vice-Chancellor and said Special Master acquiesced, and both then and on two occasions afterward spoke of re-advertisement and sale as matters then in

progress. Said Master inquired about his costs and said Garrison assured him that these, by the mutual consent of counsel, should be paid. Said Master said he thought it was his duty to regularly report the sale and have his costs taxed, to which said Garrison consented—and said Special Master and said Garrison had a complete understanding that the first sale was abandoned by said Taylor and that he had so told the Special Master—and that the re-sale was to take place.

10 And your petitioner shows, notwithstanding all said agreements, said M. B. Taylor prepared, and has by some means procured a confirmation of said sale to said Hildreth of the whole of said property, and that said Special Master has delivered the deed, and that the same is recorded, and that said Receiver now claims to own said property, said Hildreth only acting for said Richardson, and has since leased the said premises to parties to the petitioner unknown; that said property is worth five thousand dollars; that it is three thousand over a two 20 thousand dollar mortgage; that it is below all one large building or store; that up stairs it is divided by partitions; that it was always, all of it, built and used as partnership property only by said firm of Richardson & Farrow.

Your petitioner therefore prays that said sale be set aside; that said deed of said Special Master to said Hildreth be declared of no effect; that the property be re-advertised and sold again in such way as this Court shall 30 order and that petitioner be paid his costs in the matter most unnecessarily incurred; that petitioner have such other relief in the premises as to the Chancellor shall seem meet and proper.

GARRISON & FRENCH,
Solicitors for Petitioner.

CAMDEN COUNTY, SS:

CHARLES G. GARRISON, on being duly sworn, on his oath saith, that he is in this behalf the agent for George H. Barker, the petitioner; that the matters and things in said petition set forth, in so far as they relate to the acts, deeds or word of deponent are true in every particular, and that as to all of said petition he believes it to be true.

C. G. GARRISON.

Sworn and subscribed before me this 5th of June, 1885.

B. D. SHREVE, 10
M. C. C.

CAMDEN COUNTY, SS:

JAMES H. EDMUNDS, being duly sworn, on his oath saith, that he has read said petition; that all the matters and things therein stated, so far as they concern the acts of this deponent are true, and so far as it states other matters he verily believes it to be true.

J. HENRY EDMUNDS.

Sworn and subscribed before me this 5th of June, 1885.

B. D. SHREVE, 20
M. C. C.

A true copy.

G. S. DURYEE,
Clerk.

IN CHANCERY OF NEW JERSEY.

Between GEORGE H. BARKER, ADMINISTRATOR OF JOHN HENRY FARROW, 10 DEC'D, Complainant, and FURMAN L. RICHARDSON, Defendant.	ON BILL, &C. PETITION.

Upon reading and filing the petition of the complainant and affidavits attached, by which it appears that the sale heretofore made in this cause by Philip S. Scovel, 20 Special Master, was irregular, and asking the aid of this Court in the premises ;

It is, on this eighth day of June, in the year eighteen hundred and eighty-five, on motion of Garrison & French, solicitors of complainant, ordered, that the defendant and George Hildreth, the purchaser at said sale, show cause, if any they have, before this Court, at the Vice Chancellor's Chambers, in the city of Camden, on Monday, the fifteenth day of June instant, at ten o'clock in the forenoon, why said sale should not be set 30 aside, the deed from Philip S. Scovel, Special Master, to said George Hildreth, declared of no effect, and the property re-advertised and sold again in such manner as this Court shall direct.

Testimony on the return of this order to be taken orally.

Copies of petition and order to be served within four days.

THEODORE RUNYON,
C.

Respectfully advised.
JOHN T. BIRD, V. C.

A true copy.
G. S. DURYEE,
Clerk.

10

COMPLAINANT'S EVIDENCE.

JAMES H. EDMUNDS, sworn and examined.

By Mr. Garrison:

Ques. Where do you live?
Ans. At Cape May City.
Ques. What is your business?
Ans. Real Estate and Insurance.
Ques. Are you acquainted with the store property of Richardson and Farrow? 20
Ans. I am.
Ques. How many years have you been acquainted with that property?
Ans. I have known the property for the last twenty years.
Ques. Were you acquainted with Mr. Farrow in his lifetime?
Ans. About fifteen years.
Ques. Have you known those gentlemen slightly or intimately? 30
Ans. The last ten years intimately.
Ques. Were you acquainted with the fact that the sale of that property was about to take place?

Ans. I was.

Ques. Did you receive any letter from the solicitor of either party urging you to find purchasers at that sale?

Ans. I did—

(Objected to.)

Ques. Did you take any steps towards producing purchasers at that sale?

Ans. I did.

10 Ques. With what result?

Ans. I found a purchaser, a man in Philadelphia, by the name of Phileus Burr.

Ques. Did he give you any instructions as to what to do at this sale?

(Objected to.)

Ans. He instructed me to bid.

Ques. Did you attend the sale in consequence of your retainer by him?

20 Ans. I did.

Ques. Did you bid at that sale?

Ans. Yes, sir.

Ques. Where did the sale take place?

Ans. At the Chalfont House, at Sawyer's, Cape May City.

Ques. Had you done anything towards advertising this sale?

Ans. I advertised in the *Ledger* of Philadelphia.

30 Ques. Under whose authority?

Ans. Under Mr. Garrison's.

Ques. What was the advertisement you there inserted, or as near as you can remember; have you got a copy of it?

Ans. Yes, sir.

Ques. Produce it.

Ans. Yes, sir. (Same produced.)

Ques. Where did you get the copy from?

Ans. The *Ledger* Office.

Ques. Is this one of the copies they gave you?

Ans. Yes, sir; I went there and they took it out; they gave it to me at the office the next day, or the next day but one.

Ques. Read it.

Ans. (The witness reads as follows:) "Receiver's Sale. Store at Cape May City. Will be sold at public sale, at 10 Cape May City, on Friday, May 1st, at ten A. M., a large and valuable store property, formerly occupied by Richardson & Farrow. For particulars inquire of J. Henry Edmunds, 523 Jackson street."

Ques. How often was that inserted?

Ans. Twice, I think.

Ques. Before the sale?

Ans. Yes, sir—three times it is.

Ques. At that sale who conducted the sale?

(Objected to.) 20

Mr. Grey: I object to the introduction of this proof for the purpose of showing there was anything to be sold under the sanction of the order of this Court, but if it is for the purpose of showing an advertisement, of which this is a copy, was inserted in the *Public Ledger*, I have no objection.

Ques. Who conducted the sale?

Ans. Mr. Scovel. 30

Ques. Were you present when the sale took place.

Ans. Yes, sir.

Ques. What announcements, if any, were made by the Master in conducting this sale?

Ans. He read the advertisement and the condition of the sale. George Smith was the crier who cried the sale.

Ques. Did he read?

Ans. Before the bidding began, I asked Mr. Richardson if they were selling the whole of the store?

(Objected to.)

Ques. Is Mr. Richardson the Receiver?

Ans. Mr. Richardson was the Receiver.

10 (Objected to.)

The Court (to Mr. Garrison.) Is this Mr. Richardson the purchaser.

Mr. Garrison: We allege he is.

The Court: It may become competent; if it is not established, it can have no bearing on the case.

Ques. What did you ask him?

Ans. I asked Mr. Richardson and Mr. Taylor—they were both sitting together—I asked Mr. Richardson and 20 Mr. Taylor who were sitting together—I asked Mr. Richardson if they were selling the whole store, or part of it. He said, selling the whole of it. I said, I don't know about that, Mr. Scovel is representing it is not the whole amount. How much front have you got there? He said he didn't know. I said, that represents only forty feet. He said, there is more than forty feet front. Mr. Taylor said, it don't make any difference; we are selling the whole of it. The sale started on. I bid. I think the first bid was run up to fifteen hundred dollars above 30 the mark. I spoke—

Ques. To whom did you speak?

Ans. To Mr. Scovel. I said I didn't want any misunderstanding occurring about that; they were selling over forty feet; I knew it was over forty feet; I was sure of it. I knew the one we had close by was forty feet—

(Objected to.)

We talked the matter over—

Mr. Grey: I object to the preceding testimony.

Ques. What did Mr. Scovel say in response to your question?

Ans. He said, we will put up the property and sell the whole of it, whether forty feet or more or less. I said, I am perfectly satisfied if it is all right and I don't want 10 any trouble, because I am buying for another party. They started on it. After that one or two bids were made. Richardson, George Hildreth and another gentleman were talking the matter over, and I got up and Mr. Hildreth said, that was not the full front of that store.

Ques. What did Mr. Hildreth have to do with the sale of this property?

Ans. I don't know; he was a bidder against me; there was only two bidders.

Ques. What were the bidders?

Ans. Only us two. 20

Ques. You and Mr. Hildreth?

Ans. Yes, sir.

Ques. What did you do after Mr. Hildreth spoke?

Ans. After the three taked the matter over, I said to Mr. Richardson, "Fur, I don't want to buy this if it is not all the store, because I am bidding for another party." He said, "Do you want it?" I said, "No, I don't want it if there is any trouble about it, if you want to bid ten dollars more"—to Richardson—"I 30 don't want it any more." Mr. Hildreth said he thought the store was bringing all it was worth, and Mr. Richardson said you bid ten dollars. Hildreth bid ten dollars. After the ten dollars was bid they got in an argument and they thought it was best to measure the store—Mr. Scovel and Mr. Taylor and all of them. Rich-

ardson and I went down to measure the store and found it was fifty-eight feet front. When we came back Taylor said to Richardson, we have to sell forty feet.

Ques. Whose was the last bid before you went to measure the store?

Ans. Mr. Hildreth's bid.

Ques. That was the bid that Mr. Richardson told him to make?

10 Ans. Yes, sir.

Ques. And that was the last?

Ans. Yes, sir.

Ques. Did you bid any more?

Ans. No, sir.

Ques. Did anybody bid any more?

Ans. No; they considered it ended.

Ques. Before you went to measure how much was the last bid of Richardson?

Ans. $1,585 above the mortgage.

Ques. That would be $3,580?

Ans. Yes, sir.

20 Ques. You came back from measuring this property?

Ans. Yes, sir.

Ques. What was done then?

Ans. Mr. Taylor sat by and talked the matter over. Mr. Scovel said to sell only forty feet; they should only sell forty feet; they should sell that whether the Chancellor set aside the sale or not; they would sell what they had orders to sell. They put it up to sell the forty feet. Mr. Richardson bid ten dollars—some one said to me, I think it was Mr. Taylor—it hung a long while—Mr.
30 Taylor said, I wish somebody would make it fifty dollars because cash has to be paid on it, fifty dollars; now it is only ten dollars above the mortgage; there ain't enough to pay—there was another bid.

Ques. Did you bid any on this sale?

Ans. No, sir; there was another bid made of fifty dollars, then Mr. Hildreth bid fifty dollars and ten dollars, and they knocked it down to him. I didn't bid any more on this; I bid on the barn property.

Ques. It has nothing to do with this property?

Ans. Yes, sir.

Ques. It is out of town?

Ans. Not out of town, but away from this.

Mr. Grey: I move the Court to overrule the testimony in regard to conversations between Mr. Edmunds, Mr. Richardson and Mr. Taylor and Mr. Hildreth, the statements that were made to and fro. Mr. Edmunds appears here as a competitive bidder. When he attended that sale, he attended a sale of property which was ordered to be made under the direction of this Court, or else it was no sale. It was advertised and described in the advertisement. He did not go there, therefore, to bid on any more than appeared by the advertisement. The advertisement, as I am informed, was not misleading. Nor was he misled by the statements which were made by these gentlemen in any way, and they could not contribute from a legal standpoint to his misinformation. The only information he could rely upon was that contained in an advertisement under the sanction of an officer instructed to make a sale under the direction of the Court. It is wholly immaterial as to what anybody else told him, and as to what impressions he had in his own mind. Nothing could be said by any of these parties, with whom the witness had conversations, which can have any bearing on the solution of this question.

The Court: The testimony may be found in the end to be irrelevant, but I think it is my duty to hear it. I therefore overrule the motion to strike the testimony out.

Ques. On what day of the week was this sale?

Ans. I think it was on Friday.

Ques. What did you do after this sale had occurred?

Ans. What do you mean?

Ques. Did you notify anybody of this sale?

Ans. I notified you the next morning I was up here.

Ques. At any time since this sale have you had any conversation with Mr. Hildreth in regard to this property?

Ans. George Hildreth?

Ques. The person who was a purchaser?

10 Ans. I think it was on the 4th of June. I know I called on him about some insurance he had coming due. I saw him standing at the corner of Jackson and Washington street. He told me to let him know what was the lowest I could do. I said to him, "Furman, I sold out the business." He said, "Well, I think he has done well; he has rented the store for six hundred dollars and upstairs for three hundred dollars, making nine hundred dollars for three years." I said, "How could he do that if the sale had not gone through." He said, "Yes, I have got 20 the deed to this lot recorded by this time."

Ques. Who had done well?

Ans. Richardson, his son.

Ques. What relation is Mr. Richardson to Mr. Hildreth?

Ans. Father-in-law.

Ques. In the event of a re-sale of this property is there authority to make a bid of four thousand dollars again?

30 (Objected to.)

Ans. Yes, sir.

Ques. What do you know about the value of this property?

Ans. It is worth at a sale five thousand dollars. I can sell it for that.

Ques. That is, three thousand dollars over the mortgage?

Ans. Three thousand above the mortgage.

Ques. Do you know what the property cost?

Ans. I only know what they told me as the cost, a little over two thousand dollars.

(Objected to)

Ques. Who told you that?

10

(Objected to.)

Ans. Mr. Richardson.

Cross-examined.

By. Mr. Grey:

Ques. When you speak of the value of the property which you termed to be $5,000, or $3,000 in excess of the mortgage, what property do you have in your mind as worth that sum.

20

Ans. What property have we worth five thousand dollars?

(Question repeated.)

Ans. There is one across the way, twenty-five feet front, on the other side of the street, that is—

(Overruled by the Court.)

By the Court:

30

Ques. The one in controversy, this particular property?

Ans. I have said it would bring five thousand dollars.

By Mr. Grey:

Ques. What property do you say would bring five thousand dollars?

Ans. Mr. Richardson's property.

Ques. What front has it on the front?

Ans. Fifty-eight feet on Jackson street, fifty on Mansion.

Ques. The property you speak of as worth that much money has that area?

Ans. Yes, sir.

10 Ques. You do not mean to say the property with forty feet on Jackson street is worth five thousand dollars?

Ans. No, sir.

Ques. And the mortgage covers what?

Ans. I don't know.

Ques. Suppose a mortgage covered the property of forty feet front, would you consider the property worth three thousand dollars in excess of the mortgage?

(Objected to as hypothetical and also that the witness has no knowledge. Objection overruled.)

20 Ques. (Read.)

Ans. That is the forty feet?

Ques. Yes.

Ans. I don't think it is worth three thousand dollars at forty feet; no, sir. Because he would build the store into—

Mr. Grey: I ask to have the last observation of the answer stricken out as not responsive.

Motion refused.

30

Ques. Can you state what, in your opinion, the property of forty feet, subject to a mortgage of two thousand dollars, is worth?

Ans. I suppose, it is so hard to answer that question, if

the store was partitioned off forty feet, at the lowest estimate three thousand dollars, one thousand dollars above the mortgage, take it at that.

Ques. Your valuation of the property eighteen feet front, adjoining the store forty feet front, is one thousand dollars?

Ans There is a difference where you put the store at fifty-eight feet and it is all in one.

Ques. Answer the question.

Ans. I can answer that the property will not bring as much if you cut the store in two. 10

Ques. State whether your valuation of the eighteen feet adjoining the forty feet upon which there is a mortgage of two thousand dollars is or is not one thousand dollars?

Ans. If you partition the store off——

Ques. State whether your valuation of the eighteen feet adjoining the store of forty feet, upon which forty feet the two thousand dollars is mortgaged, is or is not worth one thousand dollars?

(Objected to as misleading. Objection overruled.) 20

Ans. I said the store is worth five thousand dollars as it stands now; it is all in one store, this one store thrown open with open doors. If you take and partition the forty feet off, I would not give five thousand dollars for it, because I could have turned around and sold it for five thousand dollars by selling it all in one store, because it is a nice store, one of the nicest stores on the island; fifty-eight feet front is a big front.

Ques. I understood you to say you bid thirty-five hundred dollars; that is, fifteen hundred dollars subject to the mortgage of two thousand dollars? 30

Ans. Yes, sir.

Ques. And that bid you made before the measurement of the ground?

Ans. Because they told me—

Ques. Before the measurement of the ground?

Ans. Yes, sir.

Ques. And after the measurement of the ground you did not bid at all?

Ans. No, sir.

Ques. It was after the measurement of the ground that the property was sold?

Ans. Yes, sir.

10 Ques. And after the measurement of the ground that Mr. Hildreth bid $60, advanced $10 on some other man's $50 bid?

Ans. Yes, sir.

Ques. And who the other man was you do not know?

Ans. I don't know whether Richardson bid; there was only two bids.

Ques. You do not know who the other man was?

Ans. I don't know who bid $50, whether Mr. Richardson or Mr. Hildreth; there was only $50 on the whole

20 thing.

Ques. Mr. Richardson made one and Mr. Hildreth the other?

Ans. Only made two—there were three bids, fifty, ten and sixty.

Ques. Who made fifty?

Ans. I don't know.

Ques. The store you spoke about first is forty, adjoining another property of eighteen?

30 Ans. The forty feet adjoining another property of eighteen feet.

Ques. Those two are connected by doors around them?

Ans. No, sir; they are connected at the front by doors, but they are all in one underneath.

Ques. Do you know how they are on the second floor?

Ans. Yes, sir.

Ques. How?

Ans. A partition between them.

Ques. There are columns beneath to separate the partition above on the first floor, are there not?

Ans. There are two posts.

Ques. They do separate the partition above?

Ans. Yes, sir.

Ques. So that on the first floor, the ground floor, the division between the two is by these supports?

Ans. There is no division at all.

Ques. There are two columns on the partition line? 10

Ans. There are two posts.

Ques. And above there is a partition between the two?

Ans. Yes; the second story.

Ques. Are there only two posts to carry the partition above?

Ans. There is one at the front, one at the back, and I think there are two; I have never known only two, (the witness illustrates); there is an arch, a little arch.

Ques. Of what is the building constructed?

Ans. Wood.

Ques. Do you know the length of the building? 20

Ans. Fifty-eight feet.

Ques. Is it your recollection that fifty-eight feet is carried by a column or post at each end, without any intermediate support?

Ans. In front?

Ques. Is it your recollection that the span of fifty-eight feet is carried by a post at one end of it, and a post at the other end, without any intervening support; is that your remembrance?

Ans. I didn't say— 30

Ques. Is or is there not any intervening support?

Ans. There is fifty-eight feet clear of front; there is a post there.

Ques. I am speaking of the depth of the store from Jackson street?

Ans. Jackson street, fifty feet, there is a post here (the witness illustrates) on Jackson street, and very close on the back part, and I think there is two on the entry, making four.

Ques. There are four supporting partitions above between the two floors?

Ans. The one in front, and the one back supports the other store, to support them both.

Ques. It supports the partition above which divides
10 the store?

Ans. Both buildings.

Ques. Making four posts, as you recollect it?

Ans. Yes, sir.

CHARLES G. GARRISON sworn.

I am the solicitor of the complainant in this cause. The order of sale which took place on May 1st had been adjourned by one of the counsel from time to time in order to have it sold just before the summer season opened
20 in Cape May. On April 21st I wrote three letters, two to Mr. Edmunds and one to Mrs. Farrow, urging upon them the necessity of finding a purchaser if they did not want the building or store sacrificed. On the Tuesday after the sale, Mr. Edmunds came to my office in Camden and stated to me the facts which he has given in his testimony to-day. He had previously been there on the day after the sale, and left a written memoranda to the same effect, with Mr. Hildreth. Upon
30 the receipt of this information the following letter was written by me (referring to letter book produced.) "P. S. Scovel, Esq., Dear Sir: Please advise us before your report of the sale is filed in this case. Truly yours, Garrison & French." Also this letter: "M. B. Taylor, Esq., Dear Sir:—Please give us notice of when you will move for a confirmation of the sale in this case as complete. Truly yours, Garrison & French."

They are dated on the second day of May. They were written on the strength of the information left with Mr. French on Saturday. I also, on Tuesday morning, telegraphed his Honor, Vice Chancellor Bird, " Do not confirm the sale in Richardson Farrow. Application will be made to set it aside for gross irregularities." (Signed) C. G. Garrison."

I also instructed Mr. Edmunds, on Tuesday morning, to have at once prepared an affidavit which should embody the facts as he had stated them to me. As Mr. 10 Edmunds left my office Mr. M. B. Taylor entered it; they must have almost passed in the front office. Mr. Taylor walked directly back into my private office, and I said to him, I have just telegraphed to the Vice Chancellor, quoting what my telegram was. He said, I came down to see you about that. I also said, I have instructed affidavits to be drawn at once for the purpose of setting the sale aside. He said, you need not do that; we did not know what to do, and I have come in to see you, and I will consent the sale be set aside; it was my fault; I prepared the order and advertisement, but Mr. Richard- 20 son only gave me the deed for the forty feet, that was the only one he had in his possession. The deed for the Hand property had been left either at the County Clerk's office or in the hands of somebody else, and that is the way the mistake occurred. I said there could be no question about the Court setting the sale aside at once, and your coming in saves the trouble and expense of that; let us enter a consent to that effect. I sat at my table and wrote out such a consent, when Mr. French, 30 from the inner office, said, I think the Vice Chancellor is upstairs. Mr. Taylor said, very well, that is just it, let us go right up—you (to Mr. Taylor) were surprised; you said that is all right, we will go right up. You said afterwards, I remember now he was to be here to hear a certain cause. We came in together and there was no

one employed in the room. We came directly in front of the Vice Chancellor's table. I stated the circumstances of the sale, Mr. Taylor not contradicting their correctness. I said I had telegraphed to the Vice Chancellor I should move to set the sale aside, and Mr. Taylor had at that moment come in and consented to a re-sale, and the only question now was, whether we could evade the statuatory period of two months, which would be very disastrous at this
10 time, the summer season, which neither had time to settle about, but made some suggestions. The Vice Chancellor having the opinion that the sale would have to be advertised the ordinary length of time, we went down stairs, Mr. Taylor and myself, into my office. Again Mr. Taylor spoke, regretting the fact that he had not sooner noticed that the property was not fully described, and again repeated his explanation and said at that time he would be certain to get it right; that he had either had the additional deed then in his possession or had instructed Mr. Richardson to deliver them to him, and he
20 left my office. I saw Mr. Taylor again within a week. He told me he had now the additional deed on Market street—that he found to be the additional deed. I told him I had not been able to find any authority which would sanction the departure from the ordinary two months advertisement. I do not remember what he said about that. We passed on. I went to Mr. Scovel's office and informed him—I didn't go to his office—I met him coming from the train, when I informed him what occurred. He said, I did right, did I not? I said, I don't
30 doubt you did right, I know nothing about it, but all that is removed from the fact of a re-sale. He stopped at the office. I said, Mr. Taylor and I will consent.

I had the same trouble I would have if it had been advertised and I took the advertisement from Mr. Taylor's description. He said, I think I have got the paper,

the report on the order to keep the records straight, and it will be the best thing for me to do. I afterwards found on my office table some of the papers in this matter; I think they had been sent down. I saw Mr. Scovel after I had seen those papers. I said I had seen those papers. He said, I thought it best to file those papers so the costs could be regularly taxed and keep the whole matter straight in that way. I had seen Mr. Scovel on another occasion speak with Mr. Taylor in regard to the effect of this re-sale. I asked what was said by either 10 party, expecting it was spoken of as a matter—I remember saying this to Mr. Taylor.

"It is very unfortunate for the estate that it has to go into a Receiver's hands, for it will lose a whole year's sale."

I received a letter from Mrs. Farrow stating she had heard that there had been a sale of this property. This was only about a week or so. I at once wrote to her there had been an attempt to sell, but Mr. Taylor had come to my office and in perfect good faith consented that the property should be re-sold, while it was unfortunate, there would be no loss except fees and costs. The 20 next day I was in Trenton—I received a telegram from Mr. French saying there has been a deed delivered.

(Objected to.)

I heard there had been a deed delivered. I took the telegram and read it and at once commenced the preparation of the necessary affidavits. I simply state this in order to show why it was that this deed got on record, the technical point relied on.

I at once had it prepared, in twenty-four hours had 30 procured from the Vice-Chancellor an order—setting up the ground of delay as being by the train of incidents I have detailed. With Mr. Taylor, my understanding as

to the re-sale was absolute and unqualified and admitted of no possible construction except the one which would naturally arise, that we were about to move to have a sale, that he consented for it to be done and it was not necessary to proceed before the Vice-Chancellor, and all things were done except the preparation for the re-sale, which I was advised by counsel would be right and it would not occur again.

Cross-examined.

10

By Mr. Taylor:

Ques. Please detail the rest of the conversation that took place between you and me at your office in regard to this fifty-eight feet; did I or did I not say there might be a question as to the eighteen feet, and you suggested to me you would cover the matter?

Ans. After we had gone down stairs Mr. Taylor said, now this question arises in re-advertising this sale: Ought we to include that eighteen feet anyhow? For the first time I had my attention drawn to it. I said, why not? Mr. Taylor said, the deed for that property is not made to Richardson & Farrow, but they hold it as tenants in common, each party having bought their title there separately. I said, I know that circumstance; we have a search here that shows, but inasmuch as we always had been—but inasmuch as we always had been informed from memorandum, they purchased it for partnership uses, it was the store they originally occupied in their business, Farrow bought one-half interest in the store while he was the partner—inasmuch as they were incorporated in one building, and it only having been used for partnership purposes, under the rules they should be sold as they were. In the first instance I know, however, Mr. Taylor said, I have had my attention directed to this for the first time since the attempt

20

30

to sell the other day, and the matter was there dropped; but when I met Mr. Taylor on the street I again alluded to it and said, I have not looked about that matter, but I have gone over in my own mind the rule of law was correct. Mr. Taylor said he had not made any further investigation into the subject.

Ques. Did you not state to me you had already looked into authorities?

Ans. In reference to this cause—I said I had information in another matter, looked into the law on the subject, and as I understood there could be no necessity, for this property had been for partnership uses, and the purchasers of the property would follow the rule, the building covered the whole real estate and would be the partnership property in the Receiver's sale.

Ques. Where did you see me the first time?

Ans. On Market street, between the southwest corner and your office, on the sidewalk.

Ques. On what day was that?

Ans. It is impossible to remember the day except, of course, from the general relation to the other time. It was within a week from the time we were before the Vice Chancellor. I can't remember the date, I presume the ninth, tenth or eleventh of May.

Ques. When did you see me the second time?

Ans. After you had got out from being ill, for I remember that occurrence.

Ques. I never went out until I went to Boston and Norfolk.

Ans. I had heard you were too ill to attend to this matter and asked you afterwards; the concurrent occurrence I don't remember, whether at New Brunswick, or Camden; I don't know whether it was in the graveyard at New Brunswick—

Ques. That was before the sale?

Ans. No, sir; that was about the three weeks after the

sale. I can give you that correctly, (referring to memorandum.)

FRANK L. RICHARDSON, defendant, sworn and examined.

By Mr. Garrison :

Ques. In which part of this building did you and Mr. Farrow first commence business ?

10 Ans. We commenced business on the property, the end on Richardson.

Ques. What was the frontage of that property ?

Ans. Eighteen feet.

Ques. What year did you begin to keep store on that property ?

Ans. Richardson and Farrow, I think probably about the year 1879, I don't remember positively.

Ques. At the time you began with Farrow in partnership with you, where was the title of this eighteen front lot; who held the paper ?

20 Ans. Clinton Hand held the title, and myself.

Ques. Clinton Hand and you were tenants in common ?

Ans. Yes, sir.

Ques. Do you still hold that interest in that property ?

Ans. Yes, sir.

Ques. How long before you went into partnership or that Mr. Farrow purchased any interest in the property ?

Ans. It was probably twelve years, I don't remember.

Ques. Why did you go in partnership with him ?

Ans. About 1879; I think it was probably twelve

30 years, some ten or twelve years, after Mr. Farrow bought my interest in the property that we first went into possession.

Ques. Had you obtained any possession twelve years before he purchased an interest in the property ?

Ans. Before he purchased the interest in eighteen feet, as I understand.

Ques. When did you go into partnership?

Ans. I think about 1869; I am not sure.

Ques. What interest did he buy?

Ans. Mr. Farrow bought Clinton Hand's interest.

Ques. You had half and he had half?

Ans. Yes, sir.

Ques. Did you pay anything for his half?

Ans. No, sir. 10

Ques. Did he pay anything for your half?

Ans. No, sir.

Ques. How long before this was it you bought the adjoining lot?

Ans. We bought the adjoining lot several years before Farrow ever bought any interest.

Ques. After you bought the adjoining lot what alteration in your entire store did you bring about?

Ans. After we bought the adjoining lot we erected that property.

20

By the Court:

Ques. You mean the eighteen feet property?

Ans. Yes, sir; and went into the adjoining property and did business some three or four years. This eighteen feet was unoccupied because it was a separate and distinct building.

Ques. When did you put the ridges up between them, the ridge pieces that connected the two buildings?

Ans. After Mr. Farrow bought Mr. Hand's interest. 30

Ques. Then as soon as Mr. Farrow had an equal interest with you in the eighteen feet, you threw open the whole store as one underneath?

Ans. Yes, sir.

Cross-examined.

By Mr. Grey:

Ques. You bought your interest from Clinton Hand, did you not?

Ans. Yes, sir.

Mr. Grey: I have a certified copy here of a deed from Clinton Hand to Furman L. Richardson, dated the 27th of September, 1866, and describing the tract of land, being a part of the Mansion House property situated on Jackson street, beginning at a corner of the line on Jackson street, at the corner of George Hildreth's lot, &c.

Ques. Is this a copy of the deed by which you acquired title?

Ans. Yes, sir.

Ques. I have a certified copy of a deed made on the 27th of April, 1878, by Clinton Hand and wife to John Farrow for an undivided one-half of the same lot. Is that the deed you have spoken of by which Mr. Farrow acquired title?

Ans. Yes, sir.

Ques. Then the opening of the two buildings was after the year 1878, was it not?

Ans. Yes, sir.

Ques. And that was the only opening of the first floor, was it not?

Ans. We took down the partition, some portion of it, and we left posts four or five feet merely to make a passage through and occupied it for a store building.

Ques. There is a perceptible division between the two buildings as they stand together?

Ans. Yes, sir; even in the stairway there are two separate stairs.

Ques. They are separate buildings?

Ans. Yes, sir.

Ques. Occupying adjoining lots?

Ans. Yes, sir.

Ques. Was the eighteen feet building adjoining ever regarded as a part of the partnership property of Richardson & Farrow?

Ans. I don't know how you might term it anyway, only this, when Mr. Taylor asked me to send him the deeds—

Ques. State whether in the terms of your partnership of Richardson & Farrow this adjoining building was considered as a part of the partnership property, or whether it was considered as belonging to the Furman Richardson one-half, and John Farrow one-half? 10

Ans. No, sir; I bought my half and paid for it with my own individual money and Mr. Farrow did the same. I bought it years before and Mr. Farrow went in with me. After Mr. Farrow bought he bought it with his own individual money and paid for his interest.

Ques. It was not part of the partnership, the acquisition of land?

Ans. No, sir. 20

By Mr. Garrison:

Ques. In your affidavit in this case, you said the firm was possessed of real estate that cost the firm over $8,000; did you include in the $8,000 the eighteen feet front lot?

Ans. Perhaps I did, the whole, I took the average this way all the firm could be worth, the two of us.

Ques. At the time you drew this affidavit, you dealt with the eighteen feet lot the same as the adjoining property, as partnership property? 30

Ans. I considered it the assets of the firm.

Ques. Are the floors level of the two buildings?

Ans. No, sir; the ceiling.

Ques. I am speaking of the lower floor; when the buildings were originally built they were of different heights?

Ans. Yes, sir.

Ques. Did you not lower the floor of one to make them correspond?

Ans. We lowered both floors.

Ques. How about the roof?

Ans. The roof was much lower of the other building.

Ques. They are all under one roof?

10 Ans. No, sir; the one building runs up against the other, and one roof may be some four or five feet higher.

By Mr. Grey:

Ques. Which is the lower roof?

Ans. The eighteen feet.

By Mr. Garrison:

Ques. There was an alleyway between these two stores

20 when you purchased the corner store?

Ans. We purchased the vacant lot when I purchased the corner store.

Ques. Did you weatherboard on in front?

Ans. We joined on that.

Ques. The weatherboards run across and connected with both buildings?

Ans. No, sir; there was a corner post; each building has a separate corner post. We weatherboarded up the

30 post.

Ques. In the front, then, this presents the appearance of one building?

Ans. No, sir.

Ques. Is there an alleyway between them?

Ans. No alley; the two buildings join.

Ques. Did you floor where the alleyway is?

Ans. We built that adjoining this property some three or four years before Mr. Farrow bought it.

Ques. Is the alleyway now floored over and incorporated into the adjoining store; there is no alleyway?

Ans. We built the new building in the alleyway after we bought it.

Ques. The floor is connected with the other building?

Ans. Yes, sir.

Ques. On the same level, all thrown open?

Ans. Yes, sir. 10

The complainant rests.

DEFENDANT'S EVIDENCE.

P. S. SCOVEL, sworn and examined.

By Mr. Grey:

Ques. Were you the Master? 20

Ans. Yes, sir.

Ques. You made this sale?

Ans. Yes, sir.

Ques. You advertised it?

Ans. Yes, sir.

Ques. The copy of the advertisement you have there?

Ans. Yes, sir; this is the same copy that Mr. Garrison advertised and the time originally advertised was the 20th of December, 1884. It was advertised from time to 30 time up to the day of the sale.

Ques. I call your attention to the description. The lot is described in the advertisement as forty feet in front on Jackson street, and fifty feet in depth?

Ans. Yes, sir; I believe that is correct.

Ques. Is that the lot, by that description, you were there to sell?

Ans. Yes, sir.

Ques. At the sale you were present?

Ans. Yes, sir.

Ques. Will you state what occurred?

Ans. The conditions of the sale were read, the proclamation made by the crier or auctioneer whom I had
10 employed for that purpose, the description of the property was read, and which included as I understood all the partnership property. After the bidding had commenced some questions arose as to the frontage, I think it was whether it was forty or fifty-eight feet about this property, and whether it included the whole of the store property. I think I did state there that I understood that it covered all of the property; because I didn't know any better. The bidding still went on and the question then again arose about this—I said whether it was forty or fifty-eight feet—some one alleged that it was certainly more than forty feet and finally the sale was
20 suspended for a little while for the purpose of letting—

Ques. At what stage of the sale was this suspension; what was the amount then bid?

Ans. That I don't just recollect, but it seems to me it might be about fifteen hundred dollars, subject to a mortgage of two thousand dollars, and seventy dollars interest.

Ques. Was that in your condition?

Ans. No; I made no mention of it. I merely made that to put purchasers on their guard, as I understood
30 there was a mortgage.

Ques. There was nothing in the advertisement?

Ans. No, sir.

Ques. And nothing in the conditions in regard to it?

Ans. No; I merely made that statement. It was suspended for the purpose of letting the parties go, who

were talking about this matter, and make the actual measurement; they returned and said—

Ques. Did you go with them?

Ans. No; they said they had measured. I think Richardson went, and I think probably Edmunds. I knew they were competent to decide the matter without me. When they came back and reported what it was, fifty-eight feet instead of forty, I then said, and after inquiring about this other property, the eighteen feet—I had come for this purpose—I said, as we advertised forty feet we will not sell any more than forty feet, and it was a question to me whether the eighteen feet was partnership property or not, and as this had cost considerable money and had been running in the papers, and if it was correct it would be a mistake not to go on with the sale, and if it was wrong the court would adjust it, so I concluded we would go on and sell the forty feet, and distinctly gave notice all I was selling was the forty feet.

Ques. After you gave that notice the sale was continued?

Ans. Yes, sir; the sale was continued—commenced re-bidding again.

Ques. Do you recollect the bids?

Ans. Yes, sir; we commenced re-bidding again and began anew.

Ques. After the re-announcement the property was sold as stated at sixty dollars?

Ans. $60 with notice there was a mortgage on it and this mortgage was on forty feet instead of eighteen.

Ques. Do you remember who bid at the sale after the measurement?

Ans. I don't know that I can state distinctly. I think Mr. Hildreth, the purchaser, was one of the bidders, but I sat a little back and out of the way.

Ques. There was more than one bidder; there was competition?

Ans. Yes, sir; I think ten dollars, as one of the witnesses stated, then fifty dollars and sixty dollars. I think that is the way it run, and it was struck off at sixty dollars to George Hildreth.

Ques. So far as your observation extended was there any confusion at the sale?

Ans. No, sir.

Ques. Or misapprehension as to what was being sold?

Ans. No, sir; it was distinctly announced, exactly.

Ques. There was no misapprehenson otherwise?

10 Ans. No, sir.

Ques. As to what was being sold?

Ans. No, sir; I don't see how there could be.

Cross-examined.

By Mr. Garrison:

Ques. When you say there was no misapprehension at the sale, you mean there was no misapprehension after they came back and the second announcement was

20 made?

Ans. Yes, sir; after that.

Ques. The misapprehension which existed was prior to the time of the second offer?

Ans. There was no misapprehension about the mortgage; they understood it.

Ques. What I mean is this, there was no other misapprehension, at the first sale; the apprehension of all the parties was, they were selling the entire store?

30 Ans. At first.

Ques. After the second offer they were selling only forty feet?

Ans. That is correct.

HENRY W. SAWYER, sworn and examined.

By Mr. Grey:

Ques. You live at Cape May, and have been there a great many years?

Ans. Yes, sir.

Ques. Do you remember the building adjoining the lot of eighteen feet that was put up by Richardson & Farrow on the corner of Jackson and Mansion streets? 10

Ans. I do.

Ques. Did you build it?

Ans. I did.

Ques. Who was then the owner?

Ans. Mr. Clinton Hand and Furman L. Richardson, in 1866.

Ques. Was there any building on the adjoining lot at that time, between that lot and Mansion street?

Ans. No, sir—yes, sir; I am mistaken, there was.

Ques. Was that building occupied?

Ans. By McGonigle, the *Ocean Wave* office.

Ques. Was it cccupied by Richardson & Hand in their 20 business?

Ans. No, sir.

Ques. Do you recollect the building you constructed, occupied by Farrow & Richardson afterwards?

Ans. Yes, sir.

Ques. When they occupied it?

Ans. Yes, sir.

Ques. Did they have any occupancy of the adjoining McGonigle building?

Ans. Not at the beginning 30

Ques. After Richardson and Farrow went into business they went into business on that eighteen feet next?

Ans. Yes, sir.

Ques. After they had been in business there, they occupied the adjoining building?

Ans. They purchased the corner building?

Ques. As Richardson & Farrow?

Ans. Yes, sir.

Ques. Did they make some changes in that building?

Ans. They did.

Ques. The corner building?

Ans. Yes, sir; they lowered the floors, put doors all open front, with sash doors, and opened the store in there and used the eighteen feet building for several years?

10 Ques. They occupied the corner building and the eighteen feet building for some years?

Ans. Yes, sir.

Ques. The buildings are of different heights?

Ans. Entirely; one is some eight feet lower than the other.

Ques. And they are divided by a partition?

Ans. Yes, sir.

Ques. which is carried on the ground by a portion of the original partition and by posts; is that so?

20 Ans. Yes, sir.

Ques. So there is a distinction between the buildings?

Ans. You can see it very plainly. One is one to three feet lower. The posts of the building are situated—as this building on the forty feet has two posts, and this building on the edge of the eighteen feet there are two ridges, so it hung—

Ques. The columns stand under the partition and separate the partition above, which divides the building?

30 Ans. Yes, sir; the columns are about that wide (indicating)—two posts placed in between to reach and hang overhead and a difference in the ceilings.

Ques. The studding in between the columns separate the buildings?

Ans. Always separate it at any time without any trouble, without removing the posts.

Ques. It is simply a removal of part of the original partition?

Ans. That is all.

Ques. You have resided some years in Cape May; are you acquainted with the value of property there?

Ans. Yes, sir.

Ques. What, in your opinion, was the value of forty feet on the corner of Mansion and Jackson streets?

Ans. The values of property at Cape May depend very much upon the surrounding circumstances. Sales 10 of that kind, most sales—most always where there is not a previous purchaser, property is not likely at a seaside place to bring one-half of its former cost, or one-third. If I may state, I have a property that cost over $40,000, and if a sale was ordered I doubt whether it would bring fifteen. Seaside property is very uncertain. You must obtain a purchaser before you make a sale.

Ques. What is the fair value of this property on the corner, in your judgment, at public sale?

Ans. From my measurement of the forty feet, it would 20 be anything above the mortgage; in the way that is located it would have brought all that I expected, all that he would expect it to bring under those circumstances.

Ques. In your judgment, state the price it would bring at a public sale; the mortgage being for $2,000, the price bid $60—was or was not that a fair price at that sale for that property?

Ans. It was a very low price but as much as could be obtained under those circumstances, or is likely it ever 30 will again under the same circumstances.

Ques. Were you at the sale?

Ans. Yes, sir; it was held at my house.

Ques. There was a suspension of the sale, the Master says?

Ans. Yes, sir.

Ques. To enable the parties to make a measurement of the property; after the return of those who went to make the measurement, did the sale proceed?

Ans. Yes, sir.

Ques. Do you know whether there was more than one bidder at the sale?

Ans. Yes, sir; James Leaming was there, and I think he made a bid on it—I know he bid on some other property, but I think he made a bid on that; I am not posi-
10 tive about that.

Ques. Anybody else?

Ans. Hildreth and Richardson are all I recollect now.

Ques. Your recollection is, there were three persons bid?

Ans. Yes, sir.

Ques. Was there any confusion?

Ans. No, sir.

Ques. So far as you saw there was no misapprehension about what was being sold after the return of the people after the measurement?

Ans. None whatever. There was a misunderstanding
20 as to what was actually being sold, when they went and measured and returned and said that the store measured fifty-eight feet, when the Master, Mr. Scovel, stated that he sold by authority of the Chancellor, only sold what he had been authorized to sell, which was forty feet.

Ques. Then the sale proceeded as you have stated?

Ans. Yes, sir.

Cross-examined.

30 By Mr. Garrison:

Ques. Did Mr. Leaming bid on the back lot, the one with the stable on it?

Ans. I didn't charge my mind; I know he was a bid-

der at that sale, and it is impossible for me to say what he bid on.

Ques. Was not the back lot knocked down and sold to Mr. Leaming?

Ans. I don't know.

Ques. After they had returned and after the misapprehension was dissipated, who bid the second time; did Mr. Richardson bid?

Ans. That I don't know.

Ques. Did Mr. Hildreth? 10

Ans. I can't tell you; I paid no attention to it.

CLINTON HAND, sworn and examined.

By Mr. Grey:

Ques. Were you the owner of the property adjoining the forty feet on the corner of Mansion street?

Ans. Yes, sir.

Ques. You conveyed a portion of it to Furman Richardson about 1866, did you not?

Ans. Yes, sir.

Ques. You and he were in business together there? 20

Ans. Yes, sir.

Ques. After you went out of business with him, did Mr. Farrow go in with him?

Ans. Yes, sir.

Ques. On the same lot you sold?

Ans. Yes, sir.

Ques. Your sale to Richardson was made before he went in business with Mr. Farrow?

Ans. Yes, sir.

Ques. After they had been in business there did you 30 sell to Mr. Farrow?

Ans. No, sir; not while they were in the small building; that was years afterwards.

Ques. They continued their business sometime before you sold to Mr. Farrow?

Ans. Yes, sir; continued their business there quite a while and then they bought the corner store.

Ques. That was after the firm of Richardson & Farrow was formed they bought the corner store?

Ans. Yes, sir; and then they left the eighteen feet building.

By Mr. Garrison:

10

Ques. Can you explain how that lot was divided up so your conveyance was eighteen feet; what was in it originally when you bought it?

Ans. George Hildreth and me first bought the property, and there was forty feet, and then we divided it to the eighteen feet way front on Lafayette street. We considered it worth as much as the twenty-two feet the other way. And he gave me eighteen feet and took the twenty-two feet which made the forty feet of the first deed.

20 Ques. That is the way you divided the forty feet you bought of the old Mansion House property?

Ans. Yes, sir.

Ques. This was a part of the old Mansion House property?

Ans. Yes, sir; I made the deed to Richardson for one-half of my interest.

Ques. The undivided one-half of eighteen feet?

Ans. Yes, sir.

30 Ques. And afterwards conveyed the other undivided one-half to Farrow?

Ans. Yes, sir.

Ques. Years after?

Ans. Yes, sir.

Ques. One deed was made in 1866 and the other in 1878?

Ans. Yes, sir; there was that much difference between them.

Ques. This was after the formation of partnership between Richardson & Farrow you made the conveyance to Farrow?

Ans. Yes, sir; but before Richardson.

Ques. You made the conveyance to Richardson when you and he were in business?

Ans. Yes, sir.

Ques. Did Mr. Sawyer put up the building there for you? 10

Ans. Yes, sir.

Ques. That was eighteen feet front?

Ans. Yes, sir.

Ques. When you sold to Mr. Farrow, did he pay you all cash, or secure part of it by mortgage?

Ans. No; he signed me there a mortgage.

Ques. Whose mortgage was it; his own?

Ans. Yes, sir.

Ques. It was not Richardson & Farrow's mortgage?

Ans. No, sir. 20

Ques. Not made to them?

Ans. No; an individual mortgage, been given a good many years.

Ques. Are you somewhat acquainted with the value of lots at Cape May; have you any knowledge of the value of property at Cape May?

Ans. It seems to vary so; it is hard to tell anything about it anyhow.

Ques. The value of property, you say, varies at Cape May? 30

Ans. It is fancy. All depends upon the fancy of the people a good bit.

Ques. Do you rent property and know the value intrinsically, and what it will bring depends wholly on people's express fancy?

Ans. Certainly fancy; undoubtedly.

Ques. What, in your judgment, would the property at the corner of Jackson and Mansion streets, forty feet on Jackson, fifty feet deep, where Richardson & Farrow conducted their business; what would it bring at public sale?

(Objected to.)

10 The Court: Its value depends on the opportunity of the witness to form an opinion, whether he had dealt in real estate very much—if he owns any.

Ans. I have a great many acres of real estate.

By Mr. Garrison:

Ques. Have you been buying and selling there?

Ans. Very little there. I own property at Cape May a short distance.

The Court: (To Mr. Grey.) Give the true inquiry; what is the fair mortgage value?

20 Ans. I should consider $2,500 would be a good price for it.

Cross-examined.

By Mr. Garrison:

Ques. Which is the principal business street there?

Ans. Washington street.

Ques. How long after you sold your half of this to Mr. Farrow did Richardson & Farrow connect it with the

30 new building?

Ans. I don't know exactly, not a great while. I couldn't exactly answer that question; but not a great while afterwards.

Ques. Do you remember before you sold your half to

Mr. Farrow there was an alleyway between the two buildings?

Ans. No, I think they had taken the alleyway in.

Ques. Do you remember after Richardson was there, there was an alleyway in?

Ans. Yes, sir.

Ques. Until you sold to Farrow the equal one-half of it, they did not occupy it as a partnership store?

Ans. No, sir.

Ques. They did that after Farrow & Richardson had equal interests? 10

Ans. Yes, sir.

GEORGE HILDRETH, sworn and examined.

By Mr. Grey:

Ques. You attended the sale of the property made by Mr. Scovel, on the 24th of April?

Ans. Yes, sir.

Ques. At the Chalfont House, Cape May?

Ans. Yes, sir. 20

Ques. Were you the purchaser of the forty by fifty feet?

Ans. Yes, sir.

Ques. Did you bid on the property before the measurement was made?

Ans. I did.

Ques. Mr. Edmunds said in his examination that Mr. Furman Richardson told you to bid ten dollars more, which you did; is that so?

Ans. Mr. Edmunds made a mistake in making that assertion. 30

Ques. Was there any such statement made to you?

Ans. No; there was none.

Ques. You bid on the property after the measurement was made?

Ans. Yes, sir.

Ques. And became the purchaser?

Ans. Yes, sir.

Ques. Did you make more than one bid at that time after the measurement?

Ans. I was under the impression I made about two bids.

Ques. Your last was the price at which it was struck
10 off?

Ans. $60.

Ques. Subject to one thousand dollars?

Ans. Yes, sir.

Ques. Do you remember the Master stating after the measurement how much he sold?

Ans. Yes, sir.

Ques. What did he say.

Ans. 40 feet; 40 by 50.

Ques. Was there any misapprehension, as far as you observed, about what was being sold?

Ans. No, sir.

20 Ques. Did you have any misvaluation about it or any valuation?

Ans. No, sir.

Ques. In making this bid and purchasing your property, whom did you represent; whom did you buy it for?

Ans. I bought it for my own self.

Ques. Whose money did you pay for it?

Ans. I gave my own check for the money.

Ques. Did you bid it in with any understanding with Furman Richardson you were to buy it for him?

Ans. No.

30 Ques. Is there any arrangement or agreement he shall have it?

Ans. No agreement whatever. I suppose it will be mine; I can do whatever I please, or sell it.

Ques. Do you regard this any less yours than any other property you own?

Ans. No; not at all.

Ques. Mr. Edmunds also said he had a conversation with you on the corner of the street in regard to the insurance, and that you said to him during that conversation, Furman has rented out the store, or something of that character, referring to the forty feet; is that true?

Ans. I have not the slightest recollection of a word of the kind. 10

Ques. Is the property in point of fact yours absolutely?

Ans. Yes, sir; as much as anything else I have got.

Ques. Is there any trust or understanding between you and Richardson?

Ans. No.

Ques. Was there at the time of the sale you were bidding for him?

Ans. No; none at the time of the sale.

Ques. And none now?

Ans. No, sir.

Ques. And never has been any?

Ans. Never has been any. 20

Cross-examined.

By Mr. Garrison:

Ques. At the second sale, when you knew you were bidding on the forty feet front, who made the first bid?

Ans. If I am not mistaken, Mr. Richardson made the first bid.

Ques. How much did you bid before?

Ans. I won't be positive; I think I might have bid something about that; I don't remember. 30

Ques. Did you bid fifty dollars?

Ans. I don't think I bid fifty dollars; I might have bid fifty dollars; I won't be positive about that.

Ques. Did Richardson bid the second time?

Ans. I won't be certain whether or not he bid more than the first time.

Ques. Did anybody else but you and Richardson bid?

Ans. Not that I saw.

Ques. Were there any limits by the Special Master or Mr. Taylor to urge bidding at the second sale?

Ans. I don't know that there was.

Ques. Was there anything said about the necessity of the property bringing $50?

10 Ans. I think Mr. Taylor said it ought to bring $50 certainly.

Ques. Did Richardson bid that fifty?

Ans. I won't be positive of it.

Ques. What relation is he to you?

Ans. He married my daughter.

Ques. At that first sale were you under the impression you were bidding on the forty feet front?

Ans. No, sir.

Ques. How high did you bid?

20 Ans. Mr. Edmunds, I think perhaps, bid fifteen hundred and something, and said, "I am done now; if you want it bid ten dollars more.

Ques. Was that said to you?

Ans. Yes, sir; I was upon the stand whether to make any more bids, fifteen or seventy-five; they were ascertainining that; I thought I would not bid any more; I thought it was the full value of the property, I would not bid any more. Finally Edmunds said, if you bid ten

30 dollars more I am done.

Ques. That is what was said in your hearing?

Ans. It is what he said to me.

Ques. What was Edmunds' bid just before yours?

Ans. I suppose it might have been fifteen hundred and something; seventy-five, perhaps. I won't be positive, only what was said there; he said $1575. I bid ten

dollars above, because he said he was not going to bid any more; that was for the whole property, I supposed it to be.

FURMAN L. RICHARDSON, defendant, sworn and examined.

By Mr. Grey:

Ques. Do you know whether John Farrow left any children at his death?

Ans. No, sir; he left no children of his own. 10

Ques. Did he leave any brothers and sisters?

Ans. Yes, sir.

Ques. How many?

Ans. He left one brother and three sisters, I think.

Ques. Were there any children of any deceased brothers or sisters?

Ans. Yes, sir.

Ques. Are those children of age?

Ans. No, sir.

Mr. Garrison: There is no question about this; it is clear these two properties were separate properties. 20

Mr. Grey: I propose to call attention to the situation of the present title.

Ques. They are children of a deceased brother?

Ans. Yes, sir.

Ques. Who were infants?

Ans. Yes, sir.

Ques. Did Mr. Hildreth, in purchasing the property, buy for you on your account? 30

Ans. No, sir.

Ques. Did you have any understanding, expressed or implied, that he was to take the title for you?

Ans. No, sir.

Ques. Or that you were to have any interest in the title when you got it?

Ans. No, sir.

Ques. Or in the land he bought?

Ans. No, sir.

Ques. Did you contribute towards the purchase money in any way?

Ans. No, sir.

Ques. Have you any claim in regard to the interest?

10 Ans. Not on the forty feet.

Ques. I am speaking only of the Hildreth deed. In the transaction he purchased on his own account entirely?

Ans. Yes, sir.

Cross-examined.

By Mr. Garrison:

Ques. You were Receiver in this case?

Ans. Yes, sir.

Ques. Was an application made to the Vice Chancellor, that you might be relieved from selling this property,

20 and the Special Master might sell it?

Ans. Yes, sir.

(Objected to.)

Mr. Garrison: I propose to show that he made application to the Court that he might be a purchaser.

(Objected to as not cross-examination.)

The Court: It is not proper cross-examination; it is

30 proper to interrogate the witness on this point.

Ques. What was the ground on which you asked the Court to relieve you of making the sale?

Ans. I asked on the ground, because if I chose to I might go there and be a bidder; I went and made a bid.

Ques. You did choose to be a bidder?

Ans. Yes, sir.

Ques. How much did you bid?

Ans. I think I bid some $50 at this time.

Ques. Is that all you bid?

Ans. That is $50 above.

Ques. Is that fifty dollars all you bid?

Ans. I disremember; I might bid up to that much.

Ques. Who bid the next highest bid to you? 10

Ans. I don't know; I couldn't say.

Ques. You don't know who bid the sixty dollars?

Ans. I don't know who bid sixty dollars.

Ques. Do you think you could find out?

Ans. It was knocked down to George Hildreth for sixty dollars.

Ques. Who bid sixty dollars?

Ans. Hildreth bid sixty dollars.

Ques. You were not willing to pay any higher than sixty dollars?

(Objected to as assuming the witness made a statement and predicating a question upon it.) 20

Ques. You were not willing to pay any more than sixty dollars?

Ans. No, sir; I felt I was not able to bid any more.

By Mr. Grey:

Ques. Was that bid of sixty dollars in any sense your bid, or for you?

Ans. No, sir.

Ques. Then all is that sixty dollars? 30

Ans. When the bid was sixty dollars I did not know at the time; I didn't hear Mr. Hildreth make the bid but when it was knocked down it was knocked down to George Hildreth.

By Mr. Garrison :

Ques. That surprised you ?

Ans. No, sir.

Ques. You did not know Mr. Hildreth was bidding on it ?

Ans. I didn't see him make the bid ; I didn't hear him make the bid ; I was some distance from the auctioneer ; I think I was talking with Mr. Scovel.

Ques. Did you tell Mr. Hildreth, as stated by Mr. Edmunds, to bid ten dollars more ?

Ans. No, sir ; Mr. Edmunds came to me and said, " Mr. Richardson, I am done, bid ten dollars more if you want the property."

Ques. At which sale was that ?

Ans. That was when the property was supposed to be selling.

Ques. That was before the measurement ?

Ans. Yes, sir ; he then went to Mr. Hildreth and turned around and said the same to Mr. Hildreth. I heard him make that remark.

M. B. TAYLOR, sworn and examined.

By Mr. Grey :

Ques. Were you present at that sale ?

Ans. Yes, sir ; I was present at the sale.

Ques. Was there any confusion apparent as to what was being sold at the time of the sale ?

Ans. None at all after the Master had suspended it ; there was a little question as to whether the whole property was to be sold or not. Mr. Edmunds and Mr. Richardson went down and measured the property, which was only three or four squares from the place of sale. They returned and said it measured fifty-eight feet. The Master stated he would not sell any more than he had ; he

had forty feet advertised and that he should sell that. He put it up immediately and the bidding commenced. I think the first bid was ten dollars; the next bid was fifty dollars, and the third bid by Mr. Hildreth was sixty dollars, and the property was knocked down to Mr. Hildreth; it was distinctly understood what was being sold; every one understood it.

Ques. At that sale which was after the measurement, did or did not Mr. Edmunds bid anything?

Ans. He didn't bid at all. 10

Ques. You heard the statement of Mr. Edmunds in regard to the conversations which he had with you, I think, at the sale?

Ans. Yes, sir.

Ques. Were the statements true or mistaken?

Ans. In what particular?

Ques. In any particular, if they were in any particular wrong, where he stated about some conversation he had there during the sale with you?

Ans. They are wrong. There was one statement, that was in reference to Mr. Hildreth. Mr. Edmunds said to 20 Mr. Hildreth, "you bid ten dollars more." There was a great deal of conversation there, and particularly when they came up after the measurement was made; they stated the amount as being fifty-eight feet of store front. Mr. Edmunds and Mr. Richardson both agreed on that point. Then the property was put up again and understood for forty feet. Mr. Scovel put forty feet up and sold it—

Ques. Mr. Hildreth and Mr. Edmunds, and I think you, were sitting together, and Mr. Edmunds made statements? 30

Ans. Yes, sir.

Ques. You were about to make some explanation as to whether or not that was correct; please do so?

Ans. That was in reference to the remark to Mr. Hil-

dreth about ten dollars, "You bid ten dollars more and you can have it, I am done."

Ques. You heard Mr. Edmunds make that statement to Mr. Hildreth?

Ans. Yes, sir; I heard that statement.

Ques. Did you say anything about bidding $50, or the necessity for bidding $50?

Ans. I think I remarked to some one, I don't know who it was, that this property ought to bring $50 and
10 the Master had required a payment of $50 to secure the sale; I said simply outside, "this ought to bring $50."

Ques. Did you make that proclamation?

Ans. No, sir.

Ques. It was only a remark?

Ans. It was only a remark.

Ques. Mr. Garrison, in his testimony, made some statement in regard to a conversation which he says he had with you touching this confirmation, I think, of this sale, or some proceding for the sale; state what, if any,
20 conversation you had, and where you had them and when?

Ans. On Monday, the the 4th of May, the day the Vice Chancellor was here, I went into Mr. Garrison's office. I had my doubts up to that time as to this sale being a legal, proper sale. I had some intimation at Cape May of the property of eighteen feet, and I rather thought the sale was irregular. I came to see Mr. Garrison that morning, and he stated to me, as he has stated
30 here; I think he said he had telegraphed to the Vice Chancellor and also that he had prepared, or was about to prepare affidavits. I stated, if we could agree upon the facts, I didn't see as there was any necessity of making an application; if the sale was improperly conducted it should be set aside; if not, it ought to be confirmed. That was the burden of the conversation. I raised the question as to the eighteen feet, whether or not it was

partnership property. I suggested I had a doubt about it; I did not state whether it was true. Mr. Garrison told me that he had no doubt about it, that there was no question about this being a partnership property, and went on to explain the matter in another case—the understanding in this present case. But he convniced me the property was partnership property. With that idea I came out of his office, and I think Mr. Edmunds passed in his office, as he states. I went down stairs. It may have been I met Mr. French, but I found the 10 Vice Chancellor was here, and we came up before the Vice Chancellor, and Mr. Garrison brought the matter up before the Vice Chancellor. The question that seemed to be the only question raised before the Vice Chancellor was, how much advance should be required if the sale was ordered to be made again? The next day, or the day after that, Mr. Richardson came up from Cape May. I had not seen him from the time of the sale. I commenced to examine into these facts and I found that the eighteen feet was entirely property belonging to tenants in common; that there was a minor 20 child interested in the property; that there was no part of the property of the estate of Richardson & Farrow; no sale under this proceeding would be of any effect, of that portion of the property. I concluded immediately on discovering these facts the Vice Chancellor would order a re-sale. I immediately made a statement of the facts as they were given to me, setting them as plainly as I could, also wrote a letter to the Vice Chancellor stating that these facts had been given to me by my client, and 30 calling his attention to those facts. The result of that was that the Vice Chancellor returned a statement with this endorsement. Here is his statement here (insert) I have no doubt but the sale of forty feet was good and lawful; I have but little doubt that the Receiver, &c.

I will advise a confirmation. And the sale was con-

firmed. The deed was drawn. The confirmation of the sale did not come down until the day that the deed was to be delivered, which was three weeks. It came down on the last day of the confirmation. The deed was executed and delivered to Mr. Hildreth, and so far as he paid the money to the Master, he took his deeds.

Ques. Is that the deed delivered (shown witness.)

Ans. That is the deed delivered to Mr. Hildreth. I desire to say, shortly after this I was taken very sick with
10 an attack of inflammatory rheumatism. I have no recollection of seeing Mr. Garrison except at this interview in Court when he was engaged. I did see him at the convention, but we had no conversation at the Episcopal Convention about this property at all. I do not say he might not have met me at the corner of Third street and said something about it. If he had called my attention to it after I wrote this letter, I would have informed him.

By Mr. Garrison :

20 Ques. What is the date of the letter ?

Ans. May 6th.

Ques. What is the date of the letter that contains this statement of facts ?

Ans. May 6th.

Ques. Do you remember mailing it that day ?

Ans. That evening; I think it was written in the afternoon and mailed that night, on the evening of the 6th.

Ques. The convention was on the evening of the 6th. I met you on the morning of the 6th at the convention
30 at New Brunswick, and on the afternoon of the 5th I went at three o'clock on Tuesday—

Ans. Was Tuesday the 5th ?

Ques. Yes, sir.

Ans. I was at the convention on the morning of the

5th until I left on the three o'clock train and came home on the 5th. I was not back at the convention; I could not be back at the convention. The convention broke up before I got through there; I was there only on the 5th, so I was not there on the 6th. We were before the Vice Chancellor on the 4th; I was in the convention on the 5th. This statement came to me on the 6th, and I mailed the letter to the Vice Chancellor. I would further state in reference to seeing Mr. Garrison, I was confined in my house ten days with inflammatory rheumatism and could not go out of the house anywhere in Camden. As soon as I got better I took a trip to Boston, Massachusetts, came home one evening and the next morning at eight o'clock I went down to Norfolk, Virginia, and Washington, and was there several days.

Ques. When did you get back?

Ans. I got back last Friday a week. I suppose I was gone eight or ten days.

The defendant offers in evidence two certified copies of deed of mortgage referred to.

The defendant rests.

COMPLAINANT'S EVIDENCE IN REBUTTAL.

JONAS S. MILLER, sworn and examined.

By Mr. Garrison:

Ques. Have you lived at Cape May?

Ans. I have.

Ques. Are you familiar with the general price of properties at Cape May City?

Ans. The general price; yes, sir.

(Objected to on the ground as not rebuttal and that the question of price is not relevant.)

The Court states that a full investigation of the subject is desired.

Ques. What is your profession?

Ans. Attorney at law.

Ques. Do you or your family, or have you or your family, owned and bought large quantities of real estate
10 in Cape May, or near it?

Ans. The family?

Ques. Your father; have you or have you not been familiar with the general market value of property sold and bought?

Ans. I have generally.

Ques. Is it any part of your professional life as a lawyer to know what is the market value of property at your native city?

Ans. It is.

20 Ques. Have you so done?

Ans. Generally in my business?

Ques. From this have you or have you not a knowledge of the general market value of the properties at Cape May?

Ans. I have.

Ques. Are you acquainted with the property where the firm of Farrow & Richardson kept their store at, on the corner of Jackson and Mansion streets?

30 Ans. Yes, sir.

Ques. Is it or is it not a valuable business stand?

Ans. I consider it one of the best in the city.

Ques. Do you recollect the frontage of the store, how it looks?

Ans. Yes, sir.

Ques. In your opinion, what would be the fair market

value of the store, which is on the corner and is forty feet on front of Jackson street, and extending fifty feet in depth, on Mansion street?

Ans. To the best of my judgment it is worth at least $3,500.

Cross-examined.

By Mr. Grey:

Ques. Have you ever dealt with land yourself? 10

Ans. I have sold some property.

Ques. On your own account?

Ans. On my own account; I have attended sales frequently.

Ques. Then the judgment you have formed in regard to this matter is predicated upon the knowledge you acquired by attending sales?

Ans. That and my professional business.

Ques. Which was rather that of a lawyer than of a real estate agent?

Ans. Yes, sir; a lawyer rather than a real estate agent. 20

Ques. Have you ever built any houses at Cape May?

Ans. No, sir; I never did.

The complainant rests.

Evidence closed.

GEORGE H. BARKER, ADMINISTRATOR OF JOHN H. FARROW, ET AL., vs. FURMAN L. RICHARDSON.	MOTION TO SET ASIDE MASTER'S SALE.

C. G. GARRISON, for Motion.

S. H. GREY, for the Purchaser.

M. B. TAYLOR, for the Receiver.

BIRD, V. C.: Richardson & Farrow were partners in business. As such partners they held title to a lot forty feet wide. The title to this lot was by one deed to them as grantees. They paid for it out of partnership funds. They owned a lot eighteen feet wide adjoining the former. The title to the latter was conveyed to them by separate deeds, each taking the equal undivided one-half, and each paying the consideration out of his own funds. They held not as partners, but as tenants in common; although, I believe, it is claimed that, having devoted it to partnership purposes, it is liable to be sold as partnership property for the payment of partnership debts.

On the eighteen feet lot was a building used for trade and business. The said partners erected a building on the forty feet lot for their trade, and joined the two buildings together and removed a portion of the side of the one on the eighteen feet lot, so as to admit a passage from the one to the other. In these two buildings they carried on business for some time.

At length Farrow died. The condition of the partnership was such that a Receiver was appointed. The per-

son appointed was Richardson. It became necessary to sell the real estate. Richardson, by his counsel, asked that a Master might make the sale in order that he might bid at the sale. It was suggested that this would prove advantageous. A Master was ordered to make the sale.

The Master advertised a parcel of land for sale. On the day of sale, at first, all persons supposed that the entire parcel (both the forty feet lot and the eighteen feet lot) was offered for sale; but after reading the description in the Master's notice, and making a measurement of the parcels, it was seen that the Master could only sell the forty feet lot. But it was not then understood that the other lot was owned by Richardson and the heirs-at-law of Barker, as tenants in common. It was still supposed that the eighteen feet lot was also partnership property, and that there had only been an omission, by the Master, from his notice of sale.

The two parcels were bid to $3,585, when the inability of the Master to sell the whole was discovered. He then offered the forty feet parcel and it was bid to $60 above encumbrances, (there being a mortgage upon it for $2,000).

As soon as the solicitor of Mr. Barker, the administrator of Farrow, learned of the sale, he informed the solicitor of the Receiver that he should resist the confirmation of it, on the ground of surprise and irregularity. The solicitors both came into court, and made a statement embodying the foregoing facts, and both admitted that the sale was irregular and could not stand, and desired an order directing the Master to sell without the statutory notice of two months, which was at the time refused, but at the request of both counsel, held under advisement.

Up to this point, the parties and the counsel seemed to have but little if any disagreement as to the management of the suit in closing up the business of the partnership.

But, before any other steps were taken, before any order setting aside the sale of the forty feet lot, and

ordering a sale of what was then supposed to be the entire partnership property (that is, both the forty feet lot, and eighteen feet) was made, the solicitor of the Receiver presented a statement to the Court which exhibited the fact that the forty feet lot was, after all, the only property held by the firm as partnership property, and that the other lot was held by them as tenants in common, and which seemed, upon its face, to dispel all allegations of mistake, surprise, or irregularity. My attention had not been called to any other view of the case. I returned the statement to the solicitor, and informed him that I would advise confirmation of the sale.

In a few days an order was presented and confirmation was advised. The Master made and delivered a deed to the purchaser for the forty feet.

Now the administrator of Farrow estate comes in by petition and asks that the said deed and order confirming the said sale be set aside and declared void. This asking is on the ground of surprise and fraud. He sets up, through his counsel, that he intended to resist confirmation and was not even heard. It is claimed that the effort at confirmation, the order confirming the sale, and the execution and delivery of the deed were all made and done without the slightest knowledge on his part. It is claimed that all this took place after the clearest and most distinct admission on the part of the counsel of the Receiver that the sale was irregular, and that the situation of things on the day of sale was surprise to all parties interested, and that the sale could not stand, and that there must be a re-sale, and that the only question was, whether the Court had power to order the Master to sell at a short day or not.

I advised confirmation, in the belief that the only ground of surprise or irregularity consisted in the fact that all persons supposed that the firm owned more real

estate than it actually did, the truth about it not being discovered until several days after the sale and after the counsel had been in the court and admitted that on account of such misunderstanding the sale must fail. I did not know, nor had it been intimated, that any other point was involved.

But it is insisted that the surprise at finding that the Master could not sell the entire store building, as it appeared to have been used, extended to and affected the entire proceeding,—the whole day's work,—and made the entire transaction irregular and illegal. And it is insisted that more than all there is surprise and fraud in obtaining the order of confirmation.

First as to the surprise and fraud in obtaining the confirmation. In the light let in since the confirmation by the testimony, there can be no doubt but that it was as great a surprise as could well be. There is no doubt but that the counsel were reposing entire confidence in each other. Therefore, with the same statements before me, I am justified in saying the surprise was complete. The administratrix was not heard, nor had she any opportunity of being heard. And does this amount to a fraud? I think so. That is as good a name as the legal vocabulary offers. The fact that it is sanctioned by the order of the Court does not sanctify it. There it stands, just as hideous, however you may clothe it. Neither the good intention of the Court, nor the sincerity of the counsel, nor the innocency of the purchaser, can diminish the wrong committed against the suitor who stands ready to present his case, but without the slightest omission on his part has judgment pronounced in his cause without his being heard. I have not the slightest reason to suppose that the counsel for the Receiver intended any wrong. Discovering as he did, after the sale, that all the real estate owned by the firm was, after all, included in the Master's notice and was sold by him, it was reason-

able and natural to conclude that there was no possible necessity for a second sale. Certain it is, that upon the naked facts, so presented, the Court so concluded.

Yet it must be admitted that this leaves out of view the rights of the other side. The Court should be open to both sides. Above all, or by all means, let every person brought into Court be heard. Anything short of this would shock the sense and disgrace the tribunal.

But I am met by the allegation that the order having been pronounced and the deed delivered to the purchaser, 10 the Court is powerless. I think this is a very rigid and mischievous rule of law, if true. As to the power of the Court to deal with its decrees and orders, to alter, amend or annul them, I have no doubt. In Montgomery & Spencer vs. Williamson, 35 Md., 429, in speaking of the power of the Orphans' Court to set aside orders confirming sales said (quoting from Ralorg vs. Hammond, 2 H. & G. 42-51): "But to this it may be answered that we deem the power of revocation, under such circumstances, as necessarily inherent in the Orphans' Court and a part of the 20 essence of the power delegated to them, of granting administration." In confirmation of which see 3 Bac. Ab. 50, where, speaking of the ecclesiastical tribunals of England, in reference to this power, it is stated that "it would be absurd to allow a Court jurisdiction herein, and at the same time deprive them of the liberty of vacating and setting aside an act of their own? Whether the order of ratification was obtained by deceit or imposition is quite immaterial. If by honest mistake, the power of revocation and correction equally exists, provided the 30 application for its exercise be made within a reasonable time, and under proper circumstances." If this may be said of the Orphans' Court, a creature of the statute, an inferior tribunal, much more may it be said of the power of this Court.

Mut. Life Ins. Co. vs. Sturges, 6 Stew. 328; Mut. Life Ins. Co. vs. Goddard, 6 Stew. 482.

But the power to revoke the order of confirmation is not all. There still remains the deed; the purchaser has that. Can the Court extend its arm to that also? It has been ably contended by the counsel of the purchaser that he is beyond the reach of the Court, however great the wrong. I am not convinced that the deed, so delivered under the order, creates any such unassailable protection. The Courts do often set aside sales, declare orders of confirmation nullities, and decree that deeds are fraudulent and that the grantee takes nothing thereby. Numerous are the cases in which fraud has been alleged and proved, establishing this right and showing the exercise of this power.

In this case, the purchaser is before the Court resisting the motion to set aside his deed and the order of confirmation. The Court has jurisdiction of the subject matter and of the parties. I can find nothing in the way, so sacred as to be immovable.

Another important matter, which, in one sense, involves all the foregoing, is the value of the property. It is urged that the premises brought a fair price. On this point the testimony is somewhat in conflict. But I am nevertheless not a little influenced by the belief that, under the circumstances, the Master's sale was not a fair test. There was room for so much confusion and uncertainty in the minds of the bidders as to cause hesitation on their part. It is true the amount of land offered for sale was at length reduced to a certainty, or it was so claimed and now so turns out. But it by no means follows that the minds of men then were set at rest so soon after the manifest uncertainty that for a time existed.

In this regard, I think no one can read the testimony respecting what the Master said after the first attempt at a sale was abandoned, without the unqualified conviction that no prudent business man would bid at the second

offering except for the merest purpose of speculation. I regard the affair as a mere experiment, there not being in the mind of any one present a reasonable presumption that the Court would confirm the sale. And that this was the conviction of the experienced counsel of the Receiver, I have no doubt. Therefore I conclude that the statutory test, a fair and open public sale, was not reasonably applied. This being so there should be another sale.

10 But the course of the Receiver ought to be considered. He asked to be relieved from making the sale, that he might bid on the property. Now, no one will pretend that he would have done this had he believed that there was an equity of only $60 in the property, and at that sum would have allowed the title to pass to a stranger. The $60 perhaps will not cover the costs and expenses of the Master. However, it may be said that he too was misled and really supposed that all the real estate was held in partnership. The law cannot presume that; nor can he be heard against his own deed. But if he was in any such uncertain state as to his title, it may well be 20 seen that the reason for the hesitation of others was abundant.

The premises were struck off to Mr. Hildreth and the Receiver was his son-in-law. An effort was made to show that Mr. H. was the agent of the Receiver. I can see nothing in that to complain of. He had a right to employ an agent. Yet, although this is so, I have less hesitation in advising as I shall, because of the conviction that Mr. H. was acting in the interests of the Receiver, though it may be never a word passed 30 between them on the subject. I think this is shown in the testimony of Edmunds, wherein he details the interview between himself and H. respecting the renting of the store by the Receiver. I am aware that Mr. H. said he had no recollection of the interview on that head.

I will advise a decree setting aside the said order of confirmation as void and of no effect, and declaring the said deed to be void and of no effect. I will also advise that the said land and premises be again advertised for sale according to the statute in such case provided, by the said Master.

IN CHANCERY OF NEW JERSEY.

Between GEORGE H. BARKER, ADM'R OF, &c., OF JOHN H. FARROW, DEC'D, Compl't, and FURMAN L. RICHARDSON, Defendant.	ON BILL. PETITION, &c. DECREE.

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The order to show cause why the sale made by Philip S. Scovel, Special Master, in the above stated cause, should not be set aside and the deed made by said Special Master to George Hildreth for the property sold be declared of no effect, and the property re-advertised and sold again on the petition of the complainant granted, coming on to be heard at the Vice Chancellor's chambers in the city of Camden, on Monday, the fifteenth day of June, eighteen hundred and eighty-five, in the presence of Charles G. Garrison, of counsel with complainant; M. B. Taylor, Esq., of counsel with defendant, and Samuel H. Grey, Esquire, of counsel with the said George Hildreth, and the Court having heard the testimony of the witnesses produced and examined in support of and in opposition to the said order, and the arguments of counsel thereon, and considered the same, and no cause being shown or appearing why the complainant should

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not have the relief prayed for in his said petitition; it is, on this nineteenth day of June, eighteen hundred and eighty-five, on motion of Garrison & French, of counsel with complainant, ordered, adjudged and decreed, that the said order to show cause be made absolute; that the sale heretofore made by Philip S. Scovel, Special Master in this cause, be set aside; that the order confirming said sale be and the same is hereby declared void and of no effect; that the deed by said Special Master to said George Hildreth be and the same is hereby declared void and of no effect, and that said deed be surrendered and delivered up by said George Hildreth to said Special Master.

And it is further ordered, that the lands and premises be again advertised for sale and sold by said Special Master, in accordance with the statute in such case made and provided.

And it is further ordered, that the costs of said complainant on said petition and order to show cause await the further order of this Court, and that either party have leave to apply to this Court for further relief with respect to the same.

THEODORE RUNYON,
C.

Respectfully advised.
JOHN T. BIRD, V. C.

A true copy.
G. S. DURYEE,
Clk.

IN CHANCERY OF NEW JERSEY.

Between GEORGE H. BARKER, ADMINISTRATOR, &c. OF JOHN H. FARROW, DEC'D, Complainant, and FURMAN L. RICHARDSON, Defendant.	ON BILL, &c. PETITION AND ORDER SETTING ASIDE SALE. NOTICE OF APPEAL.

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20 George H. Hildreth, who was the purchaser at the sale of Philip S. Scovel, Esquire, a Special Master of this Court, of certain lands situate at Cape May, in the county of Cape May, made by said Master pursuant to an order of this Court in the aforestated cause, hereby appeals from so much of an order of this Court, made on the nineteenth day of June last in said cause, upon a petition filed therein by said complainant, praying that said sale should be set aside, as directs that the order to show cause made upon filing said petition should be

30 made absolute, and that said sale made by said Special Master to said George Hildreth should be set aside, and the order confirming the same and the deed delivered by said Master to said George Hildreth should be void and of no effect, and that said deed should be surrendered and delivered up by said George Hildreth to

said Special Master to the Court of Errors and Appeals in the last resort in all causes.

Dated August 6th, 1885.

S. H. GREY,
Sol. and of Counsel for George Hildreth.

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

S. H. GREY,
Of Counsel with George Hildreth.

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IN CHANCERY OF NEW JERSEY.

BETWEEN GEORGE H. BARKER, Administrator, &c., OF JOHN H. FARROW, Dec'd. Complainant, and FURMAN L. RICHARDSON, Defendant.	ON BILL, &c. PETITION. NOTICE OF APPEAL.

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George H. Hildreth, who was the purchaser at the sale of Philip S. Scovel, Esquire, a Special Master of this Court, of certain lands situate at Cape May, in the county of Cape May, made by said Special Master, by virtue of an order of this Court made in above stated cause, hereby appeals from an order of this Court made in said cause on the nineteenth day of June last, setting aside said sale and declaring the order confirming said sale void and of no effect, and directing the deed made and delivered by said Special Master to said George H. Hildreth.

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IN CHANCERY OF NEW JERSEY.

Between GEORGE H. BARKER, ADMINISTRATOR, &c., OF JOHN H. FARROW, DEC'D, Complainant, and FURMAN L. RICHARDSON, Defendant.	ON BILL, &c., ORDER STAYING PROCEEDINGS PENDING APPEAL.

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This matter being opened to the Court by S. H. Grey, Esquire, of Counsel with George Hildreth, who was the purchaser of certain lands in Cape May, in the county of Cape May, sold by Philip S. Scovel, Esquire, Special Master, under an order of this Court made in this cause, and it appearing that said George Hildreth hath filed an appeal from an order of this Court, made on the nineteenth day of June last, setting aside said sale; it is, on this day of August, eighteen hundred and eighty-five, on motion of Samuel H. Grey, Esquire, of counsel with said George Hildreth, ordered by his honor the Chancellor, that all further proceedings in this Court with the above stated cause be stayed pending said appeal.

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IN THE COURT OF ERRORS AND APPEALS IN THE LAST RESORT IN ALL CAUSES.

Between GEORGE H. BARKER, Administrator, &c., of John H. Farrow, dec'd, Compl't, and FURMAN L. RICHARDSON, Deft.	ON BILL, &c. PETITION AND ORDER SETTING ASIDE SALE. PETITION OF APPEAL.

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To the Honorable the Court of Errors and Appeals in the last resort in all causes : 20

The humble petition of George H. Hildreth, the appellant in above stated cause, (who was the purchaser at the sale made by Philip S. Scovel, Esquire, a Special Master of the Court of Chancery, of certain lands situate at Cape May, in the county of Cape May, pursuant to an order of the Court of Chancery aforesaid,) respectfully shows that your petitioner finds himself aggrieved by a decree made in the said Court of Chancery, by his honor, Theodore Runyon, Chancellor of New Jersey, upon a petition filed in the above stated cause, by said complainant therein, praying that said sale, hereinabove mentioned, should be set aside, which said decree is dated on the nineteenth day of June, Anno Domini eighteen 30

hundred and eighty-five, in this respect, to wit: that said decree adjudges that the sale theretofore made (to this appellant) by Philip S. Scovel, Special Master, be set aside; that the said order confirming said sale be and the same was by said decree declared void and of no effect; that the deed by said Special Master to this appellant be, and the same was by said decree declared void and of no effect, and that said deed be surrendered and delivered up by said appellant to said Special Master; that the lands and premises be again advertised for sale and sold by said Special Master, in accordance with the statute.

And your petitioner humbly appeals from that part of said decree of said Chancellor which decrees as aforesaid upon the ground that the same is erroneous.

1. For that this appellant not being a party in the cause before the Court of Chancery that Court could not acquire jurisdiction over him by a petition filed in that cause.

2. For that said sale was legally, regularly, fairly and openly made and conducted without misrepresentation or surprise, and the prior bid was a fair and reasonable one.

3. For that said petition to set aside said sale only attacked the sale of one of the properties sold by said Master and bought by this appellant, which said decree of the Chancellor set aside not only the sale so attempted to be impeached, but also the sale of another lot sold at said sale and conveyed to appellant by said Master, the sale of which was not attempted to be impeached by said petition.

4. For that said sale having been lawfully made as aforesaid, and confirmed by the Chancellor after report thereof and a deed delivered by the Master, by order of the Chancellor to the appellant, the jurisdiction of the

Court of Chancery had ended on that cause, over said sale.

Your petitioner therefore prays that said decree of the said Chancellor may be with particulars aforesaid reversed, set aside and for nothing holden, and that your petitioner may have such relief in the premises as to this honorable Court shall seem meet.

S. H. GREY,
Of Counsel with Appellant.

NEW JERSEY COURT OF ERRORS AND APPEALS.

Between GEORGE H. HILDRETH, Appellant, and GEORGE H. BARKER, Administrator of &c., of John H. Farrow, dec'd, Respondent.	ON APPEAL. ANSWER TO PETITION.

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The answer of the above named respondent to the petition of appeal of the above named appellant.

This respondent not acknowledging all or any of the matters which in the said petition of appeal are contained to be true, for answer thereto, nevertheless, says and admits, that a decretal order was, on the nineteenth day of June, last past, made and entered in the Court of Chancery in the cause, for that purpose mentioned in said petition as therein stated; but as to the substance and form thereof, this respondent prays to refer to when the same shall be produced.

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And this respondent admits that said petition to set aside said attempted sale attacked only the sale of the property therein described, and this respondent is advised and believes that said decree is agreeable to equity and submits that any amendment thereof necessary to the protection of the rights of said appellant could have been made by the Court below upon application, and admits that it can now be made by this Honorable Court, and that the decree of the Court of Chancery should be affirmed with costs to this respondent.

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GARRISON & FRENCH,
Solicitors for and of Counsel with Respondent.