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Bill of Complaint.

(Filed April 26, 1927.)

IN CHANCERY OF NEW JERSEY.

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TO HIS HONOR, EDWIN ROBERT WALKER,
Chancellor of the State of New Jersey:

Complainant, Raymond Buckley, of the City of Jersey City, County of Hudson and State of New Jersey, says that:

1. On the 19th day of October, 1926, the Board of Commissioners of the City of Jersey City, adopted a resolution directing the sale at public auction on the 18th day of November, 1926, of the property hereinafter described. That a copy of said resolution is hereto annexed and marked Exhibit A.

20

2. That the said property is described as follows: Lots 7a, 6, 9a, 10a, 11a and 12a in Block 290, as shown on the Official Assessment Map of Jersey City.

3. That the said auction sale was advertised in pursuance with the provisions of said resolution, and a copy of the advertisement appearing in the papers is hereto annexed and marked Exhibit B.

30

4. That on the 18th day of November, 1926, at the time and place set for the said auction sale, Honorable William B. Quinn, Commissioner of Revenue & Finance of Jersey City, in pursuance to the provisions of said resolution, offered for sale the said property at public auction. That annexed

40

Bill of Complaint.

hereto and marked Exhibit C is a copy of the terms and conditions of said auction sale. That complainant was the highest and successful bidder at said sale and the property was struck off to complainant at the price of thirty thousand five hundred dollars. That complainant paid the deposit required of sixty-one hundred dollars, and received a receipt therefor, a copy of which receipt is hereto annexed and marked Exhibit D. That under the terms and conditions of sale and the said receipt, complainant tendered to the City Treasurer the balance of the purchase price and demanded deed, which deed the defendant, its officers and employees have refused to deliver to complainant, although he has frequently demanded same.

5. That annexed hereto and marked Exhibit E is a copy of the resolution passed by the Board of Commissioners of Jersey City, on November 23rd, 1926, providing that the bid of complainant be rejected.

6. That complainant further shows that he has been and is now ready and willing to carry out and perform on his part the said agreement or bid, but that the defendant, the Mayor and Aldermen of Jersey City, has refused to deliver deed and carry out the terms and conditions of said auction sale; all of which acts, doings and pretensions of the said defendant, the Mayor and Aldermen of Jersey City, its officers and agents, are contrary to equity and good conscience and tend to the manifest wrong of complainant.

Complainant is without adequate remedy at law and therefore prays:

1. That the Mayor and Aldermen of Jersey City,

Exhibits Annexed to Bill of Complaint.

who is the defendant to this suit, may answer this bill of complaint, without oath, and each statement therein made.

2. That the defendant, the Mayor and Aldermen of Jersey City, its officers and agents may be decreed by decree of this Court, to specifically comply with the terms of the said auction sale and agreement hereinbefore mentioned, and to convey the said lands and premises by proper instrument to complainant, upon the payment of the balance of the purchase price, bid for said property at said auction sale. 10

3. That complainant may have such other and further relief in the premises as may be proper.

4. That a writ of subpoena may issue commanding said defendant, the Mayor and Aldermen of Jersey City, to answer this bill of complaint and to abide by such decree as this Court may make in the premises. 20

HARRY LANE,
Solicitor for and of Counsel
with Complainant.

EXHIBIT A. 30

BY COMMISSIONER QUINN:

WHEREAS, the Director of Parks and Public Property represents to the Board that owing to the State Bridge & Tunnel Commission having condemned part of the property of the City, known as the Fourteenth Street Bath House, for part of the approach to the New Jersey Vehicular Tunnel, leaving the balance belonging to the City useless for the purpose for which it was acquired and 40

Exhibits Annexed to Bill of Complaint.

recommending that said balance of the property be sold at public sale, now therefore be it

10 RESOLVED, that the Board of Commissioners concurs in the report of the Director of the Department for Parks and Public property and decides that it is for the best interests of the City to sell at public sale the balance of the aforesaid property belonging to the City; and be it further

20 RESOLVED, that pursuant to the provisions of Chapter 152 P. L. 1916, as amended, the City Clerk be and he is hereby authorized and directed to advertise in the official newspapers of the City, the following notice of sale, said notice to be published at least once a week for two weeks prior to said sale, to wit:

PUBLIC NOTICE

AUCTION SALE OF CITY PROPERTY

30 Sale to be held in Assembly Chambers, City Hall, Jersey City, New Jersey, Thursday, November 18th, 1926, at eight P. M. Sale to be conducted by William B. Quinn, Commissioner of Revenue & Finance, pursuant to the provisions of Chapter 152 P. L. 1917, as amended, and in accordance with the resolution of the Board of Commissioners of the Mayor and Aldermen of Jersey City, duly adopted October 19th, 1926, all of the following described lands and premises, with the appurtenances, that is to say: ALL those certain lots or parts of lands and premises hereinafter particularly described, situate, lying and being in the city of Jersey City, in the County of Hudson and State of New Jersey, which are not fit for public use and are not suitable for any public purpose, to
40 wit: lot 7a, lot 6, lot 5, lot 9a, lot 10a, lot 11a, lot

Exhibits Annexed to Bill of Complaint.

12a all in Block 290, as shown on the official Assessment Map of Jersey City.

And be it further resolved, that the corporation counsel, be and he is hereby authorized to draw up or cause to be drawn up, a deed from the Mayor and Aldermen of Jersey City, to the purchaser or purchasers conveying the aforesaid property, and the Mayor is hereby authorized to sign the aforesaid deed as and for the Mayor and Aldermen of Jersey City, and the City Clerk is hereby authorized to affix the said seal of the City of Jersey City to the said deed, and do all other things necessary in the premises. 10

Adopted

Yeas: Commissioners Beggans, Fagan, Quinn, Saul and Mayor Hague 20

Nays: None

Meeting of October 19—1926

EXHIBIT B.

PUBLIC NOTICE

AUCTION SALE OF CITY PROPERTY 30

Sale to be held in the Assembly Chambers
of the City Hall, Jersey City,
New Jersey on

THURSDAY Nov. 18, 1926
at eight o'clock P. M.

Sale to be conducted by William B. Quinn, Commissioner of Revenue & Finance. Pursuant to the provisions of Chapter 152, P. L. 1917, as amended, and in accordance with the resolution of the Board 40

Exhibits Annexed to Bill of Complaint.

of Commissioners of the Mayor and Aldermen of Jersey City duly adopted October 19, 1926, all of the following described land and premises with the appurtenances, that is to say, all those certain lots, tract or parcels of land and premises, hereinafter particularly described situate, lying and being in the City of Jersey City, in the County of Hudson and State of New Jersey, which are not needed for public use and are not suitable for any public purpose, to wit: Lot 7a, lot 6, lot 5, lot 9a, lot 10a, lot 11a, lot 12a all in Block 290, as shown on the official map of the City.

BY ORDER OF THE BOARD OF COMMISSIONERS
OF JERSEY CITY

20

EDWARD J. HOLLAND
City Clerk

Dated City Clerk's Office,
Jersey City, October 21st—1926

EXHIBIT C.

Terms and Conditions of Auction Sale of Real Estate Now Owned by and in Possession of the Mayor and Aldermen of Jersey City to be Held Thursday Evening, November 18th, 1926. At Eight O'clock in the Assembly Chamber, City Hall, Jersey City.

30

The premises shown on the annexed map of sale will be sold in fee simple, per order of the Board of Commissioners of Jersey City, under the direction of William B. Quinn, Director of Revenue and Finance, subject to the following signed terms of sale.

40

1. The purchaser shall pay twenty percent of

Exhibits Annexed to Bill of Complaint.

the accepted bid to the City Treasurer on the day of sale.

2. That the deed shall be delivered at the office of the City Clerk on November 30, 1926, upon the payment into the city treasury of the balance of the purchase money. 10

3. In case the purchaser fails to comply with the conditions of sale, the property shall be resold, and the amount of the deficiency, if any, charged to the payment heretofore made on account thereof, by the first purchaser.

4. The city shall deliver to the purchaser a deed conveying the lands in fee simple, containing a covenant of warranty on the part of the city, limited, however, to the amount of the purchase money paid. 20

5. The property shall be sold free and clear of all taxes, assessments, water rents, and other city liens to the date of sale.

Diagram of property annexed.

30

40

Exhibits Annexed to Bill of Complaint.

EXHIBIT D.

TEMPORARY RECEIPT

CITY TREASURER'S OFFICE

CITY HALL

Jersey City, N. J.

10

\$6100.00

November 18th, 1926

RECEIVED from RAYMOND BUCKLEY, Six thousand one hundred 00/100 Dollars on account of purchase money for Lots 5, 6-7a-9a-10a-11a 12a Block 290—5-6-7a—Erie Street

9a-10a-11a-12a—14th Street bought by _____
 _____ at absolute sale No. _____

20

made November 18th, 1926, by the Mayor and Aldermen of Jersey City for Thirty thousand five hundred 00/100 Dollars.

H. F. BERGHORN

Deputy City Treasurer

B. H. G.

W. J. BUDD

Comptroller

NOTICE:

30

If not a successful bidder your deposit will be returned on the surrender of this receipt.

If a successful bidder the deed for the above premises will be delivered within thirty days after sale, upon the payment to the City Treasurer of the balance of purchase money and at which time a final receipt will be issued to you.

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Exhibits Annexed to Bill of Complaint.

EXHIBIT E.

BY COMMISSIONER QUINN:

WHEREAS, the Board of Commissioners of the Mayor and Aldermen of Jersey City, by resolution adopted October 19th, 1926, authorized the Director of Revenue and Finance, to sell at public auction to the highest bidder lots 5, 6, 7a, 9a, 10a, 11a and 12a in Block 290; and 10

WHEREAS, the highest bid received was \$30,500 made by R. C. Buckley of 737 Montgomery Street, Jersey City, N. J.; and

WHEREAS, the amount of this bid is deemed too low and entirely inadequate and not to the best interests of the city to accept; therefore be it 20

RESOLVED, that said sale to R. C. Buckley for lots 5, 6, 7a, 9a, 10a, 11a, 12a, in Block 290, be and same is not confirmed, and his bid of \$30,500 is hereby rejected in order that a new sale may be held at a later date when there is likely to be a better market for the property; and be it further

RESOLVED, that the City Clerk be and he is hereby authorized and directed to draw a warrant in favor of R. C. Buckley, in the amount of \$6100.00 being sum of 20% deposit made by him at said sale as per voucher attached. 30

Adopted:

Yeas: Commissioners Beggans, Fagan, Quinn
Saul and Mayor Hague

Nays: None

Meeting of November 23, 1926.

Amended Answer.

(Filed May 31, 1927.)

IN CHANCERY OF NEW JERSEY.

10	Between RAYMOND BUCKLEY, <i>Complainant,</i> and THE MAYOR AND ALDERMEN OF JERSEY CITY, <i>Defendant.</i>	}	On Bill, &c.
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20 The Defendant, The Mayor and Aldermen of Jersey City, by way of an amended answer to the complainant, says:

1. It admits the allegations contained in paragraph one.
2. It admits the allegations contained in paragraph two.
3. It admits the allegations contained in paragraph three.
- 30 4. Answering paragraph four, this defendant says on November 18, 1926, William B. Quinn, Esq., Commissioner of the Department of Revenue and Finance, did in pursuance to the provisions of said resolution, offer for sale the said property at public auction upon the express condition that all offers are made subject to confirmation and approval of the Board of Commissioners of Jersey City and that any sale to any bidder is conditioned upon the approval or confirmation by the said Board of

40

Amended Answer.

Commissioners of Jersey City and that the said Board of Commissioners of Jersey City shall have the right to reject any and all bids or offers which are made at the said sale; that the complainant, upon paying the deposit moneys received a receipt with an endorsement that if the bidder was not a successful bidder the deposit would be returned; that the said Board of Commissioners of Jersey City did refuse to confirm the sale and the deposit moneys were tendered back to said complainant. 10

5. It admits paragraph five.

6. It denies paragraph six.

FIRST SEPARATE DEFENSE.

1. Defendant, The Mayor and Aldermen of Jersey City, is a municipal corporation and the sale of all properties must first be confirmed by the said Board of Commissioners. 20

2. This sale, at the price offered by the complainant, was at no time confirmed by the Board of Commissioners of Jersey City.

SECOND SEPARATE DEFENSE.

1. The Commissioner of the Department of Revenue and Finance, who was empowered to conduct the sale, as a condition precedent and as a term of said sale, expressly stated to the complainant and all others at the sale that all offers were made subject to confirmation and approval of the Board of Commissioners of Jersey City and that any sale to any bidder is conditioned upon the approval or confirmation by the said Board of Commissioners of Jersey City and that the said Board of Commissioners of Jersey City shall have 30 40

Amended Answer.

the right to reject any and all bids or offers which are made at the said sale.

10 2. The Board of Commissioners of Jersey City, subsequent to the sale, rejected the bid and recommended that the deposit moneys be returned. The complainant declined to accept the deposit moneys.

THIRD SEPARATE DEFENSE.

1. The agreement relied upon by the complainant cannot be specifically enforced in that it violates the Statute of Frauds.

FOURTH SEPARATE DEFENSE.

20 1. The Commissioners of Jersey City, and, particularly, the Commissioner of Revenue and Finance, under whose direction the sale was conducted, should not be decreed to specifically perform the agreement by reason of the fact the premises alleged to have been purchased by the complainant have a value much in excess of the alleged purchase price of Thirty Thousand Five Hundred (\$30,500.00) Dollars, and the said sum of Thirty Thousand Five Hundred (\$30,500) Dollars is entirely inadequate as a sale price for said lands.

30 2. The said defendant, owner of the lands in question for the benefit of the people of Jersey City should not be compelled to dispose of said lands for an entirely inadequate price.

WHEREFORE, this defendant prays that this complaint be dismissed with costs.

THOMAS J. BROGAN,
Solicitor for Defendant.

Replication.

(Filed June 31, 1927.)

IN CHANCERY OF NEW JERSEY.

Between RAYMOND BUCKLEY, <i>Complainant,</i> and THE MAYOR AND ALDERMEN OF JERSEY CITY, <i>Defendant.</i>	}	63-621. On Bill, etc.	10
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The replication of the complainant, Raymond Buckley, to the answer of the defendant, The Mayor and Aldermen of Jersey City. 20

Complainant joins issue on the answer of the said defendant.

HARRY LANE,
Solicitor for Complainant.

30

40

Testimony.

IN CHANCERY OF NEW JERSEY.

10	Between RAYMOND C. BUCKLEY, <i>Complainant,</i> and MAYOR AND ALDERMEN OF JERSEY CITY, <i>Defendant.</i>	}	On Bill, &c.
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Jersey City, N. J., April 26, 1928.

Before—HONORABLE VIVIAN M. LEWIS,
 Vice-Chancellor.

APPEARANCES:

HARRY LANE, Esq., Solicitor for complainant.

CHARLES HERSHENSTEIN, Esq., Assistant Corporation Counsel, appearing for THOMAS J. BROGAN, Esq., Corporation Counsel of Jersey City, Solicitor for defendant.

30 Mr. Lane: Your Honor, please: I think we can shorten this matter up very materially. This suit is brought for the enforcement of the rights of the successful bidder at a public sale, conducted by the City, under a specific statute. As I say, I think most of the facts could be stipulated into the record. For instance: I assume that it can be stipulated in the record that on October 19th, 1926, the Board of Commissioners of Jersey City

40 adopted that resolution.

Testimony.

Mr. Hershenstein: No objection.

(Resolution marked Exhibit C-1, as of this date.)

Mr. Lane: Briefly, it is a resolution directing the Commissioner of Revenue to sell, at public auction, under a certain statute, a certain piece of property in Jersey City. 10

The Court: What was it to be sold for?

Mr. Lane: It was a piece of property that the City had, and had no further use for, and was going to sell, under a specific statute.

Mr. Hershenstein: This piece of property was a part of a tract of land, upon which was a public bath house. The State Highway Commission then built and widened the road leading to the vehicular tunnel. The Legislature authorized the authorities, where public property has ceased to be useful for the purpose for which it has been originally acquired, to authorize the sale of said property, and this property was being sold, pursuant to that statute. 20

Mr. Lane: Then, I think, it can be stipulated that in pursuance to that resolution, advertisement of the sale was duly made in the newspapers—public newspapers, and this is a copy of the advertisement. 30

Mr. Hershenstein: I admit that the advertisement is the advertisement, and we reserved the right to reject any and all bids.

(Advertisement marked Exhibit C-2, as of this date.)

Mr. Lane: I think it can be further stipulated, if your Honor please, that this pamphlet contains the terms and conditions of the sale, as printed. 40

Testimony.

Mr. Hershenstein: I object to the injection of this instrument in evidence, or perhaps I shall reserve the right to except, on the ground of its immateriality.

10 (Pamphlet marked Exhibit C-3, as of this date.)

Mr. Lane: Can it be stipulated, Mr. Hershenstein, that Mr. Buckley attended the sale, and bid on the property, and he was the highest bidder?

20 Mr. Hershenstein: I shall admit, for the purpose of this case, that Mr. Buckley did appear at the assembly chamber, on Thursday evening, November 18, 1926, and made an offer for the purchase of this real estate, in the sum of thirty thousand, five hundred dollars, to Commissioner Quinn, Director of Revenue and Finances, who was in charge of the proceeding, and that there was no higher offer made at that particular proceeding.

30 Mr. Lane: I think it can also be stipulated that on November 18th, 1926, sixty-one hundred dollars deposit on said offer or bid, was paid by the complainant, and that is the check showing such payment.

Mr. Hershenstein: I admit that the check for sixty-one hundred dollars was paid by Mr. Buckley, made payable to the City Treasurer, on behalf of this bid.

(Check marked Exhibit C-4, as of this date.)

The Court: Was the check cashed?

40 Mr. Hershenstein: Oh, yes; it was cashed by the City.

Mr. Lane: It is also stipulated, I think, if the

William J. Budd, direct.

Court please, that this is a receipt which was delivered to Mr. Buckley upon the payment, by Mr. Buckley, of the sixty-one hundred dollars, deposit aforesaid, and in conjunction with that, that this was not a special form of receipt that was gotten up for this particular sale, but that it was taken out of the regular book of receipts that they use for ordinary sales. 10

Mr. Hershenstein: I admit, if your Honor please, that this instrument entitled: "Temporary Receipt," dated November 18th, 1926, was and is the receipt which Mr. Buckley, the complainant, received upon the payment of the sixty-one hundred dollars, as exhibited by the check, Exhibit C-4.

(Receipt marked Exhibit C-5, as of this date.) 20

WILLIAM J. BUDD, a witness produced on behalf of the complainant, being first duly sworn according to law, testified as follows:

Direct examination by Mr. Lane:

Q. Mr. Budd, you are the Comptroller of Jersey City? A. I am; yes. 30

Q. And you have been connected in the revenue department of Jersey City for twenty years? A. Over twenty years.

Q. Over twenty years, and you have a regular form of receipt that you use in tax sales, have you not?

Mr. Hershenstein: I object to the question on the ground that it is immaterial and not binding.

The Court: I will allow it. 40

A. It might vary.

William J. Budd, direct.

By the Court:

Q. You have no specific form? A. No; it might vary.

By Mr. Lane:

10 Q. I show you Exhibit C-5, and ask you if that is a regular form under the tax sale of the City?

Mr. Hershenstein: I object to the question, on the same ground.

The Court: I will allow it.

A. Well, your Honor, I can't say positively that that is a standard form we use every time; they vary. I didn't see this before. I never saw this before in regards to this sale.

20 Q. I was not asking you about this sale at all; I am asking you about receipts in the Comptroller's office, and I have subpoenaed you to produce the form of receipt and your receipt book in use here; have you got it here?

Mr. Hershenstein: Mr. Quinlan, in charge of the Comptroller's Department, says the receipt you probably want comes from the Treasurer's office, and not the Comptroller's office.

30

The Court: The witness says he has not seen them, and he is not sure whether they are the standard form or not.

Mr. Lane: I know of my personal knowledge, and I know that Mr. Budd has seen that form of receipt many, many times, and his name is signed to it.

The Court: He says he don't know whether that is the regular form.

40

Mr. Hershenstein: Mr. Lane, will you tell me what you are trying to prove?

William J. Budd, direct.

Mr. Lane: That this is the general receipt used.

Mr. Hershenstein: I don't think there has been a receipt of this kind before at all.

Mr. Lane: I asked if it is a receipt for a regular tax sale. 10

Mr. Hershenstein: I will admit that.

Q. Do you know of any sale by the City, under the surplus land act, under Chapter 152, Laws of 1917, and I will tell you that that is the statute under which this sale was permitted to be made?

A. There was some arrangements about that.

Mr. Hershenstein: That act was amended in 1924. In the amendment it declares how the sale shall be made by advertisement. 20

Mr. Lane: Can it be stipulated that this sale was advertised in accordance with Chapter 152 of the Laws of 1917, as amended by Chapter 117 of the Laws of 1924?

Mr. Hershenstein: I will admit that the advertisement appeared in accordance with the laws.

Mr. Lane: And in accordance with the resolution of the Board of Aldermen? 30

Mr. Hershenstein: I can't stipulate that, but advertisement was prepared and published pursuant to that statute.

Mr. Lane: But you will not stipulate in pursuance of that resolution?

Mr. Hershenstein: That is a conclusion of law, and you cannot stipulate as to conclusions of law.

Mr. Lane: Will you tell me who has brought down the proof of advertisement? 40

Mr. Hershenstein: I have it.

William J. Budd, direct.

Mr. Lane: I offer in evidence proof of the advertisement of this sale.

Mr. Hershenstein: Same reservation.

(Proof of advertisement marked Exhibit C-6, as of this date.)

10 Q. Mr. Budd, I notice that you signed this receipt, Exhibit C-5, as the Comptroller of Jersey City. Did you prepare any special receipt for this particular sale? A. No, sir.

Q. And there was no special receipt prepared for this sale? A. No, sir.

Q. The receipt was made out on a regular printed form that the City had in its possession for several years? A. I don't know how long they had it, or how many blank forms they had, I don't
20 know.

Q. You had signed receipts like that before, hadn't you? A. Not personally.

Q. You were Deputy Comptroller before for a long time? A. Yes, sir.

Q. And forms that the Comptroller signed, you looked over? A. Personally, I didn't supervise any receipts.

Q. Who did? A. Mr. Quinlan.

30 Mr. Lane: That is all.

(No Cross Examination.)

Robert Quinlan, direct.

ROBERT QUINLAN, a witness produced on behalf of the complainant, being first duly sworn according to law, testified as follows:

Direct examination by Mr. Lane:

Q. Mr. Quinlan, you are the man in the City Comptroller's office, who does the work respecting sales, are you not? A. Yes, sir. 10

Q. And you have had charge, for a number of years, of giving out receipts, and preparing receipts, have you not? A. These receipts come from the Treasurer's office, and the Comptroller countersigns the receipts.

Q. And you have seen numerous receipts like this passing through your office, to be countersigned, by the Comptroller, have you not? A. Yes, sir. 20

Q. And they are the regular receipt, under the tax act? A. That is for an absolute sale.

Q. Under the tax act? A. Yes, sir.

Q. Is that right? A. Yes, sir.

Q. You know of no special form of receipt that was prepared and written out for this particular sale, or any sale under the Home Rule Act? A. No.

Q. And the fact that that receipt was made out on that form—this particular form, was simply because you had those forms available, was it not? 30

Mr. Hershenshtein: I object to the question. It is a receipt itself, signed and delivered and accepted.

The Court: Objection noted.

Q. Answer the question. A. Yes.

Mr. Lane: That is all. 40

(No Cross Examination.)

Raymond C. Buckley, direct.

RAYMOND C. BUCKLEY, the complainant in the above entitled cause, being first duly sworn according to law, testified as follows:

Direct examination by Mr. Lane:

10 Mr. Lane: Might it, Mr. Hershenstein, be admitted that subsequent to the making of this sale—this purported sale, if you would rather have it that way, that Mr. Buckley attended the City Hall and tendered cash to the City, which was refused, for the balance of the purchase price of the property?

 Mr. Hershenstein: I think I can admit that, and that we declined to convey. No proof to that.

20 Q. Mr. Buckley, you attended this sale? A. Yes, sir.

 Q. There were a number of bidders? A. Yes, sir; probably one hundred or more; that is, one hundred present.

 Q. The bidding was spirited? A. Well, yes; it was an ordinary auction sale, in about the ordinary manner.

30 Q. And you were the highest bidder? A. I was the highest bidder.

 Q. And you have been ready, willing and able to go through with this sale, at any time, have you not, since the sale? A. Yes, sir.

 Mr. Lane: That is all.

Cross examination by Mr. Hershenstein:

 Q. Mr. Buckley, you are in the real estate business in Jersey City? A. Yes, sir.

40 Q. And you were, of course, familiar with this property which the City attempted to sell at this auction sale? A. Yes, sir.

Raymond C. Buckley, cross.

Q. Was Commissioner Quinn present at that sale? A. He was.

Q. Did Commissioner Quinn make any announcement to those who were assembled, or during the time which any bids were received? A. Before any bids were received? 10

Q. Yes. A. I can't say yes or no to that. I think most of the announcements were by City Collector Raddigan.

The Court: Is your claim that the City made a bid before, or a higher bid?

Mr. Hershenstein: No; we made a reservation.

Q. Will you state whether or not Commissioner Quinn did, or did not, make an announcement to all those assembled, as to the condition and terms of this sale? A. No. 20

Q. Is it or is it not a fact, that Commissioner Quinn, before the bidding commenced, announced to all persons present, that the bids received by him must be confirmed by the City Commission, before they would be received by him?

Mr. Lane: I object to the question on the ground that it is not cross examination; that it is immaterial and is not legal under the statute, and he only had a right to conduct auction sales under the strict statute. 30

The Court: It may not be cross examination, but I will allow it to stand.

A. No.

Q. Is it not a fact, that Commissioner Quinn, during the bidding, and before you made the highest bid at that sale, announced two or three times that the bids were too low, and he was certain 40

Raymond C. Buckley, cross.

that the City Commission, the governing body of the City of Jersey City, would not confirm the sale?

Mr. Lane: My objection goes to this whole line of questioning.

10 The Court: Your objection will be noted.

A. I cannot answer that yes or no.

Q. Why not? A. The question is too general.

Q. You attended the sale? A. Mr. Quinn did try to get the price up.

By the Court:

Q. What did he say at the sale? A. He didn't say anything about the confirmation of the sale.

20 Q. Did he make any announcement? A. No, sir.

Q. He made no reservation on behalf of the City? A. No, sir.

By Mr. Hershenstein:

Q. Mr. Buckley, do you mean to tell the Court this morning, that Mr. Quinn made no announcement to the persons present at the sale, about the terms of the sale? A. He made no announcement whatever, concerning the confirmation.

30 Q. Did he make any announcement? A. He made an announcement, trying to get the price up.

Q. What was the tenor of the announcement? A. The tenor of it was that the price wasn't as high as he expected.

Mr. Lane: I want to object to anything that was said after the sale was actually open.

40 The Court: I overrule that. Counsel has a right to press the witness to see if there was anything said.

Raymond C. Buckley, cross.

Q. Now, Mr. Buckley, so there will be no misunderstanding as to my question, and your answer, I again ask you: Is it your testimony now, and are you so testifying, that Commissioner Quinn, neither before the sale began, and during the course of bidding, made no announcement, or made no statement, to the effect that the bids he was receiving, were made subject to the confirmation by the City Commission? A. I heard no such announcement. 10

Q. Mr. Buckley, Exhibit C-5 is the only instrument which you received from the City of Jersey City, after this alleged sale? A. No; I received Post Cards to get my check.

Q. Tell us exactly what you did receive? 20

Mr. Lane: You have got him wrong. Here is what he means.

A. I received a number of these.

Q. Written instruments, I am concerned with.

A. That is all I received.

Q. Isn't it a fact, that Exhibit C-5 is the only written instrument that you received or procured from the Mayor and Aldermen of Jersey City? A. Yes, sir. 30

Q. This Post Card is for something that happened December 8th; we ask you to get back your bid? A. Yes, sir.

Mr. Hershenstein: That is all.

COMPLAINANT RESTS.

Mr. Hershenstein: Now, your Honor, please: If I may clarify the defense, so your Honor may understand the defense of Jersey City, this sale was held under Chapter 131, Laws of 1924, authorizing a munic- 40

Raymond C. Buckley, cross.

10 ipality to dispose of its surplus land. The resolution which Mr. Lane has offered as Exhibit C-1, was passed by the City Commissioners; that it was surplus land and it was advertised to sell by Commissioner Quinn. Nothing there authorized him to receive any bids, or receive any offer, or receive any bid, without confirmation by the City Commission. The sale was advertised and bidders appeared, and it is our contention that Mr. Quinn, at the sale, announced, and in the presence of Mr. Buckley, that the bids received by him were subject to confirmation, by the City Commission. He receives the
20 highest offer and refers that to the City Commission, and they are the only ones that can confirm that sale. Now, the statute says that the municipality shall sell. Now, we say that the statute says that the governing body shall sell, and that means that they shall sell and confirm. Now, Mr. Lane has offered in evidence the forms that show the sale. They are all subject to the statute of frauds. Therefore, Mr. Lane, before the
30 complainant can sit in this action, must prove a written contract with Jersey City to convey this land, otherwise he is not entitled to specific performance under this statute. Now, the only thing he has produced is Exhibit C-5—

The Court: Do you intend to produce any witnesses.

Mr. Hershenstein: I can; I have them here.

40 The Court: Then you had better produce them.

William D. Quinn, direct.

WILLIAM D. QUINN, a witness produced on behalf of the defendant, being first duly sworn according to law, testified as follows:

Direct examination by Mr. Hershenstein:

Q. Commissioner Quinn, you are one of the Commissioners of the City of Jersey City? A. Yes, sir. 10

Q. After resolution, Exhibit C-1, was passed by the Board of Commissioners of Jersey City, on October 19th, 1926, did you cause an advertisement to be published in the Jersey City Journal, which is Exhibit C-6, advertising the property in question for sale? A. Yes.

Q. Did you, on November 18th, 1926, at eight o'clock, attend the assembly chamber in the City Hall, in the City of Jersey City? A. Yes, sir. 20

Q. Were you present there from the beginning of the proceedings until they were completed? A. Yes, sir.

Q. Were there a number of persons there? A. Yes, sir.

Q. Did you see Mr. Buckley there? A. Yes, sir.

Q. What did you say, or announce, to the people there assembled before anything was done by you, as to selling this property? 30

Mr. Lane: So that I may get my objection on the record, I object to it, and this whole line of testimony, upon the ground that it is immaterial; that whatever might have been said was said as a municipal officer and had no effect, and anything said would be in conflict with the statute, and fourthly, that I will contend that the statute of frauds has no application to this case. 40

William D. Quinn, cross.

The Court: Note the objection and state what you said.

A. I said that I wanted all of the bidders to understand that this sale was subject to confirmation by the City Commissioners.

10

Q. And how far was Mr. Buckley from you when this statement was made, do you recall? A. Probably from here to the first row of seats.

Q. Did you make any other announcement about the sale? A. I thought the bids were low, and I said that unless I received a higher bid, the present bid would be refused by the City Commissioners.

20

Q. And was Mr. Buckley about the same relative distance away? A. I wouldn't say that, but he was present.

Q. And how many times did you make this announcement? A. Several times.

Q. Did you refer this bid to the Board of City Commissioners of Jersey City? A. Yes, sir.

Q. And what action did they take? A. They rejected the bid.

Q. I show you this resolution, and attached to the bill of complaint; is that the resolution?

30

Mr. Lane: I object to it.

The Court: I will allow it.

A. Yes, sir.

Mr. Hershenstein: That is all.

Cross examination by Mr. Lane:

Q. Commissioner, you attended this sale as Director of Revenue and Finance of Jersey City, did you not? A. Yes.

40

Q. And you attended it in pursuance of a reso-

William D. Quinn, cross.

lution of the Board of Commissioners? A. Yes, sir.

Q. And in pursuance of the advertisement? A. Yes.

Q. Were these terms of sale, Exhibit C-3, read at the sale? A. Yes. 10

Q. By whom? A. Mr. Raddigan.

Q. The City Treasurer? A. The City Collector.

Q. And who took—who actually conducted the sale, in asking for bids, you or the City Collector? A. The City Collector.

Q. And the sale was well attended, was it not?

A. It didn't satisfy me; I thought there would be a whole lot more present.

Q. And still you directed the sale to go ahead, did you not? A. Yes. 20

Q. There were present at the sale very responsible men of Jersey City, who you know are well qualified to purchase the property at that price? A. Yes, sir.

Q. Mr. Boyle? A. Yes, sir.

Q. Thomas Mullins? A. Yes, sir.

Q. And you say you didn't read any conditions of sale, did you? A. I didn't read the conditions; I made the statement. 30

Q. When did you make the statement? A. Prior to the beginning of the sale.

Q. Was it before or after the conditions of sale were read? A. Yes; it was done before anything was done relative to the sale.

Q. Before these terms were read, did you make the statement about the confirmation of the sale? A. Yes, sir.

Q. Did you, after Mr. Raddigan read the conditions of sale, did you make the same announcement? A. I did. 40

William D. Quinn, cross.

Q. Why did you make it twice? A. Because, I was there representing the City of Jersey City, and I didn't think I was getting a fair price for the property.

10 Q. The price didn't come up to what you thought it would, and then you began to talk about the sale not being confirmed; isn't that when you first made the statement about the confirmation? A. I said it first, and then later, when the bidding became listless, then I said I didn't think the bid would be confirmed by the City Commissioners, because it wasn't high enough.

Q. You did think the resolution didn't contain enough about confirmation by the City Commissioners, didn't you? A. Yes.

20 Q. And that the advertisement, advertising the sale, didn't say anything about the confirmation by the City Commissioners, did it not? A. Yes, sir.

Q. And you advised this resolution, Exhibit C-1, did you not, and voted for it? A. Yes; we concurred in that resolution.

30 Q. And in that resolution you knew that there was no reservation for any confirmation by the City Commission, did you not, after the sale was had? You knew there was nothing in that resolution about confirmation of sale—the resolution drawn up by you? A. Yes.

Q. And you knew, further, Commissioner, that the resolution specifically directed the Corporation Counsel to draw up a deed to the highest bidder, and directed the Mayor and the City Clerk to sign and deliver the deed; you knew that, did you not? A. Yes, sir.

40 Q. Did you know, Commissioner, at that time, that at the time that you—I withdraw that.

Mr. Lane: That is all.

Robert Quinlan, direct.

Redirect examination by Mr. Hershenstein:

Q. And it is a fact also that the offered receipt provides upon it that if you are not the successful bidder, the deposit will be returned to you, and if you are the successful bidder, a deed will be delivered to you thirty days after the date of sale? A. Yes, sir. 10

Recross examination by Mr. Lane:

Q. You didn't have anything to do with the direction of what particular terms the receipt should contain, did you? A. Well, no.

Q. Then so far as you were concerned, the City Treasurer wrote it, and wrote it on the form that he had in his office? A. That was a receipt confirmed by the City Legal Department, and it was a title matter, and I didn't look over it. 20

Q. You didn't look over it? A. No, sir; I do know the reservation is in the receipt.

Mr. Lane: That is all.

ROBERT QUINLAN, a witness having already been called and sworn, is recalled by the defendant, and testified as follows: 30

Direct examination by Mr. Hershenstein:

Q. Mr. Quinlan, you are connected with the Comptroller's Office, of Jersey City? A. Yes, sir.

Q. Were you present at this alleged sale? A. Yes.

Q. Did you see Mr. Buckley? A. Yes.

Q. Did you hear any statement then that Commissioner Quinn made at that sale? A. Yes, sir.

Q. Will you state what you heard Mr. Quinn say? 40

Robert Quinlan, cross.

Mr. Lane: I object to the question.

The Court: I will allow it.

10 A. I heard him say the sale would have to be confirmed by the City Commission, and I told him before the sale that that announcement could be made, instead of putting it in the written terms of sale. I drew up this form and he drew my attention to it, and I said that at the sale he could announce that, and that would cover it, just the same as if it was in this form.

Q. Did you hear him make the announcement?

A. Yes, sir.

Q. Did you hear him make any other announcement? A. Yes.

20 Q. What did you hear him announce? A. He got up several times, and he said he thought the bids were low, and he was sure the City Commission would not confirm them, unless the bids were higher.

Mr. Hershenstein: That is all.

Cross examination by Mr. Lane:

Q. Did you attend the sale? A. Yes, sir.

30 Q. Did you have anything to do with the preparation of this resolution, Exhibit C-1? A. I don't know what it is—if you will let me look at it.

Q. Here it is; look at it. A. No; I didn't know anything about it until it was passed.

Q. Who did you say drew the terms of sale? A. I drew this.

Q. And you drew this up at the direction of somebody to carry out the terms of the resolution?

A. It has been my duty to prepare these sales.

40 Q. Now, Mr. Quinlan, you mean it has been your duty to prepare the sales for the City tax sales, and like that? A. Absolute sales.

Robert Quinlan, cross.

Q. And absolute sales, that would call, subject to confirmation by the City Commission? A. Yes.

Q. Hey? A. Yes.

Q. Will you tell us why, drawing the terms of sale up, you changed from the usual form of terms of sale, and didn't put in there, in black and white, "subject to confirmation by the City Commissioners"? A. There was no particular reason for it. Commissioner Quinn called my attention to it after it had been printed, and I told him that I considered— 10

Q. Never mind that. A. That is the reason why it wasn't put in, because it could be announced at the sale.

Q. In tax sales you put it in, don't you? A. I don't think we have always put it in. 20

Q. I mean the absolute sales. A. What do you call this?

Q. I mean the absolute sales under the tax sales. Do you know, without looking, whether you put that in or not? A. Yes; they have been put in at times, and we have had other sales similar to this.

Q. You have? A. Yes.

Q. And you didn't put it in? A. I don't think we did. 30

Q. And it wasn't sold subject to confirmation? A. It was sold subject to the confirmation by the City Commission.

Q. And the highest bidder got it, didn't he? A. Yes; the highest bidder got it at that time; that was put in there in that particular manner.

Q. The sale that was held on January 24th, 1924, that you refer to; it was put in that the sale was to be subject to the Board of Commissioners of Jersey City; is that right? A. Yes, sir. 40

James A. Raddigan, direct.

Q. Have you any others that it was not put in, that you spoke about? A. I think I have.

Q. What was these other sales? A. Now, here, these tax sales, it says here that in case the amount of bid shall be less than the amount due the City, the sale shall be subject to confirmation by the City Commissioners.

Q. Right in connection with that, these receipts that are called temporary receipts, like Exhibit C-5, are given for this notice, the printed in small type, on the bottom of the receipt, aren't they? A. Yes.

Mr. Lane: That is all.

Mr. Hershenstein: I have a half a dozen witnesses here to prove that the announcement was made, if you want me to produce them.

The Court: Can you stipulate that they will state that? I guess not.

Mr. Lane: No, sir.

JAMES A. RADDIGAN, a witness produced on behalf of the defendant, being first duly sworn according to law, testified as follows:

30 *Direct examination by Mr. Hershenstein:*

Q. Mr. Raddigan, you are the Collector of Taxes of Jersey City? A. I am.

Q. Were you present at the proceeding that occurred in the assembly chamber of Jersey City, in regard to the premises in question? A. Yes, sir.

Q. Was Commissioner Quinn there? A. Yes, sir.

Q. Did you see Mr. Buckley there? A. Yes, sir.

40 Q. Did you hear Commissioner Quinn make any announcements? A. I did.

Eugene G. Makray, direct.

Q. Please state what they were. A. Mr. Quinn announced that the bids were subject to the confirmation of the City Commissioners.

Q. Did you hear the announcement made more than once? A. Yes, sir.

Q. When were the others made? A. During the progress of the sale. 10

Q. When was the first one made? A. Before the beginning of the sale.

Mr. Hershenstein: That is all.

(No Cross Examination.)

EUGENE G. MAKRAY, a witness produced on behalf of the defendant, being first duly sworn according to law, testified as follows: 20

Direct examination by Mr. Hershenstein:

Q. Mr. Makray, you are a member of the firm—of the real estate firm of I. A. Makray? A. I am.

Q. And your father is the head of that concern? A. He is.

Q. And you specialize in the appraisals of property in Jersey City? A. We do.

Q. Do you know the premises in question? A. I do. 30

Q. Have you inspected the property to know the market value as of November 18th, 1926? A. I have.

Q. And are you acquainted with the value of property in that neighborhood? A. I am.

By the Court:

Q. Did you make this appraisal? A. Yes, sir; this appraisal I am testifying to. 40

Eugene G. Makray, cross.

Q. You made an appraisal of it, did you? A. Yes, sir.

By Mr. Hershenstein:

10 Q. What, in your opinion, is and was the fair market value of this property, as of November 18th, 1926?

Mr. Lane: I object to the question on the ground that it is immaterial as to what the value was. Secondly: that the value has been fixed in accordance with the way provided by the statute, in the manner brought about by the auction sale.

The Court: I will allow it.

20 A. One hundred and seventeen thousand dollars.

By the Court:

Q. What, one hundred and seventeen thousand dollars? A. Yes, sir.

Mr. Hershenstein: That is all.

Cross examination by Mr. Lane:

30 Q. Now, this is part of the property, the Conrad Plaza, on Fourteenth Street and Erie Street, isn't it? A. It is.

Q. And the original plot owned by the City ran along Fourteenth Street and Erie Street? A. Yes, sir.

Q. And the Tunnel Commission came along and took off forty feet? A. Yes, sir.

Q. And left a tract sixty feet on Erie Street and two hundred feet on Fourteenth Street? A. Yes, sir.

40 Q. Don't you know that there wasn't paid for

Eugene G. Makray, cross.

property on Erie Street, more than eight dollars a square foot? A. I know that.

Q. Don't you know that most of the property along that way was bought for four dollars a square foot? A. A great deal of it was purchased at that price. 10

Q. By the Tunnel Commission, which I represented at that time? A. Yes, sir.

Q. When was that purchased for the Tunnel Commission; you have the sales there, have you? A. Yes; I have them here.

Q. Let's get the details. A. What sale have you reference to?

Q. Reference to the purchase of any land along Fourteenth Street, for which four dollars a foot was paid by the Tunnel Commission. A. October 15th, 1925, O'Dowd to the City. 20

Q. I am not asking for anything to the City; I am asking for any sales to the Tunnel Commission. A. I would have to look through the entire sales. Here it is for eight dollars a square foot for twelve thousand square feet. The best value is making a basis of ninety-six thousand dollars, and six thousand, six hundred dollars is added because it is a corner lot, and an additional fourteen thousand, four hundred dollars for plottage, making a total of one hundred and seventeen thousand dollars. 30

Q. Now, you say that your basic value there, without allowing anything for plottage or corner, is eight dollars a square foot? A. It is.

Q. Can you show me a sale for eight dollars a square foot? A. I cannot.

Q. Why do you place it at eight dollars a square foot? A. Because, it is worth eight dollars a square foot. 40

Eugene G. Makray, cross.

Q. You can't show me any sales? A. That doesn't fix the price; there is a sale for over seven dollars a square foot.

10 Q. Don't you know you people appraised the Seline property at nine hundred thousand dollars, and the Receivers never received over three hundred thousand dollars for it? A. Do you say that it wasn't worth that?

Q. Do you know for two square blocks in this locality, the Receivers of this Court couldn't get three hundred and fifty thousand dollars for? A. That is true, but the condition of those sales is what makes it so difficult to bring the price.

20 Q. So your value, that you have fixed, so there can be no question about it, is not based upon any knowledge of any sales of property in the locality? A. That is not so. I know all the sales of property in that locality, and my judgment is based, in part, on those sales.

Q. Have you the sale of the United States Trust Company to Seaboard Terminal and Refrigerator Company? A. What block?

30 Q. Block 362, and Lots 29, 30, 31 and 32. That is the City block. Look at Block 233, Lots 29, 30, 31 and 32? A. Where is that?

Q. Where is 233 there? A. No; no 233 in that section.

Q. On the southerly line of South Thirteenth Street, near Cole Street; look at Block 362. A. Block 326, all the sales since March 26th, 1923; there is no sale in there.

40 Q. No sale on September 28th, 1926, to the Seaboard Terminal and Refrigerator Company? A. I wouldn't say that, and if you give me the block and lot number I could easily find it.

Q. Have you the sale of the United States Trust

Eugene G. Makray, cross.

Company, as Trustee, to the State of New Jersey, on the northerly line of Twelfth Street, near Cole Street? A. Suppose you tell me what the sale is.

Q. That is what I am telling you about; it is beginning at a point in the northerly line of Twelfth Street, with the westerly line of Cole Street, and running westerly, along the northerly line of Twelfth Street, one hundred and twenty-five feet; have you that sale? A. No, sir. 10

Q. To the State of New Jersey Highway Commission? A. No, sir; I don't think I have. I should have it. Wait a minute; that is the Giardo.

Q. What do you say, that the sale price of that was anything like eight dollars a square foot? A. Two dollars and ninety-three cents per square foot —three dollars and eight cents; my mistake. 20

Q. Then we will take three dollars and eight cents. Now, how near this particular property is that? A. That is 1-2-3-4; four blocks away.

Q. Four blocks away. Now, you have examined the sales down in that locality, haven't you? A. Yes, sir.

Q. And your examination, do you say that you didn't find any property bought by the Seaboard Terminal and Refrigerator Company? A. Oh, no; I didn't say that. I have over two thousand sales, and I can't remember them by name. 30

Q. Would you say that two dollars and twenty-four cents for this Seaboard Terminal and Refrigerator Company property would be out of the way? A. That is possible.

Q. And Cole and Thirteenth Street is how far away from this particular property? A. Just about three blocks.

Q. Just about three blocks? A. Yes. 40

Q. Now, the fact of these two sales being made

Eugene G. Makray, cross.

at three dollars a square foot, you didn't take that in consideration, in giving this valuation? A. I did.

10 Q. What consideration did you give it? A. I gave consideration to all the sales made in that locality. That section is a very distinct section. It is bounded on the north by the D. L. & W. Railroad, and on the east by the Erie Railroad, and on the west by the D. L. & W. Railroad, and on the south by the Palisades, and I have valued a great deal of property there, and there is a great deal of discrepancy there, and the reason is that the property has undergone a great change in the last few years, and up until a few years ago, property was sold for one dollar, and seventy-
20 five and fifty cents a square foot, and property took a jump for five dollars a square foot, and property right next to it was being sold for two dollars a square foot. People didn't know that this property had changed from a purely residential section to a commercial one, on account of the vehicular tunnel.

30 Q. Do you say that the property in question would bring at public auction, one hundred and seventeen thousand dollars? A. No, sir.

Mr. Lane: I move to strike out the entire testimony.

The Court: I will let it stand.

By the Court:

Q. Do you know of anybody that would give that? A. I do.

Q. It is pretty good property? A. It is the best property in this City.

40 *By Mr. Lane:*

Q. What use could this property be put to? A.

Eugene G. Makray, cross.

It has no limitation; it could be used for a warehouse in that locality.

Q. Sixty feet wide? A. Yes, and two hundred and fifty feet deep. The railroads have bought up more than fifty per cent. in the last few years.

Q. And they have bought up enough to last them for the next one hundred years? A. Yes; for the railroad companies, but not for other people. 10

Q. And don't you know this iron works property has been going around for three or four years and no purchaser for that? A. Yes, sir; but that doesn't say it hasn't any value.

Q. How many square feet are in that Fagan Iron Works? A. Thirty-two lots in each block and sixty-four lots in both blocks.

Q. How many square feet, roughly, one hundred and forty thousand? A. One hundred and sixty. 20

Q. One hundred and sixty thousand square feet? A. Yes, sir.

Q. And in this tract how many? A. Twelve thousand square feet, and there are one hundred offers for twelve thousand square feet, where there isn't one for one hundred and sixty thousand square feet.

Q. And don't you know that throughout all this city, industrial property, you cannot give it away, hardly; don't you know that, in the real estate vernacular? A. I don't know any such thing. 30

Q. And just one thing, because I know something about it; this Fagan Iron property was right up to the railroad, where they could get a switch in? A. Yes, sir.

Q. Can you get any siding up to this property? A. No, sir.

Q. Then why is it worth so much as a warehouse? A. That isn't necessary. 40

Eugene G. Makray, cross.

Q. Are there warehouses around there? A. Yes, sir; right next, where the Erie built.

Q. The Erie built a warehouse? A. Yes, sir.

Q. For railroad facilities? A. Surely.

10 Q. Any other warehouse in that vicinity? A. Yes, sir; the Seaboard Terminal.

Q. And that has an Erie siding in? A. I don't know whether it is the Erie, or the D. L. & W.

Q. Do you know of any warehouses down there that haven't any railroad sidings? A. Yes, sir; lots of them, small ones.

Q. Name them? A. I can't think of the names.

Q. You don't know much about the property down there? A. I know more about it probably than any other real estate man in town.

20 Q. And you have made sales there? A. Yes, sir.

Q. And you bought some property there yourself the other day? A. Yes, sir.

Q. For how much? A. Six thousand dollars.

Q. Six thousand dollars for what? A. About twenty-five feet front.

Q. And one hundred feet deep? A. One hundred feet deep.

30 Q. Was there a store on the property? A. No, sir.

Q. Was there a building on the property? A. Two walls on the property.

Q. No roof? A. No roof on it.

Q. What was that a square foot? A. A little over two dollars a square foot.

Q. What street was that? A. On Sixteenth Street, near Jersey Avenue.

Q. And that was up near the railroad? A. Further away from the railroad than this is.

40 Q. It was right up against the property that the railroad had acquired? A. Across the street; the railroad has bought, but there are no tracks there.

Eugene G. Makray, cross.

Q. Did the railroad have anything to do with this? A. No, sir; I bought it for myself and sold it the same day I bought it.

Q. You knew this auction sale was going to be held, at the time of the bath house sale? A. I did.

Q. When was it? A. November 18th, 1926. 10

Q. What time are you fixing the value at, today or then? A. November 18th, 1926.

Q. What is it today? A. I would have to change it.

Q. You say the value of the property in November, 1926, was one hundred and fifteen thousand dollars? A. Yes, sir.

Q. The value of the property is what it will sell for? A. What property will sell for is not always its value. 20

Q. Is that the value you are putting on it? A. It is what you want to use it for.

Q. Who have you got to buy that property? A. I am not saying that. I said I could sell it.

Q. Who is your buyer; who is your buyer; have you got a buyer? A. For this property?

Q. Yes. A. No.

Q. Why did you testify to it for? A. I said I could get a buyer for that price. 30

Q. Now, you think that its being near to the vehicular tunnel adds something to the value of the property? A. It does add to the value of the property.

Q. Do you know the Cooperage Company property that was in the hands of the receiver? A. No, sir.

Q. You don't know of that property? A. Yes; but I didn't know it was in the hands of a receiver. 40

Q. Where is it? A. I don't know the exact location.

Eugene G. Makray, cross.

Q. You don't know much about the location there? A. I certainly do.

By the Court:

Q. How old are you? A. Twenty-nine.

10 Q. How long have you been in that business?
A. For ten years, and I have bought property for the railroad there.

By Mr. Lane:

Q. For the D. L. & W.? A. Yes, sir.

Q. And don't you know the railroad company bought the Cooperage property? A. I don't. When was that?

20 Q. Three years ago. 1925. Have you the Cooperage property there; Provost Street and Fourteenth Street—right here. You didn't take it into consideration making this appraisal, did you? A. No.

Q. So there can be no misunderstanding, did you say you took any sale into consideration? A. Yes, sir.

Q. What sale did you take into consideration? A. The sales within the immediate vicinity, from November, 1926, three years prior to that.

30 Q. And you didn't find any of the sales I referred to? A. No; I only take vacant land sales into consideration. That may be improved property, and that may be the reason why I haven't got it in that file; there may be a building on there.

Q. Have you got a sale of Vodta to the Realty Company? A. No; I haven't got that.

Q. Which is our block? A. 290.

40 Q. Which is the block you bought a lot in for six thousand dollars? A. 329.

Q. One block down—about 213 blocks from it? A. Yes, sir.

Eugene G. Makray, cross.

Q. Have you any sales in 289—directly across the street? A. I have all the sales in the block.

Q. Have you any sales there at eight dollars a square foot? A. No vacant land sales in that block.

Q. Then you haven't considered any of the sales there at all? A. You cannot take that into consideration when there is a building on it. 10

Q. Don't you know you can put a value on the building, and also on the land? A. I can for my own use.

Q. You can't for a tax sale and condemnation property? A. Not the condemnation.

Q. Do you know what the assessed valuation is? A. The assessed valuation in the block in which I bought that lot, in Block 329, the assessed valuation is six thousand dollars a lot, but the assessed valuation in this location, in 1926, I don't know. 20

Q. You didn't consider it? A. No; I didn't consider it. I never do.

Q. Now, have you got the Height sale? A. That is improved property also.

Q. Have you got it? A. Yes; I have it.

Q. Didn't consider it? A. No; it has buildings on. 30

Q. Let us hear some that you have made in that neighborhood that you have considered? A. Block No. 155.

Q. Where is Block No. 155? A. That is right across the street from the one that you mentioned before—O'Dowd to the City.

Q. Those are the purchases by condemnation proceedings by the State of New Jersey, aren't they? A. No.

Q. What are they? A. Straight sales. 40

Eugene G. Makray, redirect.

Q. To the State of New Jersey? A. Yes, sir.

Q. For highway purposes? A. Yes, sir.

Q. Have you taken into consideration any private sales, not to the State, and what were they?

10 A. The Erie Railroad Company, twenty-five hundred square feet, in Block "V," four dollars and sixty-five cents a square foot.

Q. Just a minute; is that part of the rear of some of the property that the Tunnel Commission took, and the Erie took the balance? A. Yes; the Tunnel Commission took forty feet, and the railroad took the balance. It was damaged property.

20 Q. That was property that they knew they had to have, and took it by condemnation? A. No, sir.

Q. Don't you know that the Erie had an agreement with the tunnel people to take all the balance? A. No, sir.

Q. Don't you know that the people knew that they could condemn? A. Yes, sir.

Q. The Erie Railroad property, your figure is four dollars and sixty-one cents a square foot?

A. Yes, sir.

30 Q. Have you any private sale; are there any near the price of eight dollars? A. No; the nearest one is—

Q. You have some running along in Twelfth Street that go down to two dollars and seventy-one cents a square foot? A. Sure, I have.

Q. What is the nearest price to eight dollars? A. Seven dollars and eight cents.

Mr. Lane: That is all.

40 *Redirect examination by Mr. Hershenstein:*

Q. This property is on Fourteenth Street, isn't it? A. Yes, sir.

Raymond C. Buckley, direct.

Q. And Fourteenth Street is the approach to the vehicular tunnel? A. Yes, sir.

Q. Is there any sales to the City at eight dollars a square foot? A. No; the nearest is seven dollars and eight cents.

Q. Part of this property was taken by the City for highway purposes? A. Yes, sir. 10

Q. How much was taken? A. Four thousand square feet.

Q. Forty by one hundred? A. Yes, sir.

Q. Do you know what the State Highway Commission paid Jersey City for that land? A. Yes, I know; but I don't know what was for the land.

Mr. Hershenstein: That is all.

DEFENDANT RESTS.

20

RAYMOND C. BUCKLEY, the complainant in the above entitled cause, having already been called and sworn, is recalled and testified as follows:

Direct examination by Mr. Lane:

Q. Mr. Buckley, you have been in the real estate business in Jersey City for some time? A. Six or seven years. 30

Q. Will you tell us of some sales in this vicinity, establishing the value of this property?

Mr. Hershenstein: I admit his qualifications.

Q. Have you made sales in that section? A. Yes; I located the Continental Can there.

Q. What did you sell the land there for? A. About two thousand dollars a lot.

Q. How much a foot would that be? A. Eighty cents. 40

Raymond C. Buckley, direct.

Q. Eighty cents? A. Eighty cents a square foot.

Q. That was some time ago? A. Yes; eight years ago.

By the Court:

10 Q. Around the time that you bought from the City, have you any sales there? A. Yes; I have a number there.

Q. What are they? A. United States Trust Company to Seaboard Terminal and Refrigerator Company, thirty thousand, three hundred and seventy-five square feet at two dollars and ninety-four cents a square foot.

20 Q. Go to the next one. A. This is not a sale, but the State Highway Commission offered a plot there at public auction, which would be three dollars and ten cents a square foot, and they didn't get a bidder on it.

Q. Where is that property? A. On Twelfth Street, along the viaduct.

Q. In your opinion, what is this land worth? A. I don't know. My opinion was thirty thousand, five hundred dollars.

30 Q. What do you say it was worth when you bought it? A. My opinion, when I bought it, was in the neighborhood of thirty-five or thirty-six thousand dollars.

By Mr. Lane:

40 Q. When you went to the sale, did you have an opinion as to what price you would go, and not go any further? A. I told one of them that I would go to thirty-five thousand or forty thousand dollars, but Mr. Goldberg went around and said it would cost five thousand dollars to remove that building, and that influenced my bid.

Raymond C. Buckley, direct.

By the Court:

Q. What is the nearest figure you have there, nearest to eight dollars a foot? A. There is no sale near eight dollars a foot.

Q. What is the nearest? A. Three eighty-five and three ten; two forty-two, two dollars and two sixty-two.

10

By Mr. Lane:

Q. And then you had this McCrea sale? A. Yes, I had that. I took every outstanding sale in that neighborhood. I had very few of the sales, but I got every outstanding sale in that section, at, about or since that time.

By the Court:

20

Q. And the highest is about three or four dollars? A. Yes, sir; and that includes buildings and all, but I couldn't get anything like eight dollars.

By Mr. Lane:

Q. On this property there is a structure that was formerly a substantial bath house? A. Yes, sir.

Q. And that building was cut right in half? A. Yes, sir.

30

Q. And that foundation is one-half down in the ground, and one-half up in the air, and that would have to be removed to make the property of any value? A. Yes, sir.

Q. And that has to be taken into consideration? A. Mr. Goldberg said it would cost five thousand dollars.

Q. And that is his business? A. Yes, sir; he is an expert wrecker.

Q. And there were about one hundred people or more there at the sale? A. Yes, sir.

40

Raymond C. Buckley, cross.

Q. And some very responsible people? A. The most responsible in the City.

Q. Anybody who was able to buy this property?
A. Harry Max, Tom Boyle, Mr. Mullins—it was the most representative gathering in the City, as regards to gatherings of that sort.

Q. And there were a number of bids made? A. Oh, yes.

Q. And, irrespective of Commissioner Quinn trying to boost the price, nobody went over your bid?

A. No; they did not.

Mr. Lane: That is all.

Cross examination by Mr. Hershenstein:

Q. And with all those people there, you haven't one of the people here to state that Mr. Quinn didn't make the statement that you say he didn't make; have you or not? A. No.

Q. Do you know of the sale of this property to the City for seven dollars a square foot, in 1925?

A. No.

Q. Do you say there was no such a sale? A. No.

Q. Have you any sales on Fourteenth Street? A. No, sir.

Q. Did you know there was a sale there for eight dollars a foot? A. No, sir.

Q. You think the price you bid is low enough for you to institute a suit for specific performance to compel them to convey to you? A. I thought the City didn't treat me right, and I was going to try to enforce it.

Mr. Hershenstein: That is all.

CASE CLOSED.

Exhibit C-1.

RESOLUTION ADOPTED BY BOARD OF COMMISSIONERS OF
JERSEY CITY—DATED OCTOBER 19TH, 1926.

BY COMMISSIONER QUINN :

Whereas the Director of Parks and Public Prop-
erty represents to the Board that owing to the State
Bridge & Tunnel Commission having condemned
part of the property of the City, known as the
Fourteenth Street Bath House, for part of the ap-
proach to the New Jersey Vehicular Tunnel, leav-
ing the balance belonging to the City useless for
the purpose for which it was acquired and recom-
mending that said balance of the property be sold
at public sale, now therefore be it

RESOLVED that the Board of Commissioners con-
curs in the report of the Director of the Depart-
ment for Parks and Public property and decides
that it is for the best interests of the City to sell at
public sale the balance of the aforesaid property
belonging to the City; and be it further

RESOLVED, that pursuant to the provisions of
Chapter 152, P. L. 1917 as amended, the City Clerk
be and he is hereby authorized and directed to ad-
vertise in the official newspapers of the City, the
following notice of sale, said notice to be published
at least once a week for two weeks prior to said
sale, to wit:

PUBLIC NOTICE**AUCTION SALE OF CITY PROPERTY**

Sale to be held in Assembly Chambers, City Hall,
Jersey City, New Jersey, Thursday, November 18th,
1926 at eight P. M. Sale to be conducted by Wil-

Exhibits.

10 liam B. Quinn, Commissioner of Revenue & Finance; pursuant to the provisions of Chapter 152, P. L. 1917, as amended, and in accordance with the resolution of the Board of Commissioners of the Mayor and Aldermen of Jersey City, duly
20 adopted October 19th, 1926, all of the following described lands and premises, with the appurtenances, that is to say: All those certain lots or parts of land and premises hereinafter particularly described, situate, lying and being in the City of Jersey City, in the County of Hudson and State of New Jersey, which are not fit for public use and are not suitable for any public purpose, to wit: lot 7a, lot 6, lot 5, lot 9a, lot 10a, lot 11a, lot 12a, all in Block 290, as shown on the Official Assessment Map of Jersey City.

30 And be it further Resolved, that the Corporation Counsel, be and he is hereby authorized to draw up or cause to be drawn up, a deed from the Mayor and Aldermen of Jersey City, to the purchaser or purchasers conveying the aforesaid property, and the Mayor is hereby authorized to sign the aforesaid deed as and for the Mayor and Aldermen of Jersey City, and the City Clerk is hereby authorized to affix the said seal of the City of Jersey City to the said deed, and do all other things necessary in the premises.

Adopted:

Yeas: Commissioners Beggans, Fagan, Quinn, Saul and Mayor Hague.

Nays: None.

Meeting of October 19th, 1926.

*Exhibits.***Exhibit C-2.**

PRINTED ADVERTISEMENT OF SALE PUBLISHED
IN NEWSPAPERS

PUBLIC NOTICE

. AUCTION SALE OF CITY PROPERTY

10

Sale to be held in the Assembly Chamber
of the City Hall, Jersey City,
New Jersey, on
THURSDAY, Nov. 18, 1926
at 8 o'clock P. M.

Sale to be conducted by William B. Quinn, Commissioner of Revenue and Finance. Pursuant to the provisions of Chapter 152, P. L. 1917, as amended, and in accordance with the resolution of the Board of Commissioners of the Mayor and Aldermen of Jersey City duly adopted October 19, 1926, all of the following described land and premises with the appurtenances, that is to say, all those certain lots, tract or parcels of land and premises, hereinafter particularly described situate, lying and being in the City of Jersey City, in the County of Hudson and State of New Jersey, which are not needed for public use and are not suitable for any public purpose, to wit:

20

30

Lot 7A, Lot 6, Lot 5, Lot 9A, Lot 10A, Lot 11A, Lot 12A, all in Block 290. As shown on the official map of the city.

BY ORDER OF THE BOARD OF
COMMISSIONERS OF JERSEY CITY

EDWARD J. HOLLAND
City Clerk.

Dated City Clerk's Office,
Jersey City, October 21st, 1926.

40

*Exhibits.***Exhibit C-3.**

PRINTED NOTICE AND CONDITIONS OF SALE (then follows map and survey of property to be sold).

10 PUBLIC AUCTION SALE
TO HIGHEST BIDDER
OF VALUABLE PROPERTY LOCATED IN
VEHICULAR TUNNEL ZONE
JERSEY CITY

To Be Held In

ASSEMBLY CHAMBER
CITY HALL, JERSEY CITY, N. J.

20 THURSDAY EVENING, NOV. 18, 1926
At Eight O'Clock

Under Direction of William B. Quinn, Director of
Revenue and Finance

Terms and Conditions of Auction Sale
of Real Estate Now Owned by and in Possession of
The Mayor and Aldermen of Jersey City

30 To Be Held
THURSDAY EVENING, NOVEMBER 18th, 1926
AT EIGHT O'CLOCK IN THE ASSEMBLY CHAMBER,
CITY HALL, JERSEY CITY.

40 The premises shown on the annexed map of sale
will be sold in fee simple, per order of the Board
of Commissioners of Jersey City, under the direc-
tion of William B. Quinn, Director of Revenue and
Finance, subject to the following signed terms of
sale:

Exhibits.

1. The purchaser shall pay twenty percent of the accepted bid to the City Treasurer on the day of sale.
2. That the deed shall be delivered at the office of the City Clerk on November 30, 1926, upon the payment into the city treasury of the balance of the purchase money. 10
3. In case the purchaser fails to comply with the conditions of sale, the property shall be resold, and the amount of the deficiency, if any, charged to the payment heretofore made on account thereof, by the first purchaser.
4. The city shall deliver to the purchaser a deed conveying the lands in fee simple, containing a covenant of warranty on the part of the city, limited, however, to the amount of the purchase money paid. 20
5. The property shall be sold free and clear of all taxes, assessments, water rents, and other city liens to the date of sale.

30

40

*Exhibits.***Exhibit C-4.**

CHECK PAID FOR DEPOSIT—PUT THROUGH BANK
AND STAMPED "PAID"

10 RAYMOND C. BUCKLEY
Real Estate and Insurance No. 1435
737 Montgomery Street

Jersey City, N. J., November 18th, 1926.

Pay to the order of . . . City Treasurer . . . \$6100.00
Six Thousand one hundred and no/100 . . . Dollars

To The

UNION TRUST and HUDSON COUNTY
NATIONAL BANK
JERSEY CITY, N. J.

20

R. C. BUCKLEY

Payable in New York
City through the
Northern New Jersey
Clearing House.

ENDORSEMENT:

Pay UNION TRUST & HUDSON CO. NAT. BANK
OR ORDER
CITY OF JERSEY CITY

30

William B. Quinn, Treas.
Check stamped "paid."

40

Exhibits.

Exhibit C-5.

PRINTED FORM OF RECEIPT GIVEN FOR DEPOSIT

Receipt No. 9.2.2

TEMPORARY RECEIPT
City Treasurer's Office
City Hall, Jersey City, N. J.

10

November 18th, 1926

Absolute Sale No.....
\$6100.00.....

Received from.....Raymond Buckley.....
.....Six Thousand One Hundred.00.....
..... Dollars,
5-6-7A

20

on account of purchase money for Lot 9A, 10A, 11A,
5-6-7A Erie St.
12A Block....290....9A, 10A, 11A, 12A—14th St.
Street, bought by.....At Absolute Sale No.....
made.....November 18th,.....1926 by the Mayor
and Aldermen of Jersey City for Thirty Thousand
five hundred 00/100.....Dollars

W. BUDD
Comptroller

H. J. BERGHORN
Deputy City Treasurer.
BHG

30

NOTICE

If not a successful bidder your deposit will be returned on the surrender of this receipt.

If a successful bidder the deed for the above premises will be delivered within thirty days after sale, upon the payment to the City Treasurer of the balance of purchase money and at which time a final receipt will be issued to you.

40

*Exhibits.***Exhibit C-6.**AFFIDAVIT OF PUBLICATION OF PUBLIC NOTICE OF
AUCTION SALE

10 State of New Jersey }
Hudson County } ss.:

EDNA E. WARD, being duly sworn, according to law, upon her oath saith that she is the Bookkeeper of THE JERSEY JOURNAL, a newspaper printed and published in Jersey City, County and State aforesaid, and that a notice, of which the annexed is a true copy was published in the said newspaper for five weeks, five times, successively, at least once in each week, the first publication being on the 22nd day of October, 1926, and continued thereafter on October 29th, 1926,—Nov. 4-9-17th, 1926.

20

EDNA E. WARD

Sworn and subscribed before me this }
29th day of February, A. D. 1928. }

ETHEL E. FAGAN
Notary Public, N. J.

30 NOTE: Printed notice annexed to the affidavit is the same as Exhibit C-2.

*Exhibits.***Exhibit D-1.**RESOLUTION ADOPTED BY BOARD OF COMMISSIONERS OF
JERSEY CITY ON NOVEMBER 23, 1926.

BY COMMISSIONER QUINN:

WHEREAS, the Board of Commissioners of the Mayor and Aldermen of Jersey City, by resolution adopted October 19th, 1926, authorized the Director of Revenue & Finance to sell at public auction to the highest bidder lots 5, 6, 7a, 9a, 10a, 11a and 12a in Block 290; and

10

WHEREAS, the highest bid received was \$30,500. made by R. C. Buckley, of 737 Montgomery Street, Jersey City, N. J.; and

WHEREAS, the amount of this bid is deemed too low and entirely inadequate and not to the best interests of the City to accept; therefore be it

20

RESOLVED, that said sale to R. C. Buckley for lots 5, 6, 7a, 9a, 10a, 11a and 12a in Block 290, be and the same is not confirmed, and his bid of \$30,500. is hereby rejected in order that a new sale may be held at a later date when there is likely to be a better market for the property; and be it further

RESOLVED, that the City Clerk be and he is hereby authorized and directed to draw a warrant in favor of R. C. Buckley, in the amount of \$6100.00 being the sum of 20% deposit made by him at said sale as per voucher attached.

30

Adopted:

Yeas: Commissioners Beggans, Fagan, Quinn, Saul and Mayor Hague.

Nays: None.

40

Meeting of November 23-1926.

Final Decree.

(Filed July 15, 1929.)

IN CHANCERY OF NEW JERSEY.

10	Between <p style="text-align: center;">RAYMOND BUCKLEY, <i>Complainant,</i></p> <p style="text-align: center;">and</p> <p style="text-align: center;">MAYOR AND ALDERMEN OF JERSEY CITY, <i>Defendant.</i></p>	} 63-621. On Bill, etc.
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20 This matter coming on to be heard in the presence of Harry Lane, Esquire, of counsel with the complainant, and Charles Hershenstein, Esquire, of counsel with the defendant, and the court having examined the pleadings and having taken proofs, orally and in open Court, and heard and considered the arguments of counsel thereon; and it appearing to the satisfaction of the court that the defendant, the Mayor and Aldermen of Jersey City, offered the property described in the bill of complaint for sale at public auction, duly authorized and advertised in accordance with the provisions of the statute in such case made and provided, and particularly in pursuance with the provisions of Chapter 152 of the laws of 1917, as amended; and it further appearing that the complainant was the highest and successful bidder at said sale, and that the property was struck off to the complainant at the price of \$30,500.00, being the amount of his bid; and it further appearing that the complainant has paid on account of the pur-

30

40

Final Decree.

chase price of said property, the amount of \$6,100.00, being the deposit required according to the terms of the said auction sale;

And it further appearing to the satisfaction of the court that the said defendant and its officers and agents have refused and failed to carry out the terms of said auction sale, and to convey the said lands and premises to the complainant, upon receipt of the balance of the said purchase price of said lands and premises; and it further appearing to the satisfaction of the court that the said complainant has always been and still is ready and willing in all things to comply with the terms of his said bill and said auction sale and to pay the balance of the said purchase price or bid upon the execution and delivery to him by the defendant, and its officers and agents of a proper deed for said lands and premises;

10

20

And it further appearing that the court being of the opinion that the complainant is entitled to a decree directing the proper officers of the defendant municipality to execute and deliver to the complainant a proper deed and conveyance of the lands and premises mentioned in the bill of complaint, upon payment by the complainant to the defendant of the balance of the purchase price bid for the property at the aforesaid auction sale, as prayed for by the complainant in his bill of complaint filed herein;

30

It is on this 15th day of April, Nineteen hundred and twenty-nine, on motion of Harry Lane, solicitor of the complainant, ORDERED, ADJUDGED and DECREED that the proper municipal officers of the defendant, the Mayor and Aldermen of Jersey City, do make, execute and acknowledge in due form of law and deliver to the complainant, Raymond

40

Final Decree.

10 Buckley, on the 16th day of September, 1929, at
two o'clock in the afternoon, at the office of the
City Clerk of the City of Jersey City, a good and
sufficient deed of conveyance for all those certain
lands and premises situate, lying and being in the
10 City of Jersey City, County of Hudson and State
of New Jersey, known and described as lot 7a,
lot 6, lot 5, lot 9a, lot 10a and lot 11a-lot 12a all
in Block 290 as shown on the Official Assessment
Map of Jersey City, which deed shall be duly
signed by the Mayor of Jersey City, and the cor-
porate seal of Jersey City shall be duly affixed
and attested by the City Clerk of Jersey City,
and said deed shall be duly acknowledged, and
20 the said defendant shall deliver at the same
time and place to the said complainant, pos-
session of the said lands and premises, and that
at the same time and place, the complainant, upon
the delivery of said deed to him, do pay to said
defendant, the Mayor and Aldermen of Jersey City,
the sum of \$24,400.00, being the balance of the
purchase price bid for said lands and premises,
after deducting therefrom the costs of these pro-
ceedings to be taxed, including a counsel fee of
30 five hundred dollars which is hereby allowed to
said complainant as against said defendant and
which costs and counsel fees are hereby directed
to be at said time paid by the said complainant to
the solicitor for the complainant out of the said
\$24,400.00 balance of the purchase price bid for
said lands and premises.

E. R. WALKER,
C.

40 Respectfully advised,
VIVIAN M. LEWIS,
V. C.

Notice of Appeal.

I, FERD GARRETSON, Clerk of the Court of Chancery of the State of New Jersey, the same being a Court of Record, do hereby certify that the foregoing is a true copy of the FINAL DECREE, filed July 15, 1929, in the cause wherein Raymond Buckley is complainant, and The Mayor and Aldermen of Jersey City is defendant, now on the files of my office. 10

IN TESTIMONY WHEREOF, I have hereto set my hand and affixed the seal of said Court, at Trenton, this 9th day of September, A. D., nineteen hundred and twenty-nine.

FERD GARRETSON,
Clerk.

[SEAL]

20

Notice of Appeal.

(Filed October 4, 1929.)

IN CHANCERY OF NEW JERSEY.

Between

RAYMOND BUCKLEY,
Complainant,

and

THE MAYOR AND ALDERMEN OF
JERSEY CITY,

Defendant.

63-621.

30

The Defendant, The Mayor and Aldermen of Jersey City, does hereby appeal from an order made by the Chancellor on the advice of Vice-Chancellor Lewis on the 15th day of July, 1929, in the above entitled cause, and from so much thereof as orders and adjudges that the Defendant 40

Notice of Appeal.

10 shall execute, acknowledge and deliver to the
Complainant a deed for all of the land described
in the Bill of Complaint and that the said De-
fendant shall deliver to the Complainant pos-
session of said lands and premises at the time
stated in the decree, and upon delivery of said
deed the said Complainant shall pay to the De-
fendant the sum of Twenty-four Thousand Four
Hundred (\$24,400.00) Dollars, being the balance of
the purchase price bid for said lands and premises
after deducting therefrom the costs of these pro-
ceedings to be taxed including a counsel fee of
Five Hundred (\$500.00) Dollars allowed to the
Complainant as against the said Defendant, to
20 the Court of Errors and Appeals, the last resort in
all causes.

Dated October 4, 1929.

THOMAS J. BROGAN,
Solicitor for and of Counsel with Defendant.

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

THOMAS J. BROGAN,
Of Counsel with Defendant.

30

40

Petition of Appeal.

counsel fee of Five Hundred (\$500.00) Dollars allowed to the Complainant as against the said Defendant.

10 And your petitioner humbly appeals from that part of the order as aforesaid upon the ground that the same is erroneous, for that the said Court should have adjudged that the Complainant is not entitled to specific performance of the alleged contract of sale and that the said Court should have decreed that there was no contract on the part of the defendant to convey the premises described in the bill of complaint and that the Defendant sold the premises upon condition that the sale should first be confirmed by the governing body of Jersey City, which governing body declined and
20 refused to confirm the sale and the said Court should have further adjudged that the sale to the Complainant was made upon the express ground that the governing body had the right to reject any and all bids for the premises in question and the said Court should have further adjudged and decreed that the complainant had only made an offer to purchase the premises, which offer was not accepted by the Defendant and, therefore, no contract came into existence.

30 The said Court should have also adjudged and decreed that the alleged contract, if any, relied on by the Defendant, violated the Statute of Frauds and could not therefore be specifically performed.

Your Petitioner therefore prays that the said order and decree of the said Chancellor may be, in the particulars aforesaid, reversed, set aside and for nothing holden.

40 And your Petitioner further prays that it may have some relief in the premises as this Honorable Court shall seem meet.

THOMAS J. BROGAN,
Solicitor for and of Counsel with
Defendant-Appellant.

Answer to Petition of Appeal.

(Filed October 7, 1929.)

NEW JERSEY COURT OF ERRORS AND
APPEALS.

Between

RAYMOND BUCKLEY,
Complainant-Respondent,

and

THE MAYOR AND ALDERMEN OF
JERSEY CITY,
Defendant-Appellant.

10

*To the Honorable Court of Errors and Appeals in
the Last Resort in all Cases:*

20

The answer of the respondent to the petition
of appeal of the appellant.The respondent admits it to be true that a cer-
tain final decree was, on the 15th day of July, 1929,
made and entered in the Court of Chancery as
in the petition of appeal is stated; but as to the
substance and form thereof this respondent prays
to refer thereto when the same shall be produced,
and this respondent is advised and believes that
said decree is agreeable to law and equity and he
prays that the same may be affirmed, with costs
to be adjudged to this respondent.

30

HARRY LANE,
Solicitor for and of Counsel
with Respondent.

40

Memorandum Opinion of Lewis, V. C.
 IN CHANCERY OF NEW JERSEY.

10	Between <p style="text-align: center;">RAYMOND C. BUCKLEY, <i>Complainant,</i></p> <p style="text-align: center;">and</p> <p style="text-align: center;">THE MAYOR & ALDERMEN OF JERSEY CITY, <i>Defendants.</i></p>
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- 20
1. The resolution, the notice or the terms and conditions, authorizing and governing, respectively, the public sale of municipal land—all of which were in writing and constituted the contract of sale—not having provided that the sale was to be subject to confirmation, held: that parole evidence, that an announcement was made prior to the commencing of the bidding to the effect that the sale was to be subject to confirmation by the commissioners, is inadmissible and incompetent for the purpose of establishing that said oral announcement constituted one of the terms of said contract of sale.
- 30
2. The Legislature having failed to confer upon a municipality or any of its agencies, the power to confirm or reject a sale of public land made pursuant to the provisions of Sections 9 and 11 of Chapter 131, P. L. 1924, authorizing and regulating such sales, neither the municipality nor any of its agencies has,
- 40

Memorandum Opinion of Lewis, V. C.

nor can either of them exercise any such power.

3. The Legislature having, by Section 9 of Chapter 131, P. L. 1924, authorized the municipality to sell or dispose of such of its lands as it may not need for public use, without having required such to be done by ordinance, the legislative body of the municipality may exercise such power through the instrumentality of either an ordinance or a resolution, and thereby bring into existence a contract for the sale of said land, binding upon the municipality. 10
4. Authority to sign an agreement, or memorandum thereof, binding on the principal under the Statute of Frauds, may be conferred upon an agent by parol. 20
5. Where the governing body of Jersey City unanimously adopted a resolution directing the sale of the land therein described, at public auction, and the advertisement of notice thereof by its City Clerk, who, pursuant thereto, subscribed and published said notice, and the said land was sold at said sale to the highest bidder, who thereupon subscribed the written terms of sale, paid the deposit, which was received by and accepted by said municipality, through its City Treasurer, pursuant to the terms of said sale, who thereupon gave the purchaser a receipt subscribed by him as City Treasurer and countersigned by the Comptroller of said municipality, and where all of these documents or writings described the land in question, embodied internal references to each other and contained all of the 30 40

Memorandum Opinion of Lewis, V. C.

terms of the contract of sale: Held; that all of these writings or documents are so connected to each other, that they may be deemed and considered as one entire document or writing, constituting the contract between the municipality and the purchaser at the sale, and as such—since one or more of them are duly signed by both the municipality, through its agent, and the purchaser—to be sufficient to satisfy the requirements of the Statute of Frauds.

10

6. A municipality cannot rescind or dissolve an existing contract, binding upon it, by merely adopting a resolution to that effect.

20

7. Where a public auction sale was duly advertised, well attended and there is no charge of fraud, imposition or unfair dealing, and the price bid is not so inadequate as to make the contract unconscionable, this Court will not refuse to compel the specific performance of said contract merely because it is claimed that the price is inadequate.

HARRY LANE, Esq., Solicitor for Complainant.

30

THOMAS J. BROGAN, Esq., and CHARLES HERSHENSTEIN, Esq., Solicitors for Defendants.

LEWIS, V. C.:

Complainant, as purchaser, brings this suit against defendant, as vendor, to compel the specific performance by the latter of its agreement to convey the lands hereinafter described. The defendant, a municipality, owned, having acquired same for public use, a tract of land in said municipality

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Memorandum Opinion of Lewis, V. C.

described as the Fourteenth Street Bath House, a part of which, being needed for widening the approach to the New Jersey Vehicular Tunnel, was, by condemnation, taken over for that purpose by the State Bridge & Tunnel Commission, thereby rendering the remainder of said tract—particularly described in the notice of sale hereinafter set forth—unfit and useless for the purpose for which defendant had originally acquired it. The Director of Parks & Public Property of said defendant having made his report to said effect, coupled with his recommendation that the remainder of said described lands be sold at public sale, to its Board of Commissioners, the latter, at its meeting of October 19, 1926, unanimously adopted the resolution, Exhibit C-1, concurring in said report, deciding the sale thereby recommended to be for the best interests of said defendant, ordering said sale to be made and authorizing and directing the City Clerk, pursuant to the provisions of Chapter 152, P. L. 1917, as amended, to advertise in the official newspapers of the City, the following notice of sale:

PUBLIC NOTICE

AUCTION SALE OF CITY PROPERTY. 30

Sale to be held in Assembly Chambers, City Hall, Jersey City, New Jersey, Thursday, November 18, 1926, at eight P. M. Sale to be conducted by William B. Quinn, Commissioner of Revenue & Finance; pursuant to the provisions of Chapter 152, P. L. 1917, as amended, and in accordance with the resolution of the Board of Commissioners of the Mayor and Aldermen of Jersey City, duly adopted October 19, 1926, all of the

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10 following described lands and premises, with the appurtenances, that is to say: All those certain lots or parts of land and premises hereinafter particularly described, situate, lying and being in the City of Jersey City, in the County of Hudson and State of New Jersey, which are not fit for public use and are not suitable for any public purpose, to wit: lot 7a, lot 6, lot 5, lot 9a, lot 10a, lot 11a, lot 12a, all in Block 290, as shown on the Official Assessment Map of Jersey City.

20 Pursuant to the express authorization and direction of the foregoing resolution, defendant's City Clerk caused said notice of sale, exhibit C-2, to be published in The Jersey Journal, in the manner and form prescribed thereby and in accordance with the provisions of Chapter 152, P. L. 1917, as amended, applicable thereto. At the time, place and in the manner specified in said resolution and public notice of sale, the said lands were offered for sale, at public auction, to a large number of persons then and there assembled for said purpose, and at which, no one having bid as much as, or more than, complainant, he having bid the sum of
30 \$30,500.00, the said lands were struck off and sold to him for the amount of his said bid, whereupon he immediately subscribed the conditions of sale, exhibit C-3, which read as follows:

Terms and Conditions of Auction Sale of Real Estate Now Owned by and in possession of the Mayor and Aldermen of Jersey City, to be held Thursday Evening, November 18, 1926, at eight o'clock in the Assembly Chamber, City Hall, Jersey City.

40 The premises shown on the annexed map

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of sale will be sold in fee simple, as per order of the Board of Commissioners of Jersey City, under the direction of William B. Quinn, Director of Revenue and Finance, subject to the following signed terms of sale:

1. The purchaser shall pay twenty per cent. of the accepted bid to the City Treasurer on the day of sale. 10
2. That the deed shall be delivered at the office of the City Clerk on November 30, 1926, upon the payment into the city treasury of the balance of the purchase money.
3. In case the purchaser fails to comply with the conditions of sale, the property shall be resold, and the amount of the deficiency, if any, charged to the payment heretofore made on account thereof, by the first purchaser. 20
4. The city shall deliver to the purchaser a deed conveying the lands in fee simple, containing a covenant of warranty on the part of the city, limited, however, to the amount of the purchase money paid. 30
5. The property shall be sold free and clear of all taxes, assessments, water rents, and other city liens to the date of sale.

Complainant, in accordance with the foregoing terms of sale, immediately paid to the City Treasurer, by check, the sum of \$6,100.00, representing twenty per cent. of his accepted bid, which check, exhibit C-4, was accepted and cashed by, having been deposited to the account of, the said defend- 40

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ant, and in return for which, he received the official receipt of said City Treasurer, exhibit C-5, duly signed by the latter as such, and countersigned by its Comptroller, dated November 18, 1926, whereby it acknowledged receipt from Raymond Buckley, the complainant, of the sum of \$6,100.00 on account of the purchase price of the land in question, sold at the absolute sale thereof made on November 18, 1926, by the Mayor and Aldermen of Jersey City for the sum of \$30,500.00, all of which facts were particularly set forth in said receipt.

It was conceded that complainant was at all times ready, willing and able to perform, and tendered performance of, his part of the agreement in question, but that defendant failed and refused to carry out its part of said agreement of sale, attempting, instead, by a resolution adopted on November 23, 1926, exhibit D-1, to reject complainant's bid and ordering the return of complainant's deposit and the resale of the lands in question, whereupon complainant brought this suit.

All of the facts above-stated, including the fact that the sale in question was conducted, and the notice thereof was published, in accordance with the provisions of Chapter 152, P. L. 1917, as amended, authorizing and governing such sales, were conceded. The defendant answers and urges in support of its contention that it should not be compelled to perform because (1) the sale was made subject to confirmation by its Board of Commissioners, who declined to do so, (2) the agreement evidencing said sale, not being in a writing, subscribed by it, is within the provisions of the Statute of Frauds, and is, therefore, unen-

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forceable as against it, and (3) the sale price is inadequate.

From the evidence adduced, it does not satisfactorily appear that, upon the commencement of the sale, but prior to the calling for bids, an announcement was made that the sale was to be subject to confirmation by the Board of Commissioners, as is contended by the defendant; especially in view of complainant's denial and the fact that no such reservation was provided for or sanctioned by the resolution, notice of sale, or the terms of sale. 10

Being for the sale of land and, therefore, within the provisions of the Statute of Frauds, not only must the agreement, or memorandum thereof, be in writing, but it must also contain the full terms of the contract. 20

Johnson & Miller v. Buck, 6 Vr. 338;
Schind v. Spring Lake, &c., Improvement Co., 2 Dick. Ch. Rep. 44;
Grafton v. Cummings, 99 U. S. 100;
Bowers v. Glucksman, 68 N. J. L. 146.

As such its terms can either be varied or added to by parole evidence. *Lozier v. Hill*, 68 N. J. Eq. 300, and *Johnson v. Miller and Buck*, 35 N. J. L. 338, wherein our Supreme Court says: "To admit parole evidence of any of the terms of the contract with respect to which it, or the memorandum, is silent, would open the door to the very mischief the statute was intended to suppress." Consequently, it follows that, even if this condition of sale had been announced, it could not legally be deemed to be a part of the contract under consideration, since it was not embodied in or referred to by the resolution, notice of sale or terms of 30 40

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10 sale, all of which, as hereinbefore indicated, contain the full terms of the sale, and as such constitute the written agreement between the parties hereto, which could not be added to, altered or amended by any parole testimony, objection to the offer of which was duly made on behalf of complainant. Furthermore, since the resolution authorizing the sale or the notice of sale contained no authorization to the person conducting it to impose any such condition upon the sale, as claimed by defendant, his act in so doing must be held to be nugatory, and as being an unauthorized and ineffective attempt on his part to enlarge upon or add to the conditions of sale as prescribed by the resolution, notice of sale and terms of sale.

20 An examination of the statute, conferring the power of sale in such cases upon the municipality, clearly discloses that neither the City nor its Commissioners had any right or power to impose any such condition or reservation on such sale, and consequently no such power could be exercised by the person conducting it for them. At the time of enacting this legislation, Chapter 152, P. L. 1917, as amended, the Legislature had before it, and was dealing with, the problem of conferring power upon municipalities to dispose of surplus lands, under such regulations, however, as would safeguard the public interests. Section 9 of this act expressly provides that such lands shall not be sold except at public sale, to the highest bidder. Thus, under the well-settled principles of law, there can be no room left for construction or interpretation, and its express language becomes the sole and imperative guide in connection with the exercise of said power.

40 *Hale v. Council of Town of Kearny*, 123 At. 724.

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Defendant, without advancing any reason or citing any authority, contends that it possesses and retains an inherent right to confirm or reject such sale, since Sections 9 and 11 of Chapter 131, P. L. 1924, do not expressly deprive it thereof. With such a contention, I am unable to concur. Even assuming, but not so deciding, that defendant, prior to the enactment of said sections, possessed such power, nevertheless, the Legislature, having by said sections conferred upon municipalities the power to sell surplus lands, also regulating the exercise thereof, thereby framed a new and general rule covering said subject matter, and thereby discarded and nullified, in favor of such later rules, all earlier and different rules, touching said subject matter.

Harrington's Sons Co. *v.* Jersey City, 78 N. J. L. 610;

Industrial School District *v.* Whitehead, 2 Beas. 290;

Brachen *v.* Smith, 2 Stew. Eq. 169;

DeGinther *v.* New Jersey Home, 29 Vr. 354;

Smith *v.* Hightstown, 42 Vr. 536;

Crown *v.* Regna Construction Co., 146 At. 346.

The intent of the Legislature, in specifically providing that the land was to be sold to the "highest bidder"—and this without reservation—undoubtedly was to inspire the confidence of the public in such sales and to prevent the property from being sold to anyone but the "highest bidder." Having this purpose in mind—and knowing that such power, if placed in the hands of indifferent or unscrupulous officials, could be used as a means of

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bringing about the very condition of affairs which the Statute was designed to make impossible—the Legislature did not see fit to provide that a sale made to the “highest bidder” should remain subject to confirmation or rejection by the municipality or any of its boards or officials.

Had it intended otherwise, it would have said so, as such required the use of but a few words. Not having included any such provision in said sections, it must, and only can, be assumed that it did not intend to confer any such power upon the municipality or any of its boards or officials. *In re: City of Passaic*, 94 N. J. L. 384. Having, by said Sections, clearly manifested its intent that the “highest bidder” should legally be entitled to the property—irrespective of the personal whims or wishes of any boards or officials of the municipality—there can be no room left for construction or interpretation, and thus its express language becomes the sole and imperative guide of the municipality in the conduct and making of such sales.

Hale v. Council of Town of Kearny, 123 Atl. 724.

Even if these sections permitted of any construction, nevertheless the one contended for by defendant would, of necessity, operate in amplification of the explicit and uncertain language of the Legislature, which, upon the plainest principles of law, is unalterable by implication.

Wooley v. Geneva Wagon Co., 59 N. J. L. 278;

Reichsman v. Mosher, 69 N. J. L. 353.

In view of the resolution authorizing said sale,

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the public notice thereof, sections 9 and 11 of Chapter 131, P. L. 1924, and the authorities in point, I conclude that even if an announcement had been made, such as is claimed by defendant, it nevertheless would be wholly ineffective and invalid.

Defendant further contends that the agreement—or a memorandum thereof, not being in writing, subscribed by it—is within the provisions of the Statute of Frauds and is unenforceable as against it. Were such the fact with reference to said agreement, complainant's suit would unquestionably have to fail. The evidence, however, clearly establishes, and I find therefrom, that the agreement between the parties to this litigation is in writing, and meets and satisfies the requirements of the Statute of Frauds, as hereinafter pointed out by me.

Being a municipal corporation, it is apparent that defendant can make no note or memorandum, nor subscribe the same, except by and through the instrumentality of one of its officers or agents. As such, it ordinarily acts through its legislative or governing body, whose action is expressed and recorded, as it takes place, in its minute books kept for that purpose by its Clerk or Secretary. Hence its agreements are rarely oral, but simultaneously with their making, are, on the instant of formation put into writing, and thus a note or memorandum of them is made in said minutes, which being signed by the Clerk in charge thereof, constitutes a note or memorandum, made by it, by its duly authorized agent, sufficient to comply with the requirements of the Statute of Frauds. As such it meets and satisfies the purpose and intention of the law, since it provides an enduring and unchanging evidence of the agreement, for there is some note or memorandum of it in writing, sub-

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scribed by the party to be charged thereby, the subscription being made by an authorized agent.

McManus *v.* City of Boston, 171 Mass. 152,
50 N. E. 607;

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Chase *v.* Lowell, 7 Gray 33;

Johnson *v.* Trinity Society, 11 Allen 123;

Tufts *v.* Plymouth Gold Mining Co., 14 Id.
407;

Townsend *v.* Hargraves, 118 Mass. 325;

Argus Co. *v.* Mayor, etc. of Albany, 55 N. Y.
495;

Dykus *v.* Townsend, 24 N. Y. 57;

Grimes *v.* Hamilton Co., 37 Iowa 290;

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Marden *v.* Champlin, 17 R. I. 423; 22 Atl.
938;

City of Vincennes *v.* Citizens Gaslight Co.,
32 Ind. 114, 31 N. E. 573.

While the contracts of a municipal corporation are ordinarily executed and signed on its behalf by one or more of its duly authorized officers, it is also well established, by the great weight of authority, that a contract, binding upon a municipality may be brought into existence by a vote of the municipal council.

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Argus Co. *v.* Mayor, etc. of Albany;

McManus *v.* City of Boston;

Chase *v.* Lowell, *supra*, and other authorities cited in the preceding paragraph.

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Thus an ordinance or a resolution, which is in effect an offer by a municipal corporation, upon acceptance by the party to whom it was addressed becomes a contract. (Cases cited in preceding paragraph.) And where the legislature has authorized a municipality to act or contract, without having

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required same to be done by ordinance, the municipal legislative body may contract either by a vote upon a motion or by the passage of a resolution.

Mayor, etc. of Jersey City *v.* Town of Harrison, 71 N. J. L. 69; 10
 Illinois Trust *v.* City of Arkansas, 76 Fed. Rep. 271.

In the case at bar, the resolution of October 19, 1926, exhibit C-1, was adopted by the unanimous vote of the Mayor and all of the Commissioners of the defendant municipality. By it, the land in question was specifically directed to be sold by Commissioner Quinn, acting for the defendant, at public auction to be held at the time and place therein specified, and defendant's corporation counsel was authorized and directed to draw a deed from defendant to the purchaser for said property, which deed it specifically authorized and directed defendant's Mayor to execute on its behalf and its corporate seal to be thereto affixed by its City Clerk. 20

Having provided for all of the details relative to the conduct and consummation of said sale, without authorizing or even referring to the execution of any contract, it is apparent that said resolution didn't contemplate the making of any formal contract. Nothing more than its acceptance by the highest bidder was contemplated or required by it, at said sale, to make it a binding contract. As such, it constituted an offer on behalf of the municipality, which, upon its acceptance by the highest bidder, became an absolute binding contract (*McManus v. City of Boston—City of Vincennes v. Citizen Gas Light Co. The Argus v.* 30 40

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Albany, etc. *supra*), and is clearly distinguishable from that class of ordinances or resolutions which contemplate or authorize the making of a formal contract pursuant thereto.

10 Nor have I overlooked the case of Mayor, etc. of Jersey City *v.* Town of Harrison, 72 N. J. L. 185, reversing 71 N. J. L. 69, wherein Chancellor Magie, on page 189 of the opinion assigned the following as the reasons for reversal:

20 "The resolution of the legislative board of the town is not signed by the town, and this resolution contemplated a contract to be made and executed by certain persons expressly authorized to sign for the town; Donnelly *v.* Currie Hardware Co., 37 Vr. 388. In the next place, the proposition had not been communicated by Harrison to Jersey City. A proposition for a contract, to be competent to be accepted, must be communicated to the party with whom the contract is proposed. It will not be sufficient that the latter acquire knowledge of it unless the knowledge is acquired with the express or implied intention of the proposing party."

30 However, the two facts, lacking in the above case, are both present in the case before me. Defendant, by resolution, exhibit C-1, expressly authorized and directed its City Clerk to advertise notice of its offer to sell the lands in question to the highest bidder at the public sale therein referred to. Pursuant thereto, he, as its duly authorized agent, subscribed and published said notice, embodying defendant's said offer of sale. Thus, 40 it is apparent that both the subscription and communication of the defendant's offer or proposal of

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sale as contemplated, and required by it are both present in the case at bar, both of which were lacking in the case of Mayor, etc., of Jersey City v. Town of Harrison, resulting in its reversal as was pointed out by Chancellor Magie.

Nor is it necessary that the authority of the City Clerk to subscribe and advertise the said notice of sale be evidenced by some written instrument. The law is now well settled, as is illustrated by a long line of cases, that authority to sign an agreement or memorandum thereof, binding on the principal under the statute of frauds, may be conferred upon an agent by parol.

Lindley v. Keim, 54 N. J. Eq. 418; 34 Atl. 1073;

Schmidt v. Quinzel, 55 N. J. Eq. 792, 25 R. C. L. 324.

Exhibit C-2, the notice embodying the offer of sale, was subscribed by defendant, through its City Clerk, and expressly referred to exhibit C-1, the resolution authorizing and directing said sale and the publication of the notice thereof. A copy of exhibit C-2 was annexed to, and referred to in, exhibit C-3, the conditions of sale, which were subscribed by complainant. The receipt, exhibit C-5, subscribed by defendant through its Treasurer and Comptroller, specified the property in question, as well as the time and place of the sale (including the names of the vendor and vendee), which facts were also set forth in exhibits C-1, C-2 and C-3. Each of these exhibits—containing internal references to each other, and relating to the sale of the land in question, the subject-matter of the contract—are thereby so connected to each other that they may be deemed and considered as

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one entire document constituting the contract between the litigating parties. This is in full harmony with the now well settled doctrine of law that a complete contract, binding under the Statute of Frauds, may be gathered from letters, writings and other documentary evidence existing between the parties, relating to the subject-matter of the contract, and so connected with each other that they may be fairly said to constitute one paper relating to the contract and this though only one of the writings, may be signed by the party to be charged.

Charlton *v.* Real Estate Co., 67 N. J. Eq. 629, 60 Atl. 192, 69 L. R. A. 394;
 Gough *v.* Williamson, 62 N. J. Eq. 526;
 20 Bowers *v.* Glucksman, 68 N. J. L. 146, 52 Atl. 218;
 Johnson *v.* Buck, 35 N. J. L. 338;
 Gerli *v.* Poidebard Silk Manufacturing Co., 57 N. J. L. 432;
 Bell *v.* Bruin, 11 U. S. (L. ed.) 89;
 Salmon Falls Manufacturing Co. *v.* Goddard, 14 U. S. (L. ed.) 493;
 Bayne *v.* Waggins, 139 U. S. 210;
 30 Bibb *v.* Allen, 149 U. S. 481;
 Halsell *v.* Remfrow, 202 U. S. 287;
 Freeland *v.* Ritz, 154 Mass. 257, 28 N. E. 226;
 Lee *v.* Butler, 167 Mass. 426; 46 N. E. 52;
 Argus Co. *v.* Albany, 55 N. Y. 495;
 Sanders *v.* Pottlitzer Bros. Fruit Co., 144 N. Y. 209; 39 N. E. 75;
 Wilson *v.* Lewiston Milk Co., 150 N. Y. 314, 44 N. E. 959.

40 Nor has the application of this principle of law

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been restricted or limited merely to papers already in existence when the instrument signed by the party to be charged is executed, provided the paper referred to is actually in existence when the action is brought.

Gough *v.* Williamson, *supra*;

Freeland *v.* Ritz, 154 Mass. 257, 28 N. E. 226, 12 L. R. A. 561;

Lee *v.* Butler, 167 Mass. 426, 46 N. E. 52.

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Turning now to the case at bar, there has been offered and received, in evidence, without objection (a) exhibit C-1, which is a resolution, unanimously adopted by the governing body of the defendant municipality, authorizing and directing the sale of the land in question, specifying the manner in which, the time when, and the place where, said sale is to be held, prescribing the notice to be given thereof and the name of the person to conduct same, and also providing for the preparation of the deed, authorizing and directing the Mayor to execute same and the Clerk to affix the corporate seal thereto, and to deliver same to the purchaser; (b) exhibit C-2, the public notice of the time when, and the place where, said lands would be offered at public auction for sale to the highest bidder, which was subscribed by defendant, by its City Clerk; (c) exhibit C-3, the written terms of sale, referring therein to the lands in question and setting forth the terms and conditions governing the sale thereof, which were subscribed by complainant; (d) exhibit C-4, complainant's check for \$6,100.00 payable and delivered to defendant's treasurer, which was received, deposited to, and cashed for, the account of defendant; (e) exhibit C-5, the receipt, which was issued

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and delivered by defendant to complainant, and which was signed by its Treasurer and counter-
signed by its Comptroller. This receipt describes
the lands in question as having been sold at public
sale, by defendant to complainant, specifies the
10 date of the sale, and acknowledges the receipt of
\$6,100.00 from complainant on account of the sale
price of \$30,500.00. As hereinbefore indicated,
each of these exhibits refer, and are so connected,
to each other, that they may be taken together as
constituting the contract between the parties to
this litigation (*Charlton v. Real Estate Co.*, 67 N. J.
Eq., 629 and other cases above cited). Thus the
contract in question, as constituted by these ex-
20 hibits, one or more of which are signed by the
party to be charged, or its authorized agent, satisfies
the requirements of the Statute of Frauds, and
as such may be specifically enforced.

The evidence clearly showed, and I am satisfied
therefrom, that the postscript appearing upon the
receipt, exhibit C-5, was not intended to, and did
not, apply to the sale in question. This receipt
was a printed form, not especially prepared for
sales such as the one under consideration, and
30 the postscript in question was printed and ap-
peared below the signatures, without in anywise
being referred to in the body of the receipt itself.
Were it otherwise, this postscript must be regarded
at most as an ineffective, as well as an unauthor-
ized, attempt by the defendant, without the con-
sent or acquiescence of the complainant, to change
the terms of a contract already existing between
them, through the instrumentality of including in
a mere receipt issued by it, terms in addition to,
40 or contradictory of, those contained in said con-
tract. That such cannot legally be done is so well

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established, as to need no citation of any authority on my part.

Having already concluded from the evidence, exhibits C-1, C-2, C-3, C-4 and C-5, that a legal and effectual contract was already in existence between the parties on November 18, 1926, it must necessarily follow that the resolution of November 23, 1926, exhibit D-1, can be regarded only as an ineffective attempt to rescind or dissolve, by the mere will and act of the defendant, without the consent or acquiescence of complainant, a legal and binding contract, already entered into and existing between them. (*Chase v. City of Lowell*, 7 Gray [Mass.] 33; *City of Vincennes v. Citizens Gas Light Co.*, 132 Ind. 114, 36 N. E. 573.)

Defendant further contends that it ought not to be required to perform the contract in question merely because, as claimed by it, the price is inadequate. The evidence, however, establishes quite the contrary to be the fact, and I find therefrom that the price was adequate. The testimony clearly showed that the auction sale was well attended, and that there were, amongst those present, some of the most reputable and best qualified realtors, as well as most extensive property owners, of Jersey City, all of whom, concededly, were conversant and familiar with real estate values, and especially with the value of the property in question. Although these persons were interested in acquiring said property, having participated in the bidding therefor, not one of them would bid more than, or even as much as, complainant did. As against this convincing proof of adequacy of price, defendant merely produced two real estate experts, hired and paid by it, who based their opinion as to the value of the property in question,

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not upon its market value, but upon what it would be worth to someone desiring to use it for some special purpose, which evidence, of course, was both incompetent and unsatisfactory to establish the value of the property in question.

10 Defendant having neither charged nor shown any fraud in connection with the conduct or the making of the sale in question, this Court will not refrain from decreeing specific performance as it is likely to do in those cases wherein the price is so inadequate or exorbitant as to make the contract unconscionable.

McManus *v.* City of Boston, 171 Mass. 152,
15 N. E. 607.

20 And as it has not been proven, or even as much as claimed, in the case at bar, that the price is so inadequate as to make the contract unconscionable, and as I find from the evidence that there exists a valid and binding contract on the part of the defendant municipality to sell, and on the part of the complainant to buy, the land in question, performance of which has been tendered by complainant and refused by defendant, I have concluded that complainant is entitled to a decree
30 compelling defendant to specifically perform, and such will be the decree of this Court.

-44-

New Jersey Court of Errors and Appeals

RAYMOND BUCKLEY,
Complainant-Respondent,

v.

THE MAYOR AND ALDERMEN OF
JERSEY CITY,
Defendant-Appellant.

On Appeal from
Decree of Court
of Chancery.

BRIEF OF DEFENDANT-APPELLANT.

This is an appeal from a final decree entered in the Court of Chancery directing the Mayor and Aldermen of Jersey City, whom we will hereafter refer to as Jersey City, to convey to the complainant certain land known as Lots 5, 6, 7A, 9A, 10A, 11A and 12A in Block 290, which, it is claimed by the complainant, Jersey City sold to him on November 18, 1926, at public auction.

Facts.

The act concerning municipalities known as Chapter 152 of the Laws of 1917, commonly known as the Home Rule Act, under Article 18, Section 9, authorizes municipalities to sell surplus lands, that is, lands or buildings not needed for public use. These sections were amended in 1924 by Chapter 131, page 251, the pertinent part of which reads as follows (*italics ours*):

“Section 9. *Every municipality may sell or dispose of any lands or buildings or any right or interest therein not needed for public use.*”

“Section 11. No land or any right or interest therein *shall be sold by any municipality* except at public sale and to the highest bidder, after public advertisement given in a newspaper circulating in the municipality, at least once a week for two weeks prior to such sale.”

The only power which a municipality possesses to dispose of surplus lands is given to it by virtue of this statute and the amendment thereof. The statute also prescribes that as a condition precedent to disposing of such lands, a notice of sale must be publicly advertised and the premises sold at a public sale to the highest bidder.

Pursuant to the statute, the Board of Commissioners of Jersey City passed a resolution bearing date October 19, 1926, marked Exhibit C-1 (p. 51). This resolution recites that the Director of Parks and Public Property having represented that the premises in question were no longer necessary for the public use, it was resolved that the Board of Commissioners concurs in that report and the City Clerk is thereupon authorized and directed to advertise a notice of sale therein set out and the Corporation Counsel is authorized to prepare a deed to the purchaser to be executed by the Mayor and City Clerk. The notice which is to be published is set out in full in this resolution and states that the sale is *to be conducted* by William B. Quinn, Commissioner of Revenue and Finance. The public notice as set out in this resolution was duly published prior to the sale and the sale advertised for Thursday, November 18, 1926, at eight o'clock. Neither the resolution (Exhibit C-1, p. 51) nor the published notice of sale as advertised (Exhibit C-2, p. 53) contains any terms of sale, nor did the Commissioners by their resolution of October 19, 1926, attempt to fix any of the terms of the sale.

At the time and place designated, Commissioner Quinn directed the City Collector, James Radigan, to act as auctioneer but before any bids were received, he made a public announcement in the presence of all those who attended the sale that he wanted "everybody to understand that this sale was subject to confirmation by the City Commissioners" (Case, p. 28, lines 1-10). He made a similar announcement during the bidding. Mr. Radigan then read the printed terms of sale which were distributed among the persons attending the sale and the bidding commenced.

Complainant made the highest bid at these proceedings and his bid was \$30,500.00. No higher bid was received and the premises were struck down to the complainant, although Commissioner Quinn announced that this bid would be rejected (Case, p. 28, lines 14-18). The complainant thereupon signed the terms of sale (Exhibit C-3, p. 54) and he procured from the City Comptroller the only written memorandum in this case which is the instrument entitled "Temporary Receipt" (Exhibit C-5, p. 57). The words "temporary receipt" are clearly delineated thereon and on the bottom of the receipt are two paragraphs which read as follows:

"NOTICE: If not a successful bidder your deposit will be returned on the surrender of this receipt.

"If a successful bidder the deed for the above premises will be delivered within thirty days after the sale, upon the payment to the City Treasurer of the balance of purchase money and at which time a final receipt will be issued to you."

Commissioner Quinn then reported the sale to the Board of Commissioners and on November 23, 1926, five days after the proceedings at the auction sale, the Board of Commissioners of Jersey

City, by resolution, rejected the bid of the complainant and directed that his deposit of \$6,100.00 be returned to him. The resolution is Exhibit D-1, page 59.

It is upon this state of facts that the complainant filed a bill to compel Jersey City to specifically perform what he alleges is a contract to convey to him the premises in question.

The matter went to a final hearing. The defenses raised by Jersey City were:

1. That the sale was not confirmed by Jersey City nor was the complainant's offer ever accepted by the Board of Commissioners of Jersey City, which is the governing body of the municipality.

2. The sale was made expressly upon the condition that it must first be confirmed by the Board of Commissioners of Jersey City, the governing body of the municipality.

3. That the agreement complainant seeks to enforce violates the Statute of Frauds, is incomplete in its terms, and cannot be specifically performed.

4. That the price offered by the complainant was in fact inadequate and may therefore be rejected by the Board of Commissioners of Jersey City.

The Court of Chancery, however, after final hearing made a decree directing that the municipality convey the premises because a contract of sale had been made, and that the contract should be specifically enforced.

We respectfully urge upon this appeal that the decree is erroneous in that all of the defenses have been sustained and, therefore, a decree of specific performance should not have been made.

POINT I.

The sale was not confirmed by Jersey City nor was the complainant's offer ever accepted by the Board of Commissioners of Jersey City, which is the governing body of the municipality.

A municipality, prior to the enactment of Sections 9 and 11 of Article 18 of the Home Rule Act of 1917, page 365, was unable to sell and dispose of any surplus lands, that is, lands which have outlived the usefulness for which they were acquired. These sections were amended by Chapter 131 of the Laws of 1924, which not only vests in the *municipality* the authority to sell and dispose of such lands not needed for public use, but also sets out the condition upon which said lands should be sold, and the authority to sell *is given to the municipality* and, therefore, under this Statute we contend that the *municipality* alone must exercise that right and not its subordinate officers.

The resolution (C-1, p. 51) put into operation the necessary machinery for the purpose of selling the land in question. It directs the City Clerk to publish a public notice. The notice is set out in full and the said notice which the City Clerk was to publish merely states that a sale will be held at a certain place *to be conducted* by William B. Quinn, Commissioner of Revenue and Finance. This resolution does not empower the Commissioner of Revenue and Finance to enter into a contract for the sale of this land. It is clear that all that the resolution does is to state that the City Commissioners directed the City Clerk to insert an advertisement, which advertisement states that Commissioner Quinn will conduct or have charge

of the proceedings where the highest bid would be received at an auction sale for certain lands which the Board of Commissioners desire to sell. It must necessarily follow that if Commissioner Quinn is to carry out the instructions under this resolution, he must report to the Board of Commissioners the highest bid which was made for the property and it remains for the Board of Commissioners, representing the municipality, to either accept or reject it.

It is true that a municipality can only act through its officers who act as agents for the municipality but they can only carry out the ministerial or administrative acts of said municipality. They cannot perform those acts which legislation confers upon the municipality as a body. In the case *sub judice* the power to sell lands is conferred upon the municipality. That power therefore must be exercised by the body which has the statutory existence as the governing body of Jersey City, to wit, the Board of Commissioners of Jersey City and not by any individual members thereof.

In *Dey v. Mayor and Common Council of Jersey City*, 19 N. J. Eq. 413, a similar situation arose. By resolution, the Common Council directed the committee of streets to advertise for proposals for a contract to remove night soil. The resolution was not signed by the Mayor but was passed over his veto. The committee, however, advertised for proposals, received the lowest bid, and then passed a resolution adopted by the Common Council wherein it was resolved that the proposals reported were to be referred to the committee of streets with authority to enter into a contract with the lowest bidder, and that such contract be executed by the Mayor and City Clerk as prepared by the corporation attorney. The Committee then caused a contract to be prepared by the City At-

torney and delivered to the complainant. The complainant began to do work under this agreement. Thereafter the Common Council rejected his proposal and the complainant brought an action for specific performance, insisting that the ordinance conferred the power to contract on the Common Council and that by virtue of it they could, by themselves or through their Committee, make the contract without the concurrence of the Mayor. The Court held, page 416,

“that power was conferred on the Common Council as a body or Board having a statutory existence as such and not on the individual members.”

We therefore respectfully urge that in this case the power to sell lands is conferred upon the municipality and the resolution (C-1, p. 51) did not delegate that power to Commissioner Quinn, if indeed that power can be delegated by the municipality to one of its individual commissioners.

Dillon on Corporations, 5th Edition, Volume 1, page 463, states the rule as follows:

“Powers are conferred upon municipal corporations for public purposes; and as their legislative powers cannot, as we have just seen, be delegated, so they cannot without legislative authority, express or implied, be bargained or bartered away. Such corporations may make authorized contracts, but they have no implied power, as a party, to make contracts or pass by-laws which shall cede away, control, or embarrass their legislative or governmental powers, or which shall disable them from performing their public duties.”

An analysis of the resolution does not disclose that the Commissioners delegated the power to sell to Commissioner Quinn. The resolution pro-

vides that the Board of Commissioners concur in the report of the Director of Parks and Public Property that the property be sold. It further provides that the City Clerk shall advertise in accordance with the statute a public notice. It further provides the Corporation Counsel shall prepare the necessary deed to be signed by the proper officials. It is to be noted that nowhere in the resolution portions of this resolution is any power delegated to any official to sell the land in question. The only reference made upon that point is in the public notice which the resolution directs shall be printed; and in that public notice it states "*sale to be conducted by William B. Quinn*" according to the statute. The mere expression in the advertisement that the sale "is to be conducted by" Commissioner Quinn cannot be construed as a resolution delegating any power to Commissioner Quinn to make a sale of these premises. Someone must conduct the proceedings of a sale—in this case, an auction sale; someone must take charge of these proceedings, and all that this resolution does is to designate that Commissioner Quinn was to take charge or conduct these proceedings.

There is therefore lacking here not only a delegation of power by the municipality to Commissioner Quinn to actually make a sale of this land, but the evidence discloses that the municipality, as a matter of fact, declined to make the contract. After Commissioner Quinn reported the proceedings to the City Commission, the Board of Commissioners, by resolution of November 23, 1926 (Exhibit D-1, p. 59), rejected the bid of the complainant on the ground that it deemed it too low and entirely inadequate and not to the best interests of the city to accept the bid. In this resolution it treated the offer of the complainant as

a bid for its property and not having accepted the bid, no contract came into being.

The Court of Chancery in its opinion held that the statute does not specifically provide that the sale of surplus lands must be confirmed by the municipal authorities, and in the absence of such specific provisions, it cannot be urged that such a sale must first be confirmed by said governing body (pp. 77-78). It is our contention that the statute is silent upon the matter of confirmation because the statute confers the power of sale upon the municipality alone and the municipality must either accept or reject the offer of a purchaser in order that a sale may be effectuated, and until such offer is accepted by the municipality, no contract is in existence.

It is quite apparent from the analysis of the resolution C-1 that the municipality of Jersey City authorized the proceedings to be instituted necessary to finally making a sale of the land in question. The proceedings were nothing more than an invitation to prospective purchasers to make bids for the land. Commissioner Quinn was the Commissioner in charge of the proceedings to receive the highest bid. That highest bid was then reported to the Board of Commissioners, the governing body of the municipality, for acceptance or rejection. Until the governing body accepted that bid there can be no contract. In this case the governing body rejected the bid and that ended the matter.

The whole question resolves itself into a case of simple contract law. There never having been an acceptance of complainant's offer, the City cannot now be charged with having entered into a binding contract which can be specifically enforced.

POINT II.

The sale was made expressly upon the condition that it must first be confirmed by the Board of Commissioners of Jersey City, the governing body of the municipality.

The evidence taken at the hearing can only lead to one conclusion—that Commissioner Quinn made the announcement at the opening of the proceedings that the sale would be subject to confirmation by the Board of Commissioners. Not only did he so testify (Case, p. 28, lines 1-10), but he was corroborated by the City Collector, James Radigan (Case, p. 35, lines 1-15), as also by Robert Quinlan (Case, p. 32, lines 1-25), who were present at the proceedings during the entire time.

May we respectfully point out the offer of counsel, page 34 of the record, lines 17-22, that there were present in the court room at least a half-dozen witnesses prepared to prove the announcement was made. But after the testimony of the City Collector, James Radigan, no further witnesses were produced because it was stated in open court that the presentation of further evidence on that point would be cumulative.

The opinion of the Court of Chancery (p. 75) states that it does not satisfactorily appear that such an announcement was made in view of the complainant's denial and because no reservation was provided for in the resolution, notice of sale or terms of sale. But the Court evidently did not decide that such an announcement was not made for the Court concludes that "if an announcement had been made such as is claimed by the defendant, it nevertheless would be wholly ineffectual and invalid" (Case, p. 79, lines 1-10). The denial on the part of the complainant that Commissioner

Quinn did make such a reservation cannot be accepted in view of his testimony in answer to the question:

“Q. Did Commissioner Quinn make any announcement to those who were assembled, or during the time which any bids were received? A. Before any bids were received?

“Q. Yes. A. I can't say yes or no to that. I think most of the announcements were made by City Collector Radigan” (Case, p. 23, lines 2-12).

Nor did the complainant produce any persons to testify that Commissioner Quinn did not make that statement.

“Q. And with all those people there, you haven't one of the people here to state that Mr. Quinn didn't make the statement that you say he didn't make? Have you or not? A. No” (Case, p. 50, lines 20-24).

We believe this testimony to be important because we respectfully contend that an auctioneer or a person in charge of a sale has the right to make oral terms in addition to any written terms of sale. Since the resolution of Jersey City authorizing the advertisement of the sale did not provide for the terms of sale, Commissioner Quinn could impose whatever terms he saw fit. It is true there was a printed form of conditions of sale but that does not prevent adding to those printed conditions by parole.

See note to *Kennel v. Boyer*, 24 L. R. A. (new series) 488.

If this statement of Commissioner Quinn was binding upon the complainant, he has no right at this time to demand specific performance, for he purchased subject to all the terms of the sale, whether written or oral.

POINT III.

The agreement complainant seeks to enforce violates the Statute of Frauds, is incomplete in its terms, and cannot be specifically performed.

It has been well settled in this State that the Statute of Frauds *may be pleaded by a municipality,*

M & A of J. C. v. Harrison, 71 N. J. L. 69;
affirmed in 72 N. J. L. 185.

Particularly should a contract for the sale of land be subject to the provisions of the Statute of Frauds.

The opinion of the Court states that the contract in this case must be gathered from the resolution passed by the City Commission, the advertisement published, the printed conditions of sale and the receipt. But reference to all these instruments discloses that the only instrument which complainant received was the paper entitled "temporary receipt" (Exhibit C-5, p. 57). This form of receipt has been used by Jersey City in absolute sales under the Tax Act. Merely because this form of receipt is used in the case of absolute sales under the Tax Act, does not prevent its use as a receipt in these proceedings for the sale of surplus lands. The fact remains that this receipt was given and accepted by the complainant, as evidence of his alleged purchase of the land. Its terms cannot be altered nor can its effect be minimized because it is a receipt which is customarily used in another class of sales. It is clearly indicated thereon that it is a temporary receipt and must therefore imply that something further must be done before it becomes a completed instrument. There is added

a notice which appears under the signatures, which the Court, in its opinion, treats as a postscript which must be regarded as an ineffective and unauthorized attempt to change the terms of a contract already existing between the parties. But we respectfully contend that no contract existed between the parties at the time this temporary receipt was delivered. The receipt itself, even as construed by the Court of Chancery, was one of the instruments which made up the contract. It must therefore be considered *in toto*. The notice appended thereon provides that if the person named therein is not a successful bidder, the deposit will be returned on the surrender of the receipt—a clear indication therefore that something further must be done before the bidder becomes the successful bidder. By this instrument alone it is apparent that the contract, if in existence, is incomplete in its terms, for by the terms of this receipt something more must be done to make it a complete contract.

It is well settled in our State that an agreement for the purchase of property, which is only a tentative agreement, will not be specifically enforced.

Kurtz v. Busch, 128 Atl. p. 552.

So, also, Mr. Justice SWAYZE held that such a tentative agreement puts the matter "*in fieri*" until the necessary instrument embodying the complete agreement becomes binding by delivery to the vendee.

Bettcher v. Knapp, 94 Eq. 433.

Moreover, this receipt does not contain all the terms of a contract for the sale of lands. It does not state where title is to close. It does not state the kind of deed which is to be delivered nor is the time for closing fixed with definiteness. It merely states if the bidder is successful, the deed

will be delivered thirty days after the sale. It does not, however, state whether it is thirty days after November 18, 1926, which is the date upon which the bid was received, or thirty days after the sale is confirmed by the Board of Commissioners of Jersey City. If, therefore, this receipt is to be enforced as a contract, the Court of Chancery cannot decree specific performance because it is incomplete in its terms.

POINT IV.

The price offered by the complainant was in fact inadequate and may therefore be rejected by the Board of Commissioners of Jersey City.

The defendant Jersey City offered testimony to prove that the offer of the complainant was far below the real value of the premises in question. No attack can be made upon the expertness of Mr. Makray's testimony. He came prepared with an analysis of all sales which were in anywise comparative to the premises in question. His testimony must be accepted as an expert's testimony upon real estate values.

It is manifest that complainant surely thinks he has struck a bargain because these proceedings are instituted to compel the City to convey the lands to him for the price bid by him.

In this connection we respectfully submit that the question of value is not material, except to prove that the Board of Commissioners of Jersey City, in rejecting the complainant's bid, did not do so merely as a whim or because of caprice, but based its judgment upon the fact that the land in question was worth a great deal more than that bid by the complainant. Acting as trustees for all

of the people of Jersey City, they should not be denied the right to obtain the best price available for the land which, under the statute, it may sell when they have ceased to be of public use. The Legislature clothed the governing body of a municipality with the power to sell such lands at its discretion and, in the exercise of their honest discretion, they rejected a bid made because, to their minds, the bid was inadequate. They exercised their honest discretion to reject this bid because of the real estate situation so that the spirit of the statute may be carried out, to wit, that the municipality should obtain the highest price for its surplus land. If there are any doubts therefore as to the rights of the respective parties in this action, such doubt should be resolved in favor of the municipality who is endeavoring to obtain a better price for its lands than that offered by the complainant. As trustees for its inhabitants, it becomes the duty of the Commissioners of Jersey City to procure a better price than that offered by the complainant, if the price so offered is indeed inadequate.

We respectfully contend that it is not necessary that it should appear that the price is so inadequate as to make the contract unconscionable before an offer may be rejected. The honest exercise of discretion as to the adequacy of the price should be sufficient.

It is therefore respectfully submitted that the decree should be set aside and the bill of complaint dismissed.

Respectfully submitted,

THOMAS J. BROGAN, and
CHARLES HERSHENSTEIN,
Of Counsel.

APPEAL PRINTING CO., 22 THAMES ST., NEW YORK CITY

[2241]

New Jersey Court of Errors and Appeals

Between

RAYMOND C. BUCKLEY,
Complainant-Respondent,

and

MAYOR AND ALDERMEN OF JERSEY
CITY,
Defendants-Appellants.

On Appeal from
Decree of Court
of Chancery.

BRIEF OF COMPLAINANT-RESPONDENT.

Statement of Case.

This is an appeal from a decree of the Court of Chancery directing the Mayor and Aldermen of Jersey City to convey to the complainant certain lands described therein. Vice-Chancellor LEWIS considered all of the questions raised in an exhaustive opinion which is printed in the record at pages 68-88. The Vice-Chancellor, in his opinion, considered with great detail all of the questions and cited all of the cases bearing upon the various points raised. A reading of his opinion leaves nothing to be said in support of the decree below. Little or nothing that could be said in this brief would add to the conclusions of the Vice-Chancellor in any degree in my opinion. I feel that the case could be safely left with this Court on the opinion of the Vice-Chancellor.

Facts.

On the 19th day of October, 1926, the Board of Commissioners of the City of Jersey City adopted a resolution directing the sale at public auction on the 18th day of November, 1926, of the property in question. The resolution, Exhibit C-1, is printed in the record at page 51. The resolution states that the Director of Parks and Public Property represented to the Board that owing to the State Bridge and Tunnel Commission having condemned part of the property of the City, known as the "14th Street Bathhouse," for part of the approach to the New Jersey Vehicular Tunnel, leaving the balance belonging to the City useless for the purpose for which it was acquired, and recommended that the said balance of the property be sold at public auction sale. It was resolved that the Board concurred in the report of the director and decided that it was for the best interest of the City to sell at public sale the balance of the aforesaid property belonging to the City. It was further resolved that pursuant to the provisions of Chapter 152, P. L. 1917 as amended, the City Clerk be authorized and directed to advertise in the official newspapers of the City, a notice of sale, the terms of the notice to be published as set out in full in the resolution. It was further resolved that the Corporation Counsel be authorized to draw up a deed from the City to the purchaser or purchasers, conveying the aforesaid property, and the Mayor was authorized to sign the deed for the City and the City Clerk authorized to affix the seal of the City to said deed, and do all other things necessary in the premises. It was conceded that the notice of sale was duly published (Exhibit C-2, p. 53). It was also conceded that Exhibit C-3 (pp. 54-55)

was the printed notice and conditions of sale. It was also conceded that the complainant attended the sale and bid on the property and that he was the highest bidder. It was also conceded that the complainant paid to the City on November 18, 1926, the sum of \$6,100.00 deposit. The check for this deposit (Exhibit C-4, p. 56) was endorsed by the treasurer of the City, and cashed by the City. It was also conceded that Exhibit C-5 was the receipt given for the deposit. Exhibit C-5 is printed on page 57 of the record. These admissions and concessions were made on pages 15 to 17 of the record.

The City refused to convey the property to complainant although tender of the balance due on the purchase price was duly made by the complainant. The Board of Commissioners on November 23, 1926, adopted a resolution rejecting the bid of complainant (Exhibit C-1, p. 59). The resolution recited the resolution adopted October 19th, 1926, authorizing the Director of Revenue and Finance to sell the property at public auction to the highest bidder; that the highest bid received was the bid of complainant; that the Board deemed the bid too low and entirely inadequate and it was resolved that the sale be not confirmed, and the bid of complainant be rejected in order that a new sale might be held at a later date, and also directed the City Clerk to draw a warrant in favor of complainant for the return of his deposit.

Complainant thereupon filed his bill of complaint praying for a decree directing the City to specifically comply with the terms of the auction sale and agreement and to convey the lands and premises by proper instrument to complainant upon payment of the balance of the purchase price bid for the said property by complainant at said auction sale.

The City filed its answer, practically admitting all of the allegations of the bill of complaint except that the answer set up that the said property was offered for sale at public auction upon the express condition that all offers were made subject to confirmation and approval by the Board of Commissioners and that the Board should have the right to reject any and all bids or offers; that the price bid was inadequate and further set up the Statute of Frauds.

The case came on for trial before Vice-Chancellor LEWIS, who advised the decree from which this appeal is taken.

ARGUMENT.

POINT I.

All of the provisions of the statute having been complied with, complainant was entitled to a decree.

The only authority for the sale by a municipality of lands not convenient for, or further needed for public use, is contained in Sections 9 and 11 of Article 18, of the Home Rule Act of 1917, page 365, as amended by Chapter 131 of the Laws of 1924, page 251.

Section 9 as amended provides that the municipality may sell or dispose of any lands or buildings or any right or interest therein not needed for public use. Section 11 provides for the method of sale of such lands and that such lands should be sold at public sale to the highest bidder.

The pertinent part of Section 11 as amended reads as follows:

“No land or any right or interest therein, shall be sold by any municipality except at public sale and to the highest bidder, after public advertisement given in a newspaper circulating in the municipality, at least once a week for two weeks prior to such sale.”

The statute is clear and express in its terms. In pursuance with the statute the Board of Commissioners adopted the resolution, Exhibit C-1, directing the sale at public auction. The resolution was complete and nothing further was left to be done except for the terms of the resolution to be carried out. The resolution directed the agent or officer of the City to make the sale, specified the date of the sale, specified the notice to be published in the newspaper, and directed the proper officers of the City to execute and deliver a deed for the property to the highest bidder. The notice was published and the auction sale was held in strict compliance with the resolution, and complainant was the highest bidder. He paid his deposit, received a receipt and there was nothing further to be done except for the deed to be drawn and executed and delivered upon payment of the balance of the purchase price.

In this stage the transaction was complete. There was nothing further to be done by the Board. As pointed out by the Vice-Chancellor there is no question of fraud or deceit. The sale was well attended, and the bidding was spirited. Under the terms of the resolution and under the provisions of the statute, complainant was entitled to a deed for the property, and upon the refusal of the City to deliver the deed, was entitled to a decree of the Court of Chancery directing the property to be conveyed to him.

POINT II.

The Board of Commissioners had no statutory authority to confirm or reject the sale.

The statute in express terms provides that the property should be sold at public auction to the highest bidder. It does not confer upon the municipality or the Board of Commissioners the power of confirmation or rejection of the sale. Therefore, as pointed out by the Vice-Chancellor, even if it had been stated by the Director of Revenue and Finance that the sale was subject to confirmation or rejection by the Board of Commissioners, that would have had no effect upon the validity of the sale or the right of complainant to receive a deed for the property, he being the highest bidder, whether the Board confirmed the sale or not.

POINT III.

As a matter of fact, the sale was not made subject to confirmation by the Board of Commissioners.

Nowhere in the resolution, notice of sale or printed conditions of sale is there any provision for the sale being made subject to confirmation by the Board of Commissioners. As a matter of fact, the resolution adopted by the Board of Commissioners itself negatives any reserved right of confirmation. The resolution not only does not provide for the sale being subject to confirmation, but the resolution treats the matter as a complete proposition and specifically provides for the proper officers of the City to execute and deliver a deed to the highest bidder. It was claimed by the defendant that immediately prior to the asking for

bids and during the sale that a verbal statement was made respecting confirmation. Testimony was taken. The complainant testified that no such announcement was made. The only evidence on the part of the defendant to the effect that it was stated that the sale was subject to confirmation was by City officials.

On page 23 the complainant denied under cross examination that there was any such announcement made before the bidding commenced. Also, on page 24 complainant stated that after the bidding had commenced Mr. Quinn did make a statement that the price was not as high as he expected and endeavored to get the bidding up. It can readily be seen that this would be entirely plausible and that *statements trying to get the price up would not be likely to be made until after the bidding had continued for awhile for, before the bidding started the Commissioner would not know whether the bidding was as high as he thought it should be or not.* Commissioner Quinn was examined and stated on direct examination that before anything was done by him as to selling the property, he stated that he wanted all of the bidders to understand that the sale was subject to confirmation by the City Commissioners (p. 28). Also that after the bidding started he thought the bids were low and said that unless he received a higher bid the present bid would be refused by the City Commissioners. On cross examination, however, he stated that the printed terms of sale, Exhibit C-3, were read by Mr. Radigan, the City Collector; that he directed the sale to go ahead; that he made the announcement both before the bidding commenced and after;

“Q. Why did you make it twice? A. Because I was there representing the City of Jersey City and I did not think that I was getting a fair price for the property” (p. 30).

At page 30, line 30, he stated that he knew there was nothing in the resolution which had been drawn up by him about confirmation of sale and he also knew that the resolution specifically directed the corporation counsel to draw up a deed to the highest bidder and direct the Mayor and City Clerk to sign and deliver the deed. Mr. Quinlan, who is connected with the Comptroller's office of the City, stated that he heard Commissioner Quinn make the announcement about confirmation. On cross examination he stated that he prepared the conditions of sale. That in an absolute tax sale, the property is sold subject to confirmation by the Board, but that in prior sales similar to the sale in question, there was nothing put in the terms about confirmation. His cross examination on page 34 shows that the reason for putting the condition of confirmation in absolute tax sales is so that the City can refuse to confirm in the event that the amount bid does not equal the amount of taxes due.

The Vice-Chancellor in his opinion on page 75 found that "From the evidence adduced, it does not satisfactorily appear that, upon the commencement of the sale, but prior to the calling for bids, an announcement was made that the same was to be subject to confirmation by the Board of Commissioners, as is contended by the defendant; especially in view of complainant's denial and the fact that no such reservation was provided for or sanctioned by the resolution, notice of sale, or the terms of sale."

This evidence in respect to an alleged verbal announcement that the sale was subject to confirmation was taken *over the objection of counsel for complainant*, and the Vice-Chancellor further held in his opinion that parol evidence of this kind

could not be introduced to vary the terms of the written documents making up and forming the agreement (p. 75).

Matching complainant's testimony and Commissioner Quinn's testimony together with all the facts and circumstances of the case, it is very easy to picture what actually happened. When apparently the bids reached what in the opinion of the bidders was the real value of the property, the bidding became listless (using the words of Commissioner Quinn, p. 30, line 10), and Commissioner Quinn *then got up for the first time* and stated that the price was not high enough or something to that effect. Certainly, *after* the bidding had started and had been completed, it would not be proper for the Commissioner to get up and say that he did not think the sale would be confirmed by the City Commissioners, when as a matter of fact, neither the resolution, advertisement, or printed conditions of sale stated anything about a confirmation, *and what is more important, the statute under which the sale was being made contained no such provision*. It is further significant that the only persons produced by the defendant on this question were City employees, even though the question of confirmation is directly in conflict with all of the written documents. As to the statement in appellant's brief that no further witnesses were produced on this point because their testimony would be merely cumulative, the record discloses that counsel for complainant expressly *refused to stipulate as to any such alleged testimony* (p. 34, line 25).

POINT IV.

The written documents described the land in question, embodied internal references to each other and contained all of the terms of the contract of sale and are sufficient to satisfy the requirements of the Statute of Frauds.

The Vice-Chancellor in his opinion discussed in great detail the question of the Statute of Frauds and considered the cases on this subject and a reading of his opinion conclusively shows that the requirements of the Statute of Frauds have been fully complied with and satisfied.

A municipality must act through its agents. Counsel for appellant argues that the resolution, notice of sale, etc., were merely invitations to bid and that there was an intimation that there was contemplated the execution of a formal contract. *There is no basis for any such contention in the resolution of the Board of Commissioners.* The resolution of the Board of Commissioners contained in the minutes signed by the City Clerk is the most formal document that could bind the City. The resolution in its terms provides for a complete act, to wit: the advertisement of the sale, the holding of the sale, and the execution and delivery of a deed to the highest bidder. The argument of counsel appears to rest upon the theory that there was to be some contract executed such as where the City advertises for bids for the awarding of a contract for public work or otherwise. Not only does the resolution not contemplate the consideration of bids and the execution of a formal contract, but as a matter of fact, under the statute which is the City's sole authority to sell the property, there is no provision whatever for the City to enter into any contract for the sale of the land.

In fact, the provisions of the statute are directly to the contrary and provide that the sale must be at public auction to the highest bidder. The written documentary evidence therefore consists of the resolution, the public notice of sale signed by the City Clerk, the printed conditions of sale signed by the complainant, the receipt for the deposit of the money signed by the City Treasurer, and City Comptroller, and furthermore, the check of the complainant for the deposit, which is endorsed by the City Treasurer.

I, therefore, respectfully submit that in view of the opinion of the Vice-Chancellor and the exhaustive and conclusive consideration of this question by him, nothing more need be said on the subject of the provisions of the Statute of Frauds being satisfied.

In this connection, I might also add that *I doubt whether the Statute of Frauds would apply to a sale by a municipal corporation under direct legislative authority*, which specifically provides for the method of the sale and which statute *does not provide for the execution of any formal contract* and does not provide that the provisions of the Statute of Frauds must be complied with. It must further be remembered that the Act under which this sale was had was passed in 1917 and amended in 1924, and it is a well-settled rule of law that later legislation of course, supersedes earlier legislation. The Statute of Frauds, I contend, deals with an absolutely different situation, as for instance, the attempt to hold a private owner of real estate to a contract for sale, which, or some memorandum of which, is not in writing and signed by the party to be bound or his agent.

Likewise, I contend that there is absolutely no basis for the argument of counsel for appellant that the sale was not made by the municipality.

As stated before, and as conceded by counsel for appellant, a municipality must act through its agents. It would be difficult to determine how a sale could be had except in the manner in which this sale was held. The sale was initiated by the adoption by the Board of Commissioners of the formal resolution by specifically authorizing and directing the conducting of the sale, stating by whom it was to be conducted and the time the sale was to be had. Can it be said that the Board of Commissioners themselves would have to conduct the sale as a body? I submit that this could not be the rule, and furthermore, the statute does not provide for any such absurd situation.

POINT V.

The fact of the postscript after the signatures on the printed form of receipt (Exhibit C-5) did not make the sale subject to confirmation by the Board of Commissioners.

The Vice-Chancellor in his opinion at page 86 considered the effect of the postscript appearing upon the printed form of receipt. The Vice-Chancellor held that this receipt was a printed form, not especially prepared for sales such as the one under consideration, and the postscript in question was printed and appeared below the signatures, without in anywise being referred to in the body of the receipt itself. That were it otherwise, this postscript must be regarded at most as an ineffective, as well as an unauthorized, attempt by the defendant, without the consent or acquiescence of the complainant, to change the terms of a contract already existing between them, and that this could not legally be done.

The testimony showed that this form of receipt was simply used because there was no particular form of receipt prepared for this sale and they simply used a printed form of receipt out of the book of receipts that was used for absolute tax sales under a statute which expressly provided for confirmation by the Commissioners. Commissioner Quinn, on page 31, testified that he had nothing to do with the particular terms of the receipt and that so far as he was concerned the City Treasurer wrote it on the form that he had in his office. On page 33 Mr. Robert Quinlan, connected with the Comptroller's office, stated that he drew up the printed conditions of sale, but could give no reason why he left out of the terms of sale anything about confirmation, although it was put in the conditions of absolute sales.

On page 33, line 20, he testified as follows:

"Q. I mean the absolute sales under the tax sales. Do you know, without looking, whether you put that in or not (referring to confirmation of sale)? A. Yes; they have been put in at times, and we have had other sales similar to this.

"Q. You have? A. Yes.

"Q. And you didn't put it in? A. I don't think we did."

On page 34, line 3, Mr. Quinlan testified as to the reason for putting it in tax sales that the amount of the bid is subject to confirmation by the Commissioners:

"Q. What were these other sales? A. Now, here, these tax sales, it says here that in case the amount of bid shall be less than the amount due the City, the sale shall be subject to confirmation by the City Commissioners." (Even tax sales are subject to confirmation *only* in case they do not bring the amount due to the City.)

This answer clearly shows the distinction between an absolute tax sale under the general tax and assessment law and a sale of public property no longer needed for public purposes under the Home Rule Act. The reason for the reservation of the right to confirm or reject by the City Commissioners in tax sales is because of the fact that the sale *may not bring sufficient to pay the arrears of taxes due on the property and then the City Commissioners have the right to either confirm or reject the highest bid.* There is nothing like that in the case of the sale of public property under the Home Rule Act. The testimony all shows that the only reason for the giving of a receipt on the printed form that was given in this case was because the officials *simply used a printed form* which they were accustomed to use in absolute tax sales.

But giving the postscript on the receipt the greatest construction in favor of the City, *it does not provide for any reservation of the right to confirm or reject by the City Commissioners.* The receipt is in proper form and at the bottom there appears *in small type after the signature of the officials, a postscript as follows:*

“NOTICE

“If not a successful bidder your deposit will be returned on the surrender of this receipt.

“If a successful bidder the deed for the above premises will be delivered within thirty days after sale, upon the payment to the City Treasurer of the balance of purchase money and at which time a final receipt will be issued to you.”

(Exhibit C-5, p. 57.)

Just what comfort counsel for the City can get from the terms of this notice is a mystery to me. *It does not provide* that the sale is subject to con-

firmation by the Commissioners; neither does it provide that the giving of the deed is subject to such confirmation. It is simply a stereotyped form that was added at the end of this printed form of receipt solely for the purpose of use for absolute tax sale receipts, where the right of confirmation or rejection exists in the City Commissioners, *but only in case the amount of arrears of taxes is not realized* and where the conditions of sale expressly provide for confirmation or rejection in the event that the amount of the bid does not equal the amount due the City for taxes. Under the Home Rule Act, and also under the resolution directing the sale, the advertisement of sale and printed conditions of sale, complainant was the successful bidder and under the express terms of the statute and of the resolution, was entitled to have the Corporation Counsel draw up a deed and to have it executed by the Mayor and City Clerk and delivered to him. And no matter what construction can be placed upon either the evidence or upon this receipt, *the complainant's rights are fixed strictly by the statute*, and there is no provision in the statute for the reservation of the right to confirm or reject the sale in the City Commissioners.

POINT VI.

The evidence does not establish that the price bid for the property by complainant is inadequate.

Upon the final hearing the City offered evidence tending to show the price bid for the property by complainant was inadequate. The Vice-Chancellor in dealing with this question in his opinion on page 87, holds that the evidence establishes quite the contrary to be the fact and found from the

evidence that the price was adequate. The sale was well attended; there were amongst those present some of the most reputable and best qualified realtors *and not one of them would bid more than, or even as much as, complainant did.*

The City produced as a real estate expert Eugene G. Makray. On his direct examination he testified on page 36, over objection, that he valued the property at \$117,000, and caused the following question by the Court:

“Q. What, One Hundred Seventeen Thousand Dollars? A. Yes, sir.”

Can the Court for one moment believe that at this sale attended by over one hundred reputable citizens, if this property was worth \$117,000 or anything like it, they would have stood aside and permitted the property to be knocked down to complainant for \$30,500? On cross examination he testified on page 37 that he knew of the sale of property along Fourteenth Street to the Tunnel Commission, but he could not find any:

“Q. Can you show me a sale for \$8.00 a square foot? A. I cannot” (p. 37, line 36).

Yet he valued this property on the basis of \$8.00 a square foot and an additional value of \$14,400 for plottage (p. 37).

On page 38 his attention was called to the fact that his concern had appraised the Fagan property (the word “Seeline” is an error) in the neighborhood which consisted of two square blocks at \$900,000 and that the receivers never received an offer of over \$300,000 for it (p. 38, lines 10-20). Also, on pages 38 and 39 his attention was called to several sales which he did not appear to know anything about. On page 39 his attention was called to the sale of the Giardo property to the New Jersey Highway Commission at \$3.08 per square foot;

also on page 39, line 30, his attention was called to the purchase of the property by the Seaboard Terminal and Refrigerating Company about three blocks from the property in question for \$2.24 per square foot. On page 40, line 30, he admitted that in his opinion the property in question *would not bring at public auction the value he placed upon it*. Also, on page 41, line 15, he admitted that he knew that the Fagan property consisting of two square blocks, had been on the market for three or four years without any purchaser, although the Fagan property was alongside of a railroad and could have railroad siding. He further attempted to say that the property in question was valuable for a warehouse site, *but admitted that there was no warehouse in that vicinity without railroad siding* (p. 41). The property in question could have no railroad siding.

In fact, his testimony was so astonishing that the Court, on page 44, asked him how old he was. Also, on page 44, he testified that he did not take into consideration the sale of the Cooperage property on Provost and Fourteenth Streets, which was right on the same street. He also admitted on page 44, line 35, that he bought a lot in the vicinity for \$6,000.

In conclusion, a reading of his testimony showed that he simply made a random guess as to the value he fixed upon the property, which was at the rate of over \$8.00 per square foot. He could show no sales in the vicinity at any such enormous rates and as a matter of fact, the sales which were pointed out to him ran from 80c. to \$3.00 per square foot.

In rebuttal, the complainant, who is engaged in the real estate business, testified. *His qualifications as a real estate expert were admitted by counsel for the City* (p. 47, line 35). On page 47

he testified that he purchased the Continental Can Company property at 80c. a square foot. He also referred to a sale to the Seaboard Terminal and Refrigerating Company consisting of a block of over 30,000 square feet, at a price of \$2.94 per square foot (p. 48, line 15). Also to the fact that the State Highway Commission offered a plot there at public auction at \$3.10 per square foot and did not even get a bidder (p. 48, line 20).

On page 48 he testified that in his opinion the property was worth, with the building cleared off, in the neighborhood of \$35,000. On page 49, that there is a structure on the property that was formerly a substantial bathhouse, which was cut right in half and would have to be removed to make the property of any value. That he had received an estimate to remove this structure from an expert wrecker at a cost of \$5,000 (p. 49, line 35).

The testimony of complainant and the sales of adjacent property referred to showed that the price bid for the property was its full value. The sale was well attended, there being over one hundred persons present, and as the Court in his opinion said, no one would bid more or as much as complainant bid at the sale (p. 87, line 35).

The evidence fails to show any inadequacy of price in the amount bid by complainant.

CONCLUSION.

In conclusion, it is respectfully submitted that the decree of the Court of Chancery should be affirmed for the reasons stated in the opinion of the Vice-Chancellor. I have not in this brief referred to any of the cases bearing on the questions raised for the reason that the Vice-Chancellor in his opinion has referred to and considered all of the cases.

An auction sale of the property in question was held in strict compliance with the terms of the statutory provisions of the Home Rule Act as amended. It was a fair and *bona fide* sale. The sale was well attended and the bidding was spirited. The complainant, under the statute, is entitled to a deed for the property upon the payment of the balance of the purchase price. Courts are always in favor of upholding judicial or statutory sales in order that such sales will be attended by bidders. The attempt which was made to show that the price was inadequate wholly failed. The Vice-Chancellor found as a fact that the evidence disclosed that the price was adequate, that there was no fraud or deceit either charged or proven and that complainant was entitled to have the property conveyed to him upon payment of the balance of the purchase price.

It is respectfully submitted that the decree of the Court of Chancery should be affirmed.

Respectfully submitted,

HARRY LANE,
Of Counsel with Complainant-Respondent.

No. 44, February Term, 1930.

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