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NEW JERSEY

Court of Errors and Appeals

IN CHANCERY OF NEW JERSEY.

IN THE MATTER OF THE APPLICATION
ON BEHALF OF REBECCA H. SHREVE } On Petition,
AND LUCY E. SHREVE, FOR THE SALE } etc.
OF LANDS LIMITED OVER, ETC.

PETITION TO SELL.

(Filed July 1, 1913.)

*To His Honor, Edwin Robert Walker, Chancellor of
the State of New Jersey:*

The petition of Rebecca H. Shreve and Lucy Ellen 10
Shreve, both of the borough of Riverton, in the county
of Burlington and State of New Jersey, respectfully
shows that your petitioner, Rebecca H. Shreve, has a
vested estate for life in possession, and your petitioner,
Lucy Ellen Shreve, has a vested estate for life in
expectancy, in all that certain building and lot of land
situate in the city of Trenton, in the county of Mercer
and State of New Jersey, bounded and described as
follows:

Beginning at the southwest corner of lot late of 20
Jasper S. Scudder and running thence northerly along

Scudder's line one hundred and forty-two feet, more or less, to lands of Ezra B. Fulk; thence westerly along his line to line of land of J. M. Davis fifty-one feet, more or less; thence southerly along his line one hundred and forty-two feet, more or less, to State Street; thence easterly along said State Street fifty-one feet, more or less, to the place of beginning, known as the Shreve Building on East State Street.

10 That the said property was devised to your petitioner, Rebecca H. Shreve for life by her husband, E. Mercer Shreve, in and by his last will and testament, which was duly admitted to probate on or about the sixteenth day of February, in the year eighteen hundred and eighty-five, before the Surrogate of the County of Mercer by the following provision, to wit:

20 "I devise to my wife, Rebecca H. Shreve in lieu of her dower in my lands all my real estate wheresover situate and the policies of insurance thereon, to have and to hold the same and enjoy all the rents, issues and profits thereof for and during the term of her natural life with remainder in fee simple to my son, Henry Wallace Shreve. Provided, nevertheless, that in case my said son shall die before his mother or under the age of twenty-one years, or without lawful issue, then my will is" etc.

30 That after the proving of said will and on or about the twenty-first day of May, nineteen hundred, by a decree of this honorable court made in a cause in which your petitioner, Rebecca H. Shreve, and her son, Henry Wallace Shreve, were complainants, and William A. MacCrellich was defendant, it was adjudged that the said Henry Wallace Shreve having survived the age of twenty-one years, was seized of an estate in fee simple in remainder.

That the said property was devised by the said Henry Wallace Shreve to your petitioner, Lucy Ellen Shreve,

for life in and by his last will and testament, which was duly admitted to probate on or about the day of November, nineteen hundred and eight, before the Surrogate of the County of Burlington, by the following provision, to wit:

"Second: I give and bequeath for life to my wife, Lucy Ellen Shreve, in lieu of her dower right, all my estate whether real or personal, also my life insurance."

That the limitations of the said real estate devised 10
as aforesaid are as follows: After the life estate of your petitioner, Lucy Ellen Shreve, which immediately succeeds the life estate of your petitioner, Rebecca H. Shreve, the two children of Henry Wallace Shreve and your petitioner, Lucy Ellen Shreve, namely, Dorothy Inskeep Shreve and Edwin Mercer Shreve, are seized of estates in remainder in fee simple. But in case of the death of both of said children, without lawful issue, before the death of your petitioner, Lucy Ellen Shreve, there is a contingent remainder to John S. Wallace, 20
Henry Edward Wallace, James Madison Power Wallace, Sarah *Matilda* Wallace (now Sarah Shreve Bishop), Marie Elizabeth Wallace, Ellen Shreve Wallace (now Ellen Shreve Hunn), Charles Philip Krauth, Jr., Hetty Wallace Krauth and Isabel Reynolds Krauth, or to the issue of any of them who shall have died before the period of distribution. That the above described limitations are found in the provisions of the will of the said Henry Wallace Shreve, as follows, 30
to wit:

"Third: That upon the death of my wife the principal to go in fee simple to my two children, Dorothy Inskeep Shreve and Edwin Mercer Shreve, in equal shares, and in the event of either dying with lawful issue said issue to have the share of the parent.

"Fourth: In the event of the death of both

of my children without lawful issue, the estate upon the death of my wife is to be divided equally between my cousins: John S. Wallace, Henry Edward Wallace, James Madison P. Wallace, Sarah *Matilda* Wallace, Marie Elizabeth Wallace, Ellen Shreve Wallace, Charles Philip Krauth, Jr., Hetty Wallace Krauth and Isabel Reynolds Krauth, the lawful issue of any one deceased to have their parent's share."

- 10 That the persons who are entitled to vested rights in said lands are your petitioner, Rebecca H. Shreve; your petitioner, Lucy Ellen Shreve; and Dorothy Inskeep Shreve and Edwin Mercer Shreve; and the persons who may be entitled to prospective estates therein are: John S. Wallace, Henry Edward Wallace, James Madison Power Wallace, Sarah *Matilda* Wallace (now Sarah Shreve Bishop), Marie Elizabeth Wallace, Ellen Shreve Wallace (now Ellen Shreve Hunn), Charles Philip Krauth, Jr., Hetty Wallace Krauth and
- 20 Isabel Reynolds Krauth, and such lawful issue of any one of them who dies before the date of distribution, namely, the termination of the life estates of your petitioners. Of the above named persons, the following are married: Henry Edward Wallace, whose wife's name is Julia E. Wallace; Sarah Shreve Bishop, whose husband's name is Alexander Hamilton Bishop; and
- 30 Ellen Shreve Hunn, whose husband's name is Edward W. J. Hunn. The said Charles Philip Krauth, Jr., is an infant of the age of twenty years, whose guardian, appointed by the Orphans' Court of Philadelphia County in the State of Pennsylvania, is John S. Wallace. The said Dorothy Inskeep Shreve and Edwin Mercer Shreve are infants, Dorothy being of the age of fifteen years and Edwin Mercer of the age of ten years, whose guardian appointed by the Orphans' Court of Burlington County in this State is your petitioner, Lucy E. Shreve.

Your petitioners further show that the building on the lands above described consists of a double dwelling house, altered to be used for offices and flats; that owing to the erection of large and modern office buildings in the city of Trenton, the rental values of the offices in the said building are greatly reduced and the demand for the offices lessened; that the total rent roll of all of the offices and flats in the building is three thousand seven hundred and fourteen dollars; that at present offices of the rental value of five hundred and seventy dollars are vacant and have been vacant for some months past, notwithstanding the efforts of the petitioners to procure tenants for them; that the yearly expenses of said building are about two thousand one hundred and ninety-one dollars, leaving a net income of barely one thousand dollars. 10

And your petitioners further show that the two children of the late Henry Wallace Shreve live with your petitioners in the borough of Riverton; that the only income for the support of said children and your petitioners are the sum of seven hundred dollars derived from a property in Riverton and the rents of the building on the land above described; that said income is constantly decreasing, owing to the fact that the said building is becoming less desirable as modern buildings are built in its vicinity; that in your petitioners' belief, the property in its present condition is not enhancing in value and will not enhance in value; that many expenditures are constantly needed, owing to the fact that the building is old; that your petitioner, Rebecca H. Shreve, has recently received a notice from the Board of Health of the City of Trenton that she will be required to erect fire escapes at the rear of the said building; that the cost of such fire escapes would be at least twelve hundred dollars, no part of which your petitioners have to be expended for such purpose. 20 30

And your petitioners further show that they have given an option on the said property to sell the same

for the amount of sixty-three thousand three hundred and seventy-five dollars, providing an order of this Court can be obtained by them for such sale; that the sum of two hundred dollars has been paid to them for said option and the prospective purchaser has assured your petitioners that he will purchase if your petitioners can present to him a proper deed of conveyance on or before August first of this year; that your petitioners believe the said price to be an advantageous one, both
10 for themselves as life tenants and for the owners of future estates; that your petitioners have been informed that persons other than the one to whom the option has been given have been negotiating for the purchase of the property through your petitioners' real estate agent, and your petitioners believe that even though the person to whom the option has been given should not take up the option they will be able to sell the said property for the sum of at least sixty thousand dollars within a short time if your Honor shall see fit to au-
20 thorize the sale at that price.

And your petitioners further show that the interests of the owners of the particular and future estate in the said lands require and would be promoted by a sale thereof; and that the prospective value thereof is such that it would be to the interest of any person who might own the same in fee simple to sell the same.

And your petitioner, Rebecca H. Shreve, further shows that she has made permanent improvements or alterations in the building on the said premises upon
30 which she expended two thousand dollars, borrowed upon her own personal promissory note, whereby the said property has been benefited and increased in value to the extent of at least two thousand dollars.

Your petitioners therefore pray that your Honor will inquire into the situation of said lands and the matters of this application and order a sale of lands in fee.

And your petitioner, Rebecca H. Shreve, therefore

prays that your Honor will order and decree that out of the purchase price of said property there shall be paid to this petitioner the sum of two thousand dollars, with interest.

And your petitioners as in duty bound will ever pray,
etc.

REBECCA H. SHREVE,

LUCY E. SHREVE,

Petitioners.

ELLIS L. PIERSON,

10

Sol'r for and of Counsel with Petitioners.

(Verification by petitioners follows.)

ORDER APPOINTING GUARDIAN.

(Filed July 5, 1913.)

IN CHANCERY OF NEW JERSEY.

On motion made this day by Ellis L. Pierson, of counsel with the petitioners, it was alleged that Charles Philip Krauth, Jr., and Edwin Mercer Shreve and Dorothy Inskeep Shreve, three of the respondents in the above-stated matter, are infants, the said Dorothy Inskeep Shreve and Charles Philip Krauth, Jr., being above the age of fourteen years and Edwin Mercer Shreve being under the age of fourteen years, and it appearing that notice of the presentation of the petition in the above-stated matter has been given to said infants pursuant to the statute in such case made and provided, and that they have failed and neglected to apply for the appointment of a guardian in this proceeding, and it appearing that due and legal notice of this application has been given to John S. Wallace, guardian of Charles Philip Krauth, Jr., appointed by the Orphans' Court of Philadelphia County, in the State of Pennsylvania, the father and mother of the said infant being dead, and that due and legal notice of this application

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has also been given to Lucy E. Shreve, the mother and guardian of Dorothy Inskeep Shreve and Edwin Mercer Shreve, their father being dead, and it further appearing that the guardian appointed for said Dorothy Inskeep Shreve and Edwin Mercer Shreve is one of the petitioners herein,

It is thereupon on this third day of July, nineteen hundred and thirteen, ordered by the Chancellor that Samuel K. Robbins, Clerk of this Court, be assigned
10 and appointed, and he hereby is assigned and appointed, guardian of the said Charles Philip Krauth, Jr., Dorothy Inskeep Shreve and Edwin Mercer Shreve, by whom they may appear and answer the said petition.

E. R. WALKER, C.

Respectively advised,

JAMES BUCHANAN, A. M.

INFANTS' APPEARANCE.

(Filed July 5, 1913.)

IN CHANCERY OF NEW JERSEY.

20 Appearance entered for Charles Philip Krauth, Jr., Edwin Mercer Shreve and Dorothy Inskeep Shreve, infant defendants in the above-stated cause, by

SAML. K. ROBBINS, *Clerk,*
Guardian ad litem.

INFANTS' ANSWER.

(Filed July 5, 1913.)

IN CHANCERY OF NEW JERSEY.

The answer of Charles Philip Krauth, Jr., Edwin Mercer Shreve and Dorothy Inskeep Shreve, infant de-
• 30 fendants, by Samuel K. Robbins, Clerk, guardian ad

litem. These defendants, answering by their said guardian, says that they are strangers to all and singular the matters and things in the said bill of complaint contained, otherwise than that these defendants are informed that they have some interest therein; and these defendants, being infants of tender years, submit themselves to the judgment of this honorable court, and pray that their interest may be protected and saved to them.

SAML. K. ROBBINS, *Clerk,*
Guardian ad litem.

01

ORDER OF REFERENCE.

(Filed July 5, 1913.)

IN CHANCERY OF NEW JERSEY.

Application being made to the Chancellor by Rebecca H. Shreve and Lucy E. Shreve, by their petition duly verified and filed, wherein it is alleged that Rebecca H. Shreve has a vested estate for life in possession and Lucy E. Shreve has a vested estate for life in expectancy in a certain building and lot of land situated in the city of Trenton, in the county of Mercer, and State of New Jersey, particularly described in said petition, which is limited over to infants, and stating the persons who are or may be entitled to vested or prospective estates therein and alleging that the interests of the owners of the particular and future estates in said lands require and would be promoted by a sale thereof, and that the prospective value of said lands is such that it would be to the interest of any person who might own the same in fee to sell the same; and it appearing that due notice of this application has been given to the persons interested in said land for the time and in the manner required by law:

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It is on this third day of July, nineteen hundred and thirteen, on motion of Ellis L. Pierson, of counsel with the petitioners, ordered by the Chancellor that it be referred to Richard C. Chamberlain, one of the special masters of this court, to inquire into the situation of said lands and the merits of said application and in what manner and by what limitations said lands are held and whether the interests of the owners of the particular and future estates in said lands require and
10 would be promoted by a sale thereof; and whether the situation and prospective value of said lands are such that it would be to the interests of any person who might own the same in fee to sell the same, and also any other special matter which the said master may deem proper or which shall appear for the benefit of the present and prospective owners of said lands.

E. R. WALKER, C.

Respectfully advised,

JAMES BUCHANAN, A. M.

(Filed July 26, 1813.)

IN CHANCERY OF NEW JERSEY.

I, the undersigned, one of the Special Masters of this Court, respectfully report to the Chancellor that in pursuance of an order of reference in the above matter bearing date the third day of July, A. D. nineteen hundred and thirteen, directing me to inquire into the merits of the said application of Rebecca H. Shreve and Lucy E. Shreve, and into the situation of the lands
30 therein mentioned, and by what limitations said lands are held and whether the interests of the owners of the particular and future estates in said lands require and would be promoted by a sale thereof, and whether

the situation and prospective value of said lands are such that it would be to the interest of any person who might own the same in fee to sell the same, and also any special matter which the said master may deem proper or shall appear for the benefit of the present and prospective owners of said lands, I have been attended by Ellis L. Pierson, Esq., solicitor and of counsel with the petitioners, no one appearing for Samuel K. Robbins, Clerk, guardian *ad litem*, although duly summoned as appears by the summons and acknowledgment thereof hereto annexed, and that I have taken the depositions of witnesses and have considered the matters referred to me. 10

And I further report that the said lands consist of a lot of land about fifty-one (51) feet front on the northerly side of East State Street, in the City of Trenton, New Jersey, by about one hundred and forty-two (142) feet in depth, on which lot of land is erected a building now used for office purposes and stores. The building is an old one, known as the Shreve Building, 20 and is without the modern conveniences found in newer office buildings, and consequently offices in this building are not as readily rented as formerly.

And I further report that the said lands are held in the manner and by the limitations following, to wit: that Rebecca H. Shreve has a vested estate for life in possession, and that Lucy E. Shreve has a vested estate for life in expectancy, and that upon the death of the said Rebecca H. Shreve and Lucy E. Shreve, Dorothy Inskeep Shreve and Edwin Mercer Shreve, and the survivor of them are seized in fee of the said premises, provided they or either of them survive the said Lucy E. Shreve; that John S. Wallace, Henry Edward Wallace, James Madison Power Wallace, Sarah Shreve Bishop, Marie Elizabeth Wallace, Ellen Shreve Hunn, Charles Philip Krauth, Jr., Hetty Wallace Krauth and Isabel Reynolds Krauth are seized of a prospective estate in the said premises contingent upon the said 30

Dorothy Inskeep Shreve and Edward Mercer Shreve dying in the lifetime of Lucy E. Shreve without leaving lawful issue.

And I further report that the last will and testament of E. Mercer Shreve, who died seized of the premises, contains the following provision with reference to said real estate, to wit: "I devise to my wife Rebecca H. Shreve, in lieu of her dower in my lands, all my real estate wheresoever situate and the policies of insurance
10 thereon to have and to hold the same and enjoy all the rents, issues and profits thereof for and during the term of her natural life with remainder in fee simple to my son Henry Wallace Shreve," as by reference to the said will a copy whereof was produced before me marked *Exhibit 1*, will more fully appear.

And I further report that the said Henry Wallace Shreve departed this life leaving a last will and testament which contains the following provisions with reference to said real estate:

20 "Second. I give and bequeath for life to wife Lucy Ellen Shreve in lieu of her dower right all my estate whether real or personal also my life insurance.

"Third. That upon the death of my wife the principal to go in fee simple to my two children Dorothy Inskeep Shreve and Edwin Mercer Shreve in equal shares and in the event of either dying with lawful issue said issue to have the share of the parent.

"Fourth. In the event of the death of both of my children without lawful issue the estate upon the death
30 of my wife is to be divided equally between my Cousins John S. Wallace, Henry Edward Wallace, James Madison P. Wallace, Jr., Sarah Matilda Wallace, Marie Elizabeth Wallace, Ellen Shreve Wallace, Charles Philip Krauth, Jr., Hetty Wallace Krauth and Isabell Reynolds Krauth, the lawful issue of any one deceased to have their parents share," as by reference to said last mentioned will a copy of which was produced before me and marked *Exhibit 2* will more fully appear.

And I further report that the said Rebecca H. Shreve and Lucy E. Shreve, the present and prospective life tenants, are living; that Dorothy Inskeep Shreve and Edwin Mercer Shreve are both living and are infants under the age of twenty-one years; that the nine contingent remaindermen named in the said last will and testament of Henry W. Shreve are all living; that the Sarah Matilda Wallace named in said will is married to A. Hamilton Bishop; that Ellen Shreve Wallace is married to Edward J. Hunn; that Henry Edward Wallace is married, his wife's name being Julia Wallace; and that all of said remaindermen are of full age except Charles Philip Krauth, Jr., who is an infant of the age of twenty years. 10

And I further report that the owners of the life estate in possession and in expectancy are both females, and are obliged to employ agents for the renting and care of the premises; that they have no other income for their support and the support of the two minor children of Lucy E. Shreve, who have a vested remainder in said premises, except the sums of seven hundred and twenty dollars (\$720) derived from the rental of another property in Riverton, N. J.; that the income derived from the said Shreve Building is not commensurate with its value, and the net income of the premises will probably not increase to an extent greater than the increased taxes and expenses. 20

And I further report that from the evidence of reliable real estate agents produced before me it appears that the value of the said premises is about sixty-one thousand two hundred dollars (\$61,200), free of all incumbrances. 30

And I further report that the premises in question are subject to a mortgage in the principal sum of five thousand dollars (\$5,000), and that the premises if sold under these proceedings should be sold subject to said mortgage; that the appraised value of the premises is on the basis of their being free and clear of all incum-

branches, and that the value of the interests of the parties is five thousand dollars (\$5,000) less than such appraisal, or the sum of fifty-six thousand two hundred dollars (\$56,200).

And I further report that in my opinion from the evidence adduced before me the interests of the owners of the particular and future estates in said lands require and will be promoted by a sale thereof, and that the situation and prospective value of said lands are
 10 such that it would be for the interest of any person who might own the same in fee to sell the same.

And I further report that I know of no other special matter which I deem necessary or proper to report for the benefit of the present and prospective owners of said lands.

Respectfully submitted this twenty-fourth day of July,
 A. D. nineteen hundred and thirteen.

RICHARD C. CHAMBERLAIN,
Special Master.

IN CHANCERY OF NEW JERSEY.

Examination of witnesses in the above matter taken before Richard C. Chamberlain, Special Master, at 313 Broad Street National Bank Building, at 2:45 P. M. on Friday, the eighteenth day of July, 1913, pursuant to adjournment from the office of said Master, No. 30 West State Street, Trenton, New Jersey, at two o'clock this day: In the presence of Ellis L. Pierson, Esquire, solicitor of the petitioner, no one appearing for Samuel
 30 K. Robbins, guardian, although duly summoned, as appears by summons and acknowledgment thereof hereto annexed.

STATE OF NEW JERSEY, } ss.:
COUNTY OF MERCER, }

Rebecca H. Shreve, being duly sworn upon her oath, deposes and says: I am the widow of E. Mercer Shreve, late of the city of Trenton, in the county of Mercer, in the State of New Jersey, who died February 6, 1885, leaving a will which was probated in the Mercer county surrogate's office before John W. Cornell, surrogate, on the sixteenth day of February, eighteen hundred and eighty-five, a copy of which will I 10 have in my hands (certified copy of will of E. Mercer Shreve marked *Exhibit 1, ex parte* petitioners). My husband left the following real estate: 39 N. Clinton Ave., which was sold by the executors of his will under the power of sale in the will; the building at 144 East State Street, known as the Shreve Building, in the city of Trenton; two small vacant lots on Franklin and Cummings Sts., in the city of Trenton, and a large house and lot in Riverton, New Jersey, on the river bank, known as the Lawn House, which has always 20 been used as a boarding house. None of this property, except the N. Clinton Ave. property, has been sold.

I now live in Riverton, New Jersey, with my daughter-in-law, Lucy E. Shreve, who is one of the petitioners in this cause, and who is the widow of my son, Henry W. Shreve, and her two children, E. Mercer Shreve, who is ten years old, and Dorothy I. Shreve, who is fifteen years old.

The income to support the persons I have named and myself are the rental of the Lawn House, which is 30 seven hundred dollars net yearly; the rentals of the Shreve Building, the gross income from which is three thousand three hundred and thirty-three dollars per year, as it is now rented, and about nine hundred and fifty dollars from other sources. The expenses incurred in maintaining the Shreve Building last year were as follows:

	Interest,	\$250.00
	Taxes,	1,263.15
	Fire insurance,	156.00
	Window insurance,	15.00
	Water,	31.50
	Coal,	291.00
	Plumbing,	35.12
	Repairs,	16.97
	Gas in halls,	25.50
10	Commissions,	130.28
	Pavement,	62.34
	Paint,	22.87
	Advertising,	15.34
	Electric wiring,	25.00
	Plastering,	27.00
	Care of heater and halls,	85.50
		\$2,504.57

Besides the above expenses, totaling twenty-five hundred and four dollars and fifty-seven cents, I have had

20 to pay interest upon the sum of two thousand dollars, which I borrowed in September of nineteen hundred and ten, for the purpose of altering the front part of the Shreve Building into stores, amounting to one hundred and twenty dollars a year. This sum was borrowed on my personal note from H. E. Finch, of Trenton, New Jersey, and was all expended for the purpose of the said alterations, which have permanently improved the property and have greatly increased the rental value of the property. Upon this loan I

03 have paid five hundred dollars, but have, during the past year, been able to pay only one hundred dollars on account of the principal. I have given an option, expiring August first of this year, for the sale of the Shreve Building at the price of sixty-three thousand three hundred and seventy-five dollars, free of encumbrances. There is no encumbrance upon the property except a mortgage of five thousand dollars held by the

Trenton Savings Fund Society. Deducting the mortgage from the purchase price stated in the option, the net purchase price would be fifty-eight thousand three hundred and seventy-five dollars. I believe the price contained in the option to be a fair price for the property and I think it is the best price that can now be obtained.

There are two rooms on the second floor unoccupied, the rental value of which is fourteen and thirteen dollars respectively, per month, making a total of three 10 hundred and twenty-four dollars a year. During the past five or six years I have had great trouble in procuring tenants for the Shreve Building. There have always been two or three rooms vacant. I have to rent the building through an agent, and I have constantly to be making expenditures in advertising for tenants.

The Shreve Building was erected by my late husband about fifty years ago. The value of it as an office building is diminishing constantly because it does not contain modern improvements and because of the erection of large and modern office buildings in its immediate vicinity. The cost of taxes has increased fourfold since my husband's death. The other expenses have also increased, and almost every year there has been some unusual expense in connection with the building, such as installing toilets, sewers, pavements, widening the street in front of the building, installing steam-heating apparatus, etc., so that the net income from the building is less now than it was twenty years ago. It is a three-story brick building, fifty-one feet wide and 20 about one hundred and twenty feet deep. The lot is 30 one hundred and forty-two feet deep.

REBECCA H. SHREVE.

Subscribed and sworn to before me this 18th day of July, 1913.

RICHARD C. CHAMBERLAIN,
Special Master.

STATE OF NEW JERSEY, }
 COUNTY OF MERCER, } ss.:

Lucy E. Shreve, being duly sworn, deposes and says: I am the widow of Henry W. Shreve, who was the son of Mrs. Rebecca H. Shreve, who has just testified. Henry W. Shreve died at Riverton, New Jersey, on the twenty-second day of October, 1908, leaving as his heirs at law and next of kin, myself and our two children, Dorothy I. Shreve and E. Mercer Shreve. My
 10 late husband left a will, of which I have here a certified copy. (Will (certified copy) offered in evidence, marked *Exhibit 2, ex parte* petitioners). My two children and I live in Riverton, New Jersey, with Mrs. Rebecca H. Shreve. My children have no sources of income, and they and I are supported by the income from the property left by the late E. Mercer Shreve.

I was appointed guardian of my two children by the surrogate of Burlington county of February 8, 1913, and I have here the certified copies of letters of guard-
 20 ianship, which I offer in evidence (certified copies of letters of guardianship of Edwin Mercer Shreve and Dorothy Inskeep Shreve, infants, offered in evidence and marked respectively *Exhibits 3 and 4, ex parte* petitioners). As guardian of my two children, I believe the sale of the Shreve Building, in Trenton, at a price of sixty thousand dollars or more, is for their best interest. From the income alone, it is my belief that they would derive the benefit of obtaining from their grandmother so long as she lives, and from me as the life
 30 tenant of the property succeeding her, a better education than would otherwise be possible. The principal reason why Mrs. Shreve and I have made this application for the sale of the Shreve Building is to derive enough income from the Shreve estate properly to bring up and educate my two children. Ever since my marriage I have lived in the family of Mrs. Shreve, and she has always, since my husband's death, aided in the support and maintenance of myself and children.

LUCY E. SHREVE.

Subscribed and sworn to before me this 18th day of July, 1913.

RICHARD C. CHAMBERLAIN,
Special Master.

STATE OF NEW JERSEY, }
COUNTY OF MERCER, } ss.

Clifford A. Worthington, being duly sworn upon his oath, deposes and says: I am in the real estate and insurance business in the city of Trenton, N. J., having my office at 144 E. State Street, in the building known as the Shreve Building, where my office has been for the past seven years. I have been in the real estate business in the city of Trenton for the past eighteen years; during which time I have acted as agent for the purchase and also for the sales of properties in all parts of the city, including the central part of the city in which the Shreve Building is situated, and I am familiar with values of real estate in the city of Trenton. I have on several occasions appraised property in the city of Trenton for the Pennsylvania Railroad Company, and I have also appraised property in the city of Trenton for condemnation proceedings for the State of New Jersey. I would value the Shreve property, known as the Shreve Building, on East State Street, in the city of Trenton, as follows: The land at about ten hundred dollars per front foot, making the value for the land fifty-one thousand dollars, and the buildings at the value of about eight thousand dollars. The building is of the full width of the lot, fifty-one feet in front, and three stories high, built of brick. The main building is about forty feet deep, three stories high throughout. There is in addition an extension in the rear, built of brick, about twenty-four feet wide, extending back to within about fifteen feet of the fence at the rear, the one-story addition being about seventy or eighty feet in depth. The building is in very poor repair. The floors themselves are very much

- worn. The building constantly needs repairing. There have for the past two years been four or five offices constantly vacant. The building is not fitted for any other purposes than an office building with the exception of the stores in the front. The value as an office building is very small by reason of its being old-fashioned, and also because three large, modern, steel structured office buildings have recently been erected on the same block with the Shreve Building. The
- 10 owners of the new buildings offer great inducements in the way of elevators and other conveniences for tenants to leave the older office buildings like the Shreve Building. I think that a fair price for the lands and building would be sixty thousand dollars, and in my opinion it would be for the best interest of a person owning that property in fee to sell it for the total price of sixty thousand dollars free of encumbrance. I am the agent for the Shreves for the sale of this property, and as their agent have made endeavors to find purchasers.
- 20 As a result of my endeavors, I have found a person who has paid the sum of two hundred dollars in cash for a two months' option on the property at the price of sixty-three thousand three hundred and seventy-five dollars, free of encumbrances, or fifty-eight thousand three hundred and seventy-five dollars, subject to a five-thousand-dollar mortgage. It is my belief that the person who has the option will take it up and purchase the property at the price stated.
- In my opinion no greater price could be obtained
- 30 for this property. The property is totally unfitted for an office building, and no one would be likely to purchase it except a person who has a mercantile business and who would buy with the intention of making many alterations and improvements and of occupying the whole building as a retail store.

CLIFFORD A. WORTHINGTON.

Subscribed and sworn to before me this 18th day of July, 1913.

RICHARD C. CHAMBERLAIN,
Special Master.

STATE OF NEW JERSEY, }
COUNTY OF MERCER, } ss.

Rebecca H. Shreve, being duly sworn, according to law, on her oath says: Of the nine cousins mentioned as devisees in my son's will, in the fourth paragraph thereof, all are living, and the following are married: 10
Sarah Shreve Wallace, mis-called Sarah Matilda Wallace, who is married to A. Hamilton Bishop; Ellen Shreve Wallace, who is married to Edward J. Hunn; Henry Edward Wallace, whose wife's name is Julia Wallace. All of the cousins are of full age, except Charles Philip Krauth, both of whose parents are dead, and whose guardian appointed by the Orphans' Court of a county in Pennsylvania, probably Philadelphia County; Charles Philip Krauth will be twenty-one years of age in November of this year. 20

REBECCA H. SHREVE.

Sworn and subscribed before me this twenty-second day of July, A. D. nineteen hundred and thirteen.

RICHARD C. CHAMBERLAIN,
Special Master.

STATE OF NEW JERSEY, }
COUNTY OF MERCER, } ss.

Gardner H. Cain, of full age, being duly sworn according to law, on his oath says: I have been in the real estate business in the city of Trenton for the past 30
twenty-seven years, and have acted as agent for purchasers and sellers in all parts of the city, including the central portion of the city wherein the building known as the Shreve Building at No. 144 East State

Street is situated; I am familiar with the value of land in that portion of the city, and have very lately acted as agent for the seller of a property within four hundred feet of the Shreve Building. In my judgment the value of the land on which the Shreve Building stands is about twelve hundred dollars a running front foot; that the building now on the property has been built a number of years and is not the kind of a building to produce an income in proportion to the value
10 of the land; to make the property profitable it would be necessary either to tear down the present buildings and put up new ones, or remodel the building now on the property and build additions thereto; I do not know exactly what it would cost to remodel and add to the present building, but am of the opinion that the cost of remodelling and adding to the present building would be so great that it would be better to build an entire new building. I know from the experience of others
20 who have remodelled and used their old buildings, when the buildings were completed, that the old building used cost more than it would to have built an entire new building; so that in this case were I purchasing the property myself, I would consider only the value of the land, making no use of the present building.

I would say that it would be better for a person owning this property in fee to sell it at this time for the sum of sixty-three thousand two hundred and seventy-five dollars, than to hold it for appreciation, because
30 the property is so highly assessed, and the taxes and expenses so great that they would, in addition to the interest on the proposed selling price, be greater than any probable increase in value.

GARDNER H. CAIN.

Sworn and subscribed before me this twenty-second day of July, A. D. nineteen hundred and thirteen.

RICHARD C. CHAMBERLAIN,
Special Master.

STATE OF NEW JERSEY, }
COUNTY OF MERCER, } ss.

Lewis C. Case, of full age, being duly sworn, according to law, deposes and says: I have been engaged in the real estate business in the city of Trenton for about fifteen years last past, and I have acted as agent for purchasers and sellers of real estate in all parts of the city; about six or seven years ago I acted as the agent for the seller of the property on East State Street, within two hundred feet of the property known as the Shreve Building at No. 144 East State Street. I have knowledge of sales of other pieces of real estate made within the past two or three years in the immediate vicinity of the Shreve Building; from my knowledge of the prices received at those sales, and from my general experience in dealing in real estate in the city of Trenton, I am able to form and have formed an estimate of the value of the Shreve Building and the land on which it stands. In my judgment a fair selling price of the Shreve property would be twelve hundred dollars a running front foot, including land and building. Taking into consideration the income of the Shreve property, and the expenses and taxes and interest on the investment, I believe the land alone is of equal value with the land and the building now erected thereon. The building is old and not at all up to date, and as compared with new office buildings which have been erected on the same block with this property, it is antiquated and undesirable for renting purposes.

I would advise a person owning the Shreve property in fee, to sell it at this time for the sum of sixty-three thousand two hundred and seventy-five dollars free of encumbrances. According to the present net income of the property, as compared with interest at five per cent. upon the proposed selling price, there is an annual loss of about twenty-two hundred dollars, which in my judgment would equal the increase in value.

LEWIS C. CASE.

Sworn and subscribed before me this twenty-second day of July, A. D. nineteen hundred and thirteen.

RICHARD C. CHAMBERLAIN,
Special Master.

ORDER TO SELL.

(Filed July 29, 1913.)

IN CHANCERY OF NEW JERSEY.

On reading and filing the report of Richard C. Chamberlain, Esq., one of the Special Masters of this Court, made in the above-stated matter, bearing date the twenty-fourth day of July, nineteen hundred and thirteen, whereby it satisfactorily appears to the Chancellor that the said real estate is held and limited over as stated in said report and in the petition filed herein, and that the interests of the owners of the particular and future estates in said real estate require and would be promoted by a sale thereof, it is now, on this twenty-eighth day of July, nineteen hundred and thirteen, on motion of Ellis L. Pierson, of counsel with the petitioners, ordered by the Chancellor that Erwin E. Marshall, one of the Special Masters of this Court, do sell the said real estate situate on East State Street, in the City of Trenton, in the County of Mercer, bounded and described as follows, to wit: Beginning at the southwest corner of lot late of Jasper S. Scudder and running thence northerly along Scudder's line one hundred and forty-two feet, more or less, to lands of Ezra B. Fulk; thence westerly along his line to line of land of J. M. Davis fifty-one feet, more or less; thence southerly along his line one hundred and forty-two feet, more or less, to State Street; thence easterly along State Street fifty-one feet, more or less, to the place of beginning, mentioned and described in the petition in

this cause, at public vendue or at private sale, in fee, giving notice of the time and place of sale in case the same be sold at public vendue, subject to a mortgage of five thousand dollars, for a price not less than fifty-six thousand and two hundred dollars; and that said master make report of such sale to the Chancellor for approval and confirmation.

E. R. WALKER, C.

Respectively advised,

JAMES BUCHANAN, A. M.

10

FURTHER PETITION.

(Filed July 6, 1914.)

IN CHANCERY OF NEW JERSEY.

To his Honor, Edwin Robert Walker, Chancellor of the State of New Jersey:

The petition of Rebecca H. Shreve and Lucy Ellen Shreve, both of the borough of Riverton, in the county of Burlington and State of New Jersey, respectfully shows that the order for sale heretofore on the twenty-eighth day of July, nineteen hundred and thirteen, made in this cause, did not specify the manner of payment of the purchase price of the property described in said order; that since the time of making that order your petitioners have endeavored in vain to obtain a purchaser who would pay the purchase price mentioned in the order in cash, or who would pay so much of the purchase price in cash as would permit of a purchase money mortgage to an amount not greater than one-half of the value of the property fixed in said order; that in the opinion of your petitioners a sale could be consummated if a provision were made that the property be sold free of the mortgage encumbrance of five thousand dollars mentioned in said order, and with a

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further provision that a small portion of the purchase price in cash be accepted, the remainder of the purchase price to remain secured to be paid by a purchase money mortgage; that in the opinion of your petitioners the payment of ten thousand dollars in cash, with the remainder of the purchase money secured by a mortgage, would be a safe method of selling the said property.

Your petitioners further show that the value of the property lies principally in the land, the building upon
 10 the land being over fifty years old and not at all suited for its location.

Your petitioners therefore pray that a further order be made referring this matter to one of the Special Masters of this Court to ascertain and report to your Honor in what manner the purchase price of the said property shall be paid.

And your petitioners will ever pray, etc.

REBECCA H. SHREVE,

LUCY E. SHREVE,

20

Petitioners.

ELLIS L. PIERSON,

Sol'r for and of Counsel with Petitioners.

(Verification by petitioners follows.)

ORDER.

(Filed July 6, 1914.)

IN CHANCERY OF NEW JERSEY.

This matter being opened to the Court by Ellis L. Pierson, of counsel with the petitioners, and the duly verified petition of the above-named petitioners being read, and it appearing that a further order should be
 30 made in regard to the manner of payment of the purchase price of the property heretofore ordered to be sold:

It is ordered that this matter be re-referred to Richard C. Chamberlain, one of the Special Masters of this Court, to ascertain and report whether or not the said property should be sold free of the mortgage encumbrance mentioned in his former report and also to inquire into and report what credit for purchase money would be expedient, these matters to be ascertained either from the testimony heretofore taken in this cause or from testimony hereafter to be taken.

E. R. WALKER, C. 10

SUPPLEMENTAL MASTER'S REPORT.

(Filed July 20, 1914.)

IN CHANCERY OF NEW JERSEY.

I, the undersigned, one of the Special Masters of this Court, respectfully report to the Chancellor that in pursuance of an order of reference in the above matter, filed in this cause on the sixth day of July, A. D. nineteen hundred and fourteen, whereby it was referred to the subscriber to ascertain and report whether or not the property described in the petition in this matter should be sold free of the mortgage encumbrance mentioned in the former report of the subscriber, and also to inquire into and report what credit for purchase money would be expedient, these matters to be ascertained either from testimony heretofore taken in this cause or from testimony hereafter to be taken. I have been attended by Ellis L. Pierson, Esq., solicitor and of counsel with the petitioners, and have considered the matters referred to me by said order. 20

And I further report that from the evidence heretofore taken in this matter and filed in this cause, it appears that the value of the premises in question is 30

almost wholly in the land, the improvements thereon being an old building and not adapted to modern uses.

That the income from said premises is barely sufficient to pay taxes and necessary expenses, and that the premises should be sold free and clear of all encumbrances. The five-thousand-dollar mortgage now on said premises and mentioned in the former report of the subscriber, filed in this cause, should be paid out of the purchase price.

- 10 I further report that it would be advisable and expedient on the sale of said premises, to accept a sum not less than ten thousand dollars in cash, out of which sum should be paid the five-thousand-dollar mortgage now a lien on the premises, and accept a mortgage which would then be a first lien, to the Chancellor of the State of New Jersey, for the balance of the purchase price.

Respectfully submitted this eleventh day of July, A. D. nineteen hundred and fourteen.

20

RICHARD C. CHAMBERLAIN,
Special Master in Chancery of New Jersey.

FURTHER ORDER CONCERNING SALE.

(Filed July 20, 1914.)

IN CHANCERY OF NEW JERSEY.

- On reading and filing the supplemental report of Richard C. Chamberlain, Esquire, one of the Special Masters of this Court, made in the above-stated matter, bearing date the eleventh day of July, nineteen hundred and fourteen, whereby it satisfactorily appears to the
- 30 Chancellor that it would be advisable and expedient to sell free of encumbrance the real estate described in an order to sell heretofore made in this cause, and to accept in payment a sum not less than ten thousand dol-

lars in cash, out of which should be paid a five-thousand-dollar mortgage now upon said premises, and a mortgage to the Chancellor of the State of New Jersey for the remainder of the purchase price,

It is now, on this eighteenth day of July, nineteen hundred and fourteen, on motion of Ellis L. Pierson, of counsel with the petitioners, ordered by the Chancellor that Erwin E. Marshall, Esquire, one of the Special Masters of this Court, appointed to sell the said premises by the former order, do sell the same for 10 sixty-one thousand two hundred dollars, free of encumbrance, and do accept in payment of the purchase price cash to the amount of at least ten thousand dollars and a purchase money mortgage to the Chancellor for the remainder; and that the said master do pay off and discharge the five-thousand-dollar mortgage now existing on said premises out of the cash received in part payment of the purchase price; and that the said master make report of such sale to the Chancellor for approval and confirmation. 20

E. R. WALKER, C.

Respectfully advised,

JAMES BUCHANAN, A. M.

REPORT OF SALE.

(Filed April 22, 1913.)

IN CHANCERY OF NEW JERSEY.

In pursuance of an order of the Court of Chancery of the State of New Jersey dated the twenty-eighth day of July, nineteen hundred and thirteen, wherein and whereby it was, among other things, ordered that 30 the subscriber, one of the Special Masters of this Court, sell the real estate on East State Street, in the City of Trenton, in the County of Mercer, bounded and described as follows, to wit:

Beginning at the southwest corner of lot late of Jasper S. Scudder and running thence northerly along Scudder's line one hundred and forty-two feet, more or less, to lands of Ezra B. Fulk; thence westerly along his line to line of land of J. M. Davis fifty-one feet, more or less; thence southerly along his line one hundred and forty-two feet, more or less, to State Street; thence easterly along State Street fifty-one feet, more or less, to the place of beginning, mentioned and described in the petition in this cause, at public vendue or at private sale, in fee, giving notice of the time and place of sale in case the same be sold at public vendue, subject to a mortgage of five thousand dollars, for a price not less than fifty-six thousand and two hundred dollars; and that said master make report of such sale to the Chancellor for approval and confirmation.

I do hereby report to his Honor, the Chancellor, that I have secured from the St. Regis Corporation, a corporation organized under the laws of the State of Delaware, and authorized to do business in the State of New Jersey, an offer to purchase the real estate in said order mentioned and described, subject to a mortgage of five thousand dollars, now a lien thereon, at private sale for the sum of fifty-eight thousand four hundred dollars over and above said encumbrance, one thousand dollars of said purchase price having been paid to the subscriber in the form of a certified check upon the acceptance of said offer and the balance of fifty-seven thousand four hundred dollars to be paid in lawful money upon the delivery of a proper deed from me as Special Master to the St. Regis Corporation, provided said sale shall be confirmed by the Court of Chancery, said sum of one thousand dollars to be returned to the St. Regis Corporation in the event of the Court of Chancery refusing to confirm the sale hereunder.

I do further certify and report that a true copy of said offer is attached to this report. I do further cer-

tify and report that said offer purports to be made pursuant to the terms of a certain agreement in writing, dated July eleventh, nineteen hundred and fourteen, and made between Rebecca H. Shreve (widow); Lucy E. Shreve (widow); Lucy E. Shreve, guardian of Dorothy I. and E. Mercer Shreve, minors, all of the Borough of Riverton, in the County of Burlington and State of New Jersey (in said agreement recited as "the Borough of Riverton, in the County of Mercer and State of New Jersey"); John S. Wallace, unmarried; 10 Sara Shreve Bishop and Alexander H. Bishop, her husband, of the Township of Lower Merion, in the County of Montgomery and State of Pennsylvania; Marie Elizabeth Wallace (unmarried), of the Township of Lower Merion, County of Montgomery and State of Pennsylvania; Henry E. Wallace, Jr., and Julia E. Wallace, his wife, of the City of Boston, in the County of Suffolk and State of Massachusetts; Ellen Shreve Hunn and Edward W. J. Hunn, her husband, of the City of Cape May Court House, in the County of Cape May, in the State of New Jersey; 20 James M. Power Wallace, Jr. (unmarried); Hetty Wallace Krauth (unmarried); Charles Philip Krauth (unmarried), and Isabel Reynolds Krauth (unmarried), all of the City and County of Philadelphia, and State of Pennsylvania, of the first part, and the St. Regis Corporation, a corporation organized and existing under and by virtue of the laws of the State of Delaware, of the second part, the original of which said agreement was produced before me and a true copy of which 30 is hereunto annexed.

I further certify and report that there was also produced before me a certain Indenture of Lease for the land and premises described in the petition in this clause, bearing date the eleventh day of June, A. D. one thousand nine hundred and fourteen, by and between Rebecca H. Shreve, Lucy E. Shreve and Lucy E. Shreve, guardian of Dorothy I. and E. Mercer Shreve, minors,

all of the Borough of Riverton, County of Burlington and State of New Jersey; John S. Wallace, Sarah Shreve Bishop and Marie Elizabeth Wallace, all of the Township of Lower Merion, County of Montgomery, State of Pennsylvania; Henry E. Wallace, Jr., of the City of Boston, County of Suffolk, State of Massachusetts; Ellen Shreve Hunn, of Cape May Court House, County of Cape May, State of New Jersey, and James M. Power Wallace, Jr., Hetty Wallace Krauth,
10 Charles Philip Krauth and Isabel Reynolds Krauth, all of the City and County of Philadelphia, State of Pennsylvania, parties of the first part, and the St. Regis Corporation, a corporation organized and existing under the laws of the State of Delaware, party of the second part, a true copy of which Indenture of Lease is annexed to this report.

I further certify that there are annexed to this report affidavits of William J. Vernon and W. Henry Elfreth, president and secretary respectively of the St. Regis Corporation, reciting in detail the negotiations had
20 by them for the purpose of obtaining a good and marketable title to the property mentioned and described in these proceedings, which negotiations finally culminated in the lease and agreement hereinbefore referred to; that in and by said affidavits of William J. Vernon and W. Henry Elfreth, it appears that almost immediately after the execution of the agreement and lease hereinbefore mentioned, the St. Regis Corporation went into possession of the premises and has expended something over thirty-five thousand dollars
30 in permanent improvements to the property; and it is further alleged that these expenditures were made on the faith of the performance of the agreement of sale hereinbefore referred to.

I further certify that annexed to this report is the affidavit of Gardner H. Cain, by whom an affidavit was made in this cause on the twenty-second day of July, nineteen hundred and thirteen, wherein he set out

that in his opinion the property mentioned and described in the proceedings in this cause, known as the "Shreve Building," No. 44 East State Street, was of the value of twelve hundred dollars a running front foot, making a total value of sixty-three thousand two hundred and seventy-five dollars; that the said Gardner H. Cain now says that the increase in the value of the land aside from the improvements which have been put upon it since the former affidavit was made is slight and more difficult to realize for the reason that in the last two 10 years money has been scarce for investments, and very few properties are selling in the middle of town because of the uncertainty of the money market.

Having regard to the value of the land and premises referred to and described in these proceedings, exclusive of the improvements placed thereon by the St. Regis Corporation, I am of opinion that sixty-three thousand four hundred dollars is the fair market value thereof and that a greater price could not at this time be secured therefor. 20

I have, therefore, subject to the approval of the Chancellor, sold the land and premises hereinbefore described at private sale to the St. Regis Corporation for the sum of fifty-eight thousand four hundred dollars, subject to the encumbrance of a mortgage of five thousand dollars, now a lien thereon; the whole amount of the purchase price above the mortgage encumbrance to be paid in cash upon the delivery of a deed for said land and premises by me as Special Master.

All of which is respectfully submitted this twenty- 30 third day of February, nineteen hundred and sixteen.

ERWIN E. MARSHALL,
Special Master.

IN CHANCERY OF NEW JERSEY.

In the Matter of the Application of
 Rebecca H. Shreve and Lucy E.
 Shreve, for the Sale of Lands } On Petition.
 Limited Over, &c.

OFFER.

*To Erwin E. Marshall, Esq., One of the Special Masters
 of the Court of Chancery of New Jersey:*

Pursuant to the terms of a certain agreement, dated
 July eleventh, nineteen hundred and fourteen, and made
 10 between Rebecca H. Shreve (widow), Lucy E. Shreve
 (widow), Lucy E. Shreve, Guardian of Dorothy I. and
 E. Mercer Shreve, minors, all of the Borough of River-
 ton, in the County of Burlington and State of New
 Jersey (in said agreement recited as "the Borough of
 Riverton, in the County of Mercer and State of New
 Jersey"); John S. Wallace, unmarried; Sara Shreve
 Bishop and Alexander H. Bishop, her husband, of the
 Township of Lower Merion, in the County of Mont-
 gomery, and State of Pennsylvania; Marie Elizabeth
 20 Wallace (unmarried), of the Township of Lower
 Merion, County of Montgomery and State of Penn-
 sylvania; Henry E. Wallace, Jr., and Julia E. Wallace,
 his wife, of the City of Boston, in the County of Suffolk
 and State of Massachusetts; Ellen Shreve Hunn and
 Edward W. J. Hunn, her husband, of the City of
 Cape May Court House, in the County of Cape May,
 in the State of New Jersey; James M. Power Wallace,
 Jr. (unmarried), Hetty Wallace Krauth (unmarried),
 30 Charles Philip Krauth (unmarried), and Isabel Rey-
 nolds Krauth (unmarried), all of the City and County
 of Philadelphia, and State of Pennsylvania, of the first
 part, and The St. Regis Corporation, a corporation
 organized and existing under and by virtue of the laws

of the State of Delaware, of the second part, the undersigned hereby offers and agrees to purchase all that certain building and lot of land, situate in the City of Trenton, in the County of Mercer, and State of New Jersey, known as the "Shreve Building," on East State Street, and more fully described in the petition for sale, filed in this cause on July first, nineteen hundred and thirteen, and in said agreement described; subject to a mortgage of five thousand dollars, and hereby offers and agrees to pay as the purchase price of said property, subject to said encumbrance, the sum of fifty-eight thousand four hundred dollars, of which sum the undersigned agrees to pay the sum of one thousand dollars, in the form of a certified check, upon the acceptance of this offer, and the balance of fifty-seven thousand four hundred dollars upon the delivery of a proper deed to the undersigned, made by you as such Special Master, after proper confirmation of sale; said sum of one thousand dollars to be delivered to you upon the condition that in the event the Court of Chancery refuses to confirm a sale under this offer, said sum shall be returned. 10 20

In witness whereof, The St. Regis Corporation has caused its corporate seal to be hereunto affixed, and these present signed by its President, and duly attested by its Secretary, this third day of February, in the year of our Lord one thousand nine hundred and sixteen.

THE ST. REGIS CORPORATION.

By WILLIAM J. VERNON,

President.

[CORPORATE SEAL.]

Attest:

W. HENRY ELFRETH,

Secretary.

THIS AGREEMENT made this Eleventh day of July nineteen hundred and fourteen, by and between Rebecca H. Shreve (widow), Lucy E. Shreve (widow), Lucy

- E. Shreve, Guardian of Dorothy I. and E. Mercer Shreve, minors, all of the borough of Riverton in the county of Mercer and State of New Jersey; John S. Wallace (unmarried), Sara Shreve Bishop and Alexander H. Bishop, her husband, of the township of Lower Merion in the county of Montgomery in the State of Pennsylvania; Marie Elizabeth Wallace (unmarried), of the township of Lower Merion in the county of Montgomery and State of Pennsylvania;
- 10 Henry E. Wallace, Jr., and Julia E. Wallace, his wife, of the city of Boston in the county of Suffolk and State of Massachusetts; Ellen Shreve Hunn and Edward W. J. Hunn, her husband, of the City of Cape May Court House in the county of Cape May in the State of New Jersey; James M. Power Wallace, Jr., (unmarried), Hetty Wallace Krauth (unmarried), Charles Philip Krauth (unmarried) and Isabel Reynolds Krauth (unmarried) all of the city and county of Philadelphia and State of Pennsylvania, of the first part, and The St.
- 20 Regis Corporation, a corporation organized and existing under the laws of the State of Delaware, of the second part, witnesseth:

The party of the first part agree to do all in their power to procure upon the terms and conditions hereinafter set forth a conveyance to be made to the party of the second part, its successors and assigns, through Erwin E. Marshall, Esquire, a Special Master of the Court of Chancery of New Jersey, or through some other Master to be appointed by the Court of Chancery,

30 of the building known as the Shreve Building and land in the city of Trenton, County of Mercer, State of New Jersey, bounded and described as follows, to wit:

Beginning at the southwest corner of lot late of Jasper S. Scudder and running thence northerly along Scudder's line one hundred and forty-two feet, more or less, to lands of Ezra B. Fulk; thence westerly along his line to line of land of J. M. Davis fifty-one feet, more or less; thence southerly along his line one hun-

dred and forty-two feet, more or less, to State Street; thence easterly along said State Street fifty-one feet, more or less, to the place of Beginning, subject to no encumbrances except a mortgage of five thousand dollars and such taxes and assessments as may accrue hereafter and leases and tenancies now existing, including the lease about to be delivered to The St. Regis Corporation, and the said party of the second part agree to pay as the purchase price of said property the sum of fifty-eight thousand, four hundred dollars in cash, 10 of which one hundred dollars are paid at the signing of this agreement and fifty-eight thousand, three hundred dollars are to be paid on July 1, 1916. In addition to such purchase price the party of the second part upon the signing of this agreement and before the same becomes binding will deposit in the Broad Street National Bank of Trenton, N. J., in the names of W. Henry Elfreth and Ellis L. Pierson, Trustees, and subject only to the joint check of the said W. Henry Elfreth and Ellis L. Pierson, Trustee, the sum of sixteen hundred 20 dollars. At any time during the life of this agreement, if the party of the second part shall request it, the said trustees are to pay out the said sum of sixteen hundred dollars to Clifford A. Worthington, a real estate broker upon his releasing the party of the first part from all claims for commission for sale of the Shreve Building, or if the said Clifford A. Worthington should, at any time recover against the party of the first part or any of them a judgment on a suit brought within six years of date of conveyance of the above described property 30 to the party of the second part, for a broker's commission for the sale of the said property then the said trustees are to pay out the said sum of sixteen hundred dollars and any accumulation of interest thereon that may be necessary to satisfy the said judgment. It is understood that if such suit should be started by the said Clifford A. Worthington, the party of the second part is to attend to and pay for the defense thereof.

If the said sum of sixteen hundred dollars should not be paid out as above stated at the request of the party of the second part or as a result of a judgment obtained by the said Clifford A. Worthington, as aforesaid, then at the final conclusion of any suit brought by the said Clifford A. Worthington within the said period of six years, if within that time he shall have brought said suit, or at the end of said period of six years, if he shall not have brought suit within that period, or upon Clifford A. Worthington's releasing the party of the first part from all claim for a commission, the said sum of sixteen hundred dollars, with accumulations of interest is to be paid to the party of the second part.

If the party of the second part shall fail in any respect to pay the rent reserved and fulfill the covenants contained in a lease made between the parties hereto, covering the property above described, then the party of the first part are to be no longer bound upon this agreement, but such default shall in no way excuse the party of the second part from the performance thereof. The party of the second part covenants that in the event of a suit for the specific performance of this agreement or an action for damages begun by the party of the first part, it, the said party of the second part, will not set up any defense based upon lack of consideration for this agreement or impossibility of performance hereof on the part of the party of the first part. The gas fixtures, heaters, ranges, etc., annexed to the building belonging to the party of the first part or any of them are included in this sale. The party of the first part agree to do all in their power to procure a conveyance of good and marketable title in fee simple for the said premises, such title to be conveyed to the party of the second part as will be insured by the Real Estate Title Company or any other reputable title guarantee company, subject only to the aforesaid mortgage of five thousand dollars and the above mentioned leases. The times of conveyance is to be July 1, 1916, time to be

of the essence of the agreement, the purchase price to be paid and the deed delivered at the office of Ellis L. Pierson, in the City of Trenton, New Jersey.

In witness whereof, the party of the first part have hereunto set their hands and seals and the party of the second part has caused these presents to be signed by its president, its corporate seal affixed and attested by its secretary on the day and year first above written.
Witness:

REBECCA H. SHREVE	(L. S.)	10
LUCY E. SHREVE	(L. S.)	
LUCY E. SHREVE		

Guardian

	(L. S.)	
JOHN S. WALLACE	(L. S.)	
ALBERT N. GARRETT {	SARA SHREVE BISHOP (L. S.)	
	ALEXANDER H. BISHOP (L. S.)	
MARIE ELIZABETH WALLACE	(L. S.)	
HENRY E. WALLACE, JR.	(L. S.)	
JULIA E. WALLACE	(L. S.)	20
ELLEN SHREVE HUNN	(L. S.)	
EDWARD W. J. HUNN	(L. S.)	
JAMES M. POWER WALLACE, JR.,	(L. S.)	
HETTY WALLACE KRAUTH	(L. S.)	
CHARLES PHILIP KRAUTH	(L. S.)	
ISABEL REYNOLDS KRAUTH	(L. S.)	
(L. S.) THE ST. REGIS CORPORATION		
By WILLIAM J. VERNON, <i>Pres't.</i>		

Attest:

W. HENRY ELFRETH, *Sec'y.*

30

(Acknowledgments follow.)

THIS INDENTURE, made in duplicate the eleventh day of June, A. D. one thousand nine hundred and fourteen (1914), by and between REBECCA H. SHREVE, LUCY E. SHREVE and LUCY E. SHREVE guardian of Dorothy I. and E. Mercer Shreve, minors, all of the Borough of Riverton, County of Burlington and State of New

Jersey; JOHN S. WALLACE, SARAH SHREVE BISHOP and MARIE ELIZABETH WALLACE, all of the Township of Lower Merion, County of Montgomery, State of Pennsylvania; HENRY E. WALLACE, JR., of the City of Boston, County of Suffolk, State of Massachusetts; ELLEN SHREVE HUNN, of Cape May Court House, County of Cape May, State of New Jersey, and JAMES M. POWER WALLACE, JR., HETTY WALLACE KRAUTH, CHARLES PHILIP KRAUTH and ISABEL REYNOLDS
 10 KRAUTH, all of the City and County of Philadelphia, State of Pennsylvania, parties of the first part, and THE ST. REGIS CORPORATION, a corporation organized and existing under the laws of the State of Delaware, party of the second part, witnesseth:

1. That the parties of the first part, in consideration of the sum of two hundred and fifty dollars paid by the party of the second part at the time of signing this lease, as an inducement for the signing thereof by the parties of the first part, and in further consideration
 20 of the rent hereinafter provided for, have letten, and by these presents do grant, demise and to farm let unto the party of the second part the building and premises known as 142 and 144 East State Street, in the City of Trenton, in the County of Mercer and State of New Jersey, described as follows, to wit:

All that certain building and lot of land situate in the City of Trenton, in the County of Mercer and State of New Jersey, bounded and described as follows:

Beginning at the southwest corner of lot late of Jasper S. Scudder and running thence northerly along
 30 Scudder's line one hundred and forty-two feet to lands of Ezra B. Fulk; thence westerly along his line to land of J. M. Davis fifty-one feet, more or less; thence southerly along his line one hundred and forty-two feet, more or less, to State Street; thence easterly along said State Street fifty-one feet, more or less, to the place of beginning, with the appurtenances, for the term of five years from the first day of July, 1914, on the following terms and conditions:

A. The party of the second part shall pay to the parties of the first part the sum of three thousand two hundred and fifty dollars per annum during each and every year of said term of five years in equal monthly payments on the first days of each month, the first payment to be made on the first day of July, A. D. 1914, payment of said sum of three thousand two hundred and fifty dollars to be made solely to the said Rebecca H. Shreve for and during the whole of said term of five years, provided she shall so long live, her 10 receipt alone to be a sufficient acknowledgment of the payment of said sum; provided also, however, that if the said Rebecca H. Shreve die before the expiration of said term, then in such case from and immediately after the death of the said Rebecca H. Shreve payment of said sum of three thousand two hundred and fifty dollars to be made solely to the said Lucy E. Shreve, if she shall then be alive, for and during the balance of the said term of five years then remaining, provided 20 she shall so long live, her receipt alone to a sufficient acknowledgment of the payment of said sum of three thousand two hundred and fifty dollars; and provided further, however, that if said Lucy E. Shreve die before the expiration of said term of five years, either before or after the death of the said Rebecca H. Shreve, then from and after the death of said Lucy E. Shreve, if she shall outlive the said Rebecca H. Shreve, or from and after the death of the said Rebecca H. Shreve if the said Lucy E. Shreve shall predecease her, payment 30 of said sum of three thousand two hundred and fifty dollars to be made to John S. Wallace, Esquire, of the City of Philadelphia, as attorney for the person or persons entitled to receive same.

B. The party of the second part shall at its own proper cost and expense during each and every of said term of five years, when the same shall become due and payable, pay all taxes and water rent or rents and municipal assessments of any kind which may be due,

levied or assessed on said hereby demised premises within the said term of five years.

C. The party of the second part shall at its own proper cost and expense during each and every year of said term of five years pay for and keep the building now erected or which may subsequently be erected on the hereby demised premises insured against fire or lightning to their full value, and further shall, in case any or all of the said buildings now erected or
10 which may subsequently be erected on said hereby demised premises shall by reason of fire or lightning be totally destroyed or partially damaged, or so extensively damaged as practically to amount to a total destruction thereof, or render them untenable, at its own proper cost and expense and as speedily as possible repair or rebuild the said building or buildings so damaged or destroyed as aforesaid so as to restore them to the condition they were in before they were so damaged or destroyed.

20 And the said parties of the first part do covenant and agree to promptly pay over unto the said party of the second part any and all sums of money received by them from any and all insurance companies by reason of any such loss by fire or lightning.

D. The party of the second part shall at its own proper cost and expense make any and all repairs necessary to keep the hereby demised buildings now erected or which may subsequently be erected on said hereby demised premises and the curtilage appurtenant thereto
30 in good condition, order and repair, including wear and tear and those made necessary by the negligence of the party of the second part, its agents or servants, including damage by fire or lightning, and at the expiration of the said term of five years, or other sooner determination of the hereby granted estate, will quit, deliver up and surrender the said hereby demised premises and building now erected or which may subsequently be erected on said hereby demised premises and the

curtilage appurtenant thereto in good condition, order and repair.

2. And it is agreed by and between the parties hereto that if the said sum of three thousand two hundred and fifty dollars, the taxes, water rent or rents, municipal assessments and insurance against fire or lightning, shall be due and unpaid when the same or any portion thereof is due and payable, or if default shall be made in any of the covenants herein contained, then this lease shall be void, and it shall be lawful for the said parties of the first part, without any notice to or demand upon the party of the second part, to re-enter the said premises and the same to have again, repossess and enjoy. 10

3. And it is further agreed by and between the parties hereto that if the said buildings now erected or which may subsequently be erected on the hereby demised premises are totally destroyed by war, any act of God or cause not the fault of the party of the second part and not covered by or included in the insurance hereinbefore stipulated to be placed and carried thereon by the party of the second part, or damaged so extensively as practically to amount to a total destruction thereof or rendering of them untenable, the said sum of three thousand two hundred and fifty dollars, the taxes, water rent or rents, municipal assessments and insurance against fire by lightning, up to the time of such destruction or rendering of them untenable, shall be paid, and then and from henceforth this lease shall at the option of the party of the second part cease and come to an end, said option to be exercised within ten days by giving written notice thereof to Rebecca H. Shreve, Lucy E. Shreve and John S. Wallace by mailing same to their last known post-office addresses. 20 30

4. And the said party of the second part doth covenant and agree that it will yearly and every year during the hereby granted term pay to the said parties of the first part the said sum of three thousand two hundred

and fifty dollars on the days and in the manner limited and described as aforesaid for the payment thereof, and will pay the taxes, water rents or rents, municipal assessments and insurance against fire or lightning, as herein specified, and that it will not assign this lease without the written consent of the said parties of the first part first had and obtained, under the penalty of forfeiture and damages.

5. And the said parties of the first part do covenant
10 and agree that the said party of the second part, on paying the said sum of three thousand two hundred and fifty dollars, the taxes, water rent or rents, municipal assessments, insurance against fire or lightning, as above set forth, and performing the covenants aforesaid, shall and may peaceably and quietly have, hold and enjoy the said demised premises for the term aforesaid without any let, suit, trouble or hindrance of or from the said parties of the first part or any other person or persons whomsoever.

20 6. And it is also further agreed by and between the parties hereto that the party of the second part may sublet all or any portion of the herein demised premises upon such terms and conditions as it may see fit, except however that (1) the term thereof shall not in any event extend beyond the first day of July, A. D. 1919 (the day stipulated in the lease for its expiration); and (2) the said subletting shall be for no use or occupation forbidden by ordinance or law.

30 7. And it is also agreed by and between the parties hereto that the leases now in existence between the said Rebecca H. Shreve and the present tenants of the hereby demised premises for the room, rooms office, stores or quarters now occupied, used and enjoyed by them shall be and hereby are assigned to the party of the second part, and the rents reserved under all of the said leases shall be apportioned between the said Rebecca H. Shreve

and the party of the second part as of the date of this indenture.

The said party of the second part from this day forward will perform all the covenants and agreements of the said Rebecca H. Shreve contained in the said assigned leases, and will save harmless the said Rebecca H. Shreve from all liability of any kind whatsoever hereafter arising out of said leases or any of them, and will defend any action that may be begun by the lessees in said leases or any of them against the said Rebecca H. Shreve for any default or alleged default of the lessor in said leases occurring hereafter. 10

8. And it is also further agreed by and between the parties hereto that the party of the second part may, but only at its own proper cost and expense, make any and all alterations, improvements and additions to the hereby demised premises that it may see fit, or may tear down all or any portion of the buildings now erected or which may subsequently be erected on the said hereby demised premises and erect other buildings in their place and stead, provided, however, that such alterations, improvements or additions shall be made or rebuilding done on the following terms and conditions: 20

a. The party of the second part shall take such proper and legal steps as shall prevent the filing of any and all mechanics' liens or other claims of any kind and description against the said hereby demised premises for any and all alterations, improvements or additions made or rebuilding done by the party of the second part. 30

b. No building now erected or which may subsequently be erected on the said hereby demised premises, nor any portion thereof, shall be torn down and removed unless there be erected in its place and stead another building or buildings of equal or increased value with the building, buildings or portions thereof so torn down and removed, properly and securely constructed and erected, and of such character as to produce an

equal or increased net revenue with the building, buildings or portions thereof so torn down and removed produced.

c. No alterations, improvements or additions either to the buildings now erected or which may subsequently be erected on the said hereby demised premises shall be undertaken or made which shall in any way depreciate the value of the buildings so sought to be altered, improved or added to.

10 d. Before the party of the second part shall make any alterations, improvements or additions to or shall tear down and remove for the purpose of rebuilding as aforesaid, all or any portion of any building or buildings now erected or which may subsequently be erected on the said hereby demised premises, shall give to the parties of the first part ten (10) days written notice thereof. Said notice shall be given either to the parties of the first part themselves, or their attorneys, and shall state the character and scope of the said alterations, improvements, additions or rebuilding.

20 9. It is agreed between the parties hereto that every covenant and agreement contained in the above lease is material and of the essence of the agreement, and upon the breach of any of the covenants and agreements herein contained, this lease shall be void, at the option of the aggrieved party, and in case the party of the second part is at fault, the parties of the first part or any of them may immediately re-enter without demand and without notice.

30 10. It is also further agreed by and between the parties hereto that all rights and liabilities herein given to or imposed upon either of the parties hereto shall extend to the heirs, executors and administrators of such party.

In witness whereof the parties hereto have set their hands and seals the day and date first above written.

Witness:

EDMUND BURROUGHS

REBECCA H. SHREVE (L. S.)

LUCY E. SHREVE (L. S.)

LUCY E. SHREVE

Guardian (L. S.)

ALBERT N. GARRETT

JOHN S. WALLACE (L. S.) 10

SARAH SHREVE BISHOP (L. S.)

GEO. J. CAMPBELL

MARIE ELIZABETH WALLACE (L. S.)

HENRY E. WALLACE, JR. (L. S.)

ELLEN SHREVE HUNN (L. S.)

ALBERT N. GARRETT

JAMES M. POWER WALLACE (L. S.)

HETTY WALLACE KRAUTH (L. S.)

CHARLES PHILIP KRAUTH (L. S.)

ALBERT N. GARRETT

ISABEL REYNOLDS KRAUTH (L. S.)

THE ST. REGIS CORPORATION.

WILLIAM J. VERNON,

(SEAL.)

President.

Attest:

W. HENRY ELFRETH,

Secretary.

(Acknowledgments follow.)

STATE OF NEW JERSEY, } ss.:
COUNTY OF MERCER,

30

William J. Vernon, of full age, being duly sworn according to law, upon his oath deposes and says:

I reside at 817 South 60th St., Phila., Pa., and am the president of the St. Regis Corporation, a corporation organized under the laws of the State of Delaware,

and authorized to do business in the State of New Jersey.

In the latter part of the year 1913 or early in 1914, I conceived the idea of purchasing the Shreve property, Nos. 142 and 144 East State Street, Trenton, for the purpose of converting the same into a moving picture theatre and operating the same as such.

With that end in view, I opened negotiations for the purchase of this property through the Van Horn Realty
10 Company, and on February 4, 1914, entered into a written agreement of purchase for said property from Rebecca H. Shreve and Lucy Ellen Shreve, the purchase price in said agreement being named as \$65,000.

This was an absolute agreement of sale, and Rebecca H. Shreve and Lucy Ellen Shreve agreed to make title to the property within ninety days from the date of the agreement, and it was my understanding at this time, that I could get a clear and marketable title to the property from them. Later, I discovered through Ellis L. Pierson, Esq., who represented the Shreve interests, that
20 Rebecca H. Shreve and Lucy Ellen Shreve had merely consecutive life estates in the property, and that the property was encumbered by certain outstanding remainders. Mr. Pierson advised me that it would be necessary to have the property sold under an order of the Court of Chancery to get rid of the contingent remainders, and make a good and marketable title to it, and advised me that such an order had been made already, by the Court of Chancery, on another offer which had never been consummated.

30 After this discovery I began negotiations for the purchase of the property with Mr. Pierson, and about this time had W. Henry Elfreth, Esq., who was my attorney, begin to negotiate for me as well.

On April 8, 1914, the St. Regis Corporation was formed for the purpose of purchasing this property, and operating it when purchased, and at about this time we struck a bargain with the Shreve interests by

which it was agreed that the Shreves should do all in their power to procure a conveyance of the property to the St. Regis Corporation from Erwin E. Marshall, one of the Special Masters of the Court of Chancery, under the Chancery proceedings above described. The purchase price was to be \$58,400, and the property was to be conveyed subject to a \$5,000 mortgage and certain leases, the St. Regis Corporation depositing the sum of \$1,600 in bank for the purpose of taking care of certain commissions claimed by Clifford A. Worthington, in addition to the purchase price above mentioned. 10

An agreement of sale embodying these terms was drawn up, the parties being the St. Regis Corporation and each of the Shreve heirs, the minor heirs being made parties to it through their guardians.

We understood that title to this property could not be made immediately, and as the Shreves were desirous of having the income on the purchase price, and we were extremely desirous of having the property ready for business at the earliest possible moment, we cast about for some method by which we could get possession, and finally adopted the devise of a lease for a term, under which we were to go into possession and begin making our improvements, and remain in possession until such time as we could get title to the property. Such a lease was drawn up and executed on June 11, 1914, and the rental therein named being fixed on the basis of the income which would accrue to the Shreves on the purchase price of the property when it was paid; and the St. Regis Corporation agreeing to pay all taxes on the property; the whole object of said lease being to give the Shreves the benefit of the income from the purchase price, and our corporation the benefit of possession and control of the property in advance of the time and until the sale could be actually consummated and title made to the property. The agreement of sale was not actually signed until July 20 30

11, 1914, although its substantial terms were all agreed upon at the time the lease was entered into, and it was the intention of the parties that these two instruments should be contemporaneous as to date. They were both signed by all the Shreve heirs, except the minors, and they signed by their guardians. True copies are annexed hereto, and marked Schedules A and B respectively.

At the time the so-called "lease" was signed, the sum of \$250 was paid by the St. Regis Corporation as
 10 earnest money to bind the bargain.

After this agreement had been executed, the St. Regis Corporation entered upon the property and proceeded to make extensive improvements and alterations. Something over \$35,000 was spent in making these alterations, and the property was transformed into a moving picture theatre, and has been operated as such since June, 1914. These improvements were made not with the idea of improving the Shreve property for the benefit of the minor heirs, but with the idea that the title
 20 to the property would be made to the St. Regis Corporation, and that all questions as to the ownership of these improvements would be settled when title passed to the St. Regis Corporation.

WILLIAM J. VERNON.

Sworn to and subscribed before me this 28th day of January, A. D. 1915.

RALPH N. KELLAM,
Master in Chancery of New Jersey.

STATE OF NEW JERSEY, }
 30 COUNTY OF MERCER, } ss.

W. Henry Elfreth, of full age, having stated that he is conscientiously scrupulous of taking an oath, did make his solemn affirmation or declaration and say:

I reside in the City of Philadelphia. I am the secretary of the St. Regis Corporation, a corporation organ-

ized and existing under the laws of the State of Delaware, of which William J. Vernon is the president.

I represented Mr. Vernon as attorney during the early stages of the negotiations for the purchase of the Shreve property, Nos. 142 and 144 East State Street, Trenton. I also lent his enterprise some financial assistance, and when the St. Regis Corporation was formed became a stockholder, and secretary and treasurer of that company, by reason of my financial interest in said enterprise.

10

I know that Mr. Vernon first entered into a written agreement for the purchase of this property for \$65,000 with Rebecca H. Shreve and Lucy Ellen Shreve. This was in February, 1914. At that time we thought that a good and marketable title could be obtained from these persons, but later discovered that the property was encumbered by certain outstanding contingent remainders, and that Rebecca H. Shreve and Lucy Ellen Shreve had merely consecutive life estates in the property. Mr. Vernon, and I for him, then entered into negotiations with Ellis L. Pierson, Esq., who represented the Shreve interests, for the purpose of obtaining a good and marketable title to this property, if possible. We were informed by him that such a title could be made through a Chancery proceeding, and that an order had already been made for the sale of this property on an offer which had never been consummated.

20

Our negotiations continued during the early spring of 1914, and finally culminated in an agreement by which the Shreve interests were to use their best effort to obtain a conveyance of this property from the Court of Chancery, and we were to pay \$58,400 for the property, the property to be conveyed subject to a \$5,000 mortgage and certain leases.

30

We had incorporated the St. Regis Corporation for the purpose of taking this property over and operating it, and the agreement was made with this corporation.

In addition to the purchase price above named, the St. Regis Corporation was to deposit \$1,600 in bank for the purpose of taking care of certain commissions claimed by Clifford A. Worthington.

- It was apparent that no title could be made to the property immediately, and Mr. Vernon and the St. Regis Corporation were very anxious to get possession of the property in order that they might begin the extensive improvements that were required in order to
- 10 put the property in condition to be operated as a moving picture theatre. The Shreves, on the other hand, were obtaining a very inadequate income from the property, and were just as desirous of obtaining an adequate income from it, and in order that we might be put in possession, and that the Shreves might receive such an income, it was decided that an agreement of sale, embodying the terms above stated, should be entered into, and that at the same time the Shreves and the St. Regis Corporation should enter into a lease, under which the
- 20 St. Regis Corporation should take possession of the property and make the necessary alterations to it, and the Shreve interests would receive an adequate income from the property. The rental was fixed on the basis of the income on the purchase price, and the sole purpose of the lease arrangement was to give the St. Regis Corporation possession in advance of obtaining title, and to give the Shreve interests the same income as they would receive after title was made.

- The lease and agreement of sale were reduced to
- 30 writing, and signed by all of the Shreve interests; the minor heirs signing by their guardian; also by the St. Regis Corporation. They were intended to be executed contemporaneously, but for some reason or other the lease bears date one month prior to the agreement of sale, although both were actually part of the same transaction.

At the time the so-called "lease" was signed the St. Regis Corporation paid to the Shreve interests \$250,

earnest money, and immediately thereafter began to make payments in accordance with the terms of the "lease."

After these agreements were executed it was suggested that it might be possible to arrange for a sale of the property free of the \$5,000 mortgage encumbrance, and the taking back by the Special Master of a purchase money mortgage, and with this end in view an application was made to the Court of Chancery, which resulted in an order authorizing the sale on a \$10,000 cash payment and balance to be secured by a purchase money mortgage, and the sale to be made free of the encumbrance of the \$5,000 mortgage.

Almost immediately after the execution of the above-named agreements the St. Regis Corporation went into possession. It became necessary to tear down one of the small buildings on the premises, and I gave my personal bond in the sum of \$3,000 to insure the erection of a building of equal value. This bond the Shreves still have.

The St. Regis Corporation has expended something over \$35,000 in improvements on this property. These expenditures were made on the faith of the performance by the Shreves of the agreement of sale before referred to. It was never the intention of the St. Regis Corporation, or any of the parties, so far as I know, that the Shreve estate should benefit by these improvements, except as it would benefit in the obtaining a sale of the property as set forth in said agreement, and all questions of ownership of the improvements, etc., were expected to be settled when the settlement was made and the title conveyed.

W. HENRY ELFRETH.

Solemnly, sincerely and truly declared and affirmed and subscribed to before me this 28th day of January, 1916.

RALPH N. KELLAM,
Master in Chancery of New Jersey.

STATE OF NEW JERSEY, }
COUNTY OF MERCER, } ss.

Gardner H. Cain, of full age, being duly sworn according to law, on his oath deposes and says that he is the same Gardner H. Cain who, on the twenty-second day of July, A. D. 1913, made an affidavit in the above cause where he set out that in his opinion the property mentioned in the above cause, known as the "Shreve Building," No. 44 East State Street, in the city of
10 Trenton, was of the value of twelve hundred dollars a running front foot, making a total value of \$63,275.

This deponent now says that the increase in the value of the land, aside from the improvements that have been put on it since the former affidavit was made, is slight, and more difficult to realize for the reason that in the last two years money has been scarce for investments, and very few properties are selling in the middle of town because of the uncertainty of the money market.

20 This deponent further says that he is a member of the firm of Case & Cain, real estate dealers of the city of Trenton, and that they have had three different people considering the purchase of property on East State Street on the two blocks adjoining the block on which this building is situated, and while each party was satisfied with the price, they were afraid of the money market, and all decided not to purchase until things were more settled.

In the opinion of this deponent there has been an
30 increase in the value, but for the reasons above stated, it would have been very difficult to have realized on the increase at any time since the former affidavit was made.

It is the opinion of this deponent that if the money market becomes settled that there would be quite an increase in the value of the above-mentioned property, but it cannot be realized upon at the present time.

GARDNER H. CAIN,

Sworn and subscribed before me this first day of February, A. D. 1916.

H. W. BACKES,
Atty. at Law, N. J.

ORDER TO SHOW CAUSE WHY SALE
SHOULD NOT BE CONFIRMED.

(Filed April 25, 1916.)

IN CHANCERY OF NEW JERSEY.

It appearing that Erwin E. Marshall, one of the Special Masters of this Court, has reported to this 10 Court that pursuant to the terms of this Court's order, made on the twenty-fourth day of July, nineteen hundred and thirteen, he has sold the premises described in the petition in this cause to the St. Regis Corporation, a corporation organized under the laws of the State of Delaware, and authorized to do business in the State of New Jersey, subject to a mortgage of \$5,000 now a lien thereon, at private sale, for the sum of \$58,400 over and above said encumbrance; \$1,000 of said purchase price having been paid to the said 20 Erwin E. Marshall, as such Special Master, and the balance of \$57,400 to be paid in lawful money upon the delivery of a proper deed to the said St. Regis Corporation, provided said sale shall be confirmed by this Court; all of which appears by the report of the said Erwin E. Marshall, Special Master, dated February 23d, 1914, and duly filed; and

It further appearing that no proceedings to obtain confirmation of said sale by this Court have been taken thereon; 30

It is, on this 8th day of April, nineteen hundred and sixteen, on motion of Scott Scammell, solicitor of

the said St. Regis Corporation, purchaser as aforesaid, ordered, that the petitioners in this cause, and all other parties in interest herein, show cause before the Chancellor at the State House, in the City of Trenton, on Tuesday, the 18th day of April, nineteen hundred and sixteen, at ten-thirty o'clock in the A. M., why said report of said Erwin E. Marshall, Special Master as aforesaid, and the sale of said premises according to the terms and conditions in the said report mentioned,
 10 should not be ratified and confirmed, and said Special Master directed to execute a good and sufficient conveyance of said lands and premises to the said St. Regis Corporation, or its assigns, on its or their complying with the terms of said sale; and it is further

Ordered, that a copy of this order (which need not be certified) be served, within five days from the date hereof, upon the petitioners by their solicitor, and upon each of the other parties in interest as follows: upon such adult parties as reside in this State, personally;
 20 upon the minor parties in interest, personally upon their guardians *ad litem*; and upon such parties in interest as reside out of this State, by mailing the same to each of them, at his or her last-known address, by registered mail, with proper postage and registry fee prepaid.

E. R. WALKER, C.

Service of a true copy of the within order to show cause hereby acknowledged this 11th day of April, A. D. 1916, for the petitioners, Rebecca H. Shreve and Lucy E. Shreve.

30

ELLIS L. PIERSON,
Solicitor.

Due and legal service of the within summons is hereby acknowledged.

ROBERT H. McADAMS,
Clerk, Guardian ad Litem.

ORDER TO TAKE TESTIMONY.

(Filed May 22, 1916.)

IN CHANCERY OF NEW JERSEY.

Application being made by Ellis L. Pierson, of counsel with Samuel K. Robbins, guardian *ad litem* of the infant owners of the land involved in the above-entitled matter, for permission to take testimony to be used before this court upon the motion to confirm the sale herein, and Scott Scammell, Esq., of counsel with the purchaser, and Harold B. Wells, Esq., of counsel with the petitioners, consenting to the making of this order, and it appearing that such permission should be granted; 10

It is, on this 18th day of May, 1916, upon motion of said Ellis L. Pierson, of counsel with said Samuel K. Robbins, guardian, etc., ordered that it be referred to Frederick W. Gnichtel, one of the Special Masters of this Court, to take testimony to be used before this Court upon the motion to confirm the sale herein, the scope of such testimony to include the circumstances 20 of the making of the lease and agreement, copies of which are attached to the report of sale, and the matters set forth in the affidavits attached to said report.

E. R. WALKER, C.

We hereby consent to the making and entry of the foregoing order.

SCOTT SCAMMELL,
Solicitor for Purchaser.

HAROLD B. WELLS,
Solicitor for Petitioners. 30

IN THE MATTER OF THE APPLICATION
 OF REBECCA H. SHREVE AND LUCY
 E. SHREVE FOR THE SALE OF LANDS
 LIMITED OVER, &C. } On Petition.

TESTIMONY.

(Filed November 10, 1916.)

Testimony taken before the subscriber, Frederick W. Gnichtel, one of the Masters and Examiners of this Court, on Saturday, the twentieth day of May, 1916,
 10 at nine-thirty o'clock A. M., in the presence of Ellis H. Pierson, Esquire, for Samuel K. Robbins, guardian *ad litem*; and Scott Scammel, Esquire, and Charles Besore, Esquire, representing the St. Regis Theatre Corporation.

W. Meredith Dickinson, being duly sworn, testified as follows:

Direct examination, by Mr. Pierson:

Q. What is your full name, and what business are
 20 you in?

A. W. Meredith Dickinson. I am in the real estate business, at No. 150 East State Street, this city.

Q. How long have you been in the real estate business?

By Mr. Scammel—We admit that he is qualified to testify as a real estate expert.

Q. Are you familiar with the Shreve Building at Nos. 140, 142 and 144 East State Street?

A. I am.

30 Q. Have you been familiar with that building for the past three or four years?

A. Yes.

Q. In your opinion, has there been any increase in the value of that building since July, 1913?

A. You mean to say the value of the land?

Q. The value of the land and the building. The value of the land first.

A. Yes, I would say there has been an increase.

Q. What has been the increase in the value of the land since that date up to the present time?

A. Well, if I can answer the question in this way—I should say the land was worth \$1,300 per front foot, without the building, at this time.

Q. And what, in your opinion, would be the value of the building that was on the land in July, 1913, if it were sold on the land, in the condition it was in 1913? 10

A. I would say \$9,000. I might say in explanation that the old building was 50 feet front by about 40 feet in depth, and 36 feet high. The rear building was 85 feet in depth by about 15 feet high, and 25 feet wide, and I took the cubic feet of these buildings, and took a decimal of about $8\frac{1}{2}$ cents per foot, which would be a very knock-down rate, to include the fact that the buildings did not have much in them, and had depreciated.

20

Q. You did not testify in this case before?

A. No, sir.

Q. In your opinion what was the value of the land in question in 1913.

A. I would say that it had increased at least \$100 a front foot in three years. Say further that there has been very few sales in that block, and the only way to get at a real price per front foot is by means of comparison of what sales there have been there, and the sales further down East State Street.

30

Q. What sales do you compare in order to arrive at the price you have given?

A. H. M. Voorhees & Bros., Thomas Trapp, Delaware and Atlantic Telephone and Telegraph Company, Public Service Corporation, and the Wilson property on East State Street next to the church. You might also take into consideration the sale of the B. M. Phillips Company to the Broad Street National Bank, but

that was sold for the reason that Mr. Phillips was indebted to the bank, and the bank took the property over for a knock-down price.

Q. Where was the Voorhees' property of which you submit a comparison?

A. No. 131 to 135 East State Street. It has a frontage of 60 feet.

Q. Do you know about when it was sold to Voorhees?

10 A. Sold about four years ago, approximately. I cannot remember just the date. It was on or about January, 1913.

Q. Do you know about what price Voorhees paid for that building?

A. It was about \$90,000.

Q. In what respects did that property differ from the Shreve property?

A. It was a larger frontage and a greater depth.

Q. How much larger frontage?

20 A. Ten feet.

Q. How much greater depth; do you know?

A. I did not measure that.

Q. Where is the Trapp property situated?

A. On East State Street.

Q. And how far from the Shreve Building?

A. About fifteen feet.

Q. What frontage has that; do you know?

A. Twenty feet.

Q. And what did it sell for?

30 A. Sold five or six years ago, and, the best I am able to find out, for about \$30,000, but that property had a very good building on it, taking up the whole area.

Q. The Delaware and Atlantic Telegraph and Telephone building, where is that situated?

A. No. 216 East State Street, about three hundred or four hundred feet from the Shreve property.

Q. Nearer or further away from the center of town?

A. Further.

Q. About how wide is it?

A. My recollection is that it is about forty-one feet.

Q. For what price did it sell?

A. It was bought in two parcels, and the matter has just been taken up before the Public Utilities Commission within the last few weeks, and Mr. Gardner H. Cain, Mr. W. A. Holcomb and I each regard that property alone at the present time at about \$1,000 a foot, valuing it separate and apart one from the other. 10

Q. That is the value of the land alone?

A. Yes, sir.

Q. The present value?

A. Yes, sir.

Q. And the Public Service land, how far is that from the Shreve Building, and what is it worth?

A. Next door but one from the Delaware and Atlantic Telegraph and Telephone building, and valued at the same price.

Q. What is the value of the land alone?

20

A. About \$1,000 a foot.

Q. And the Wilson property is how far?

A. The Wilson property is about a block and a half from the Shreve property, and has a frontage of 43 feet and 6 inches, and a depth of 237 feet, running back to Centre Court.

Q. It is a block and a half which way? Further from town?

A. Further from town.

Q. And what is the value you fix upon the Wilson 30 property?

A. The property was sold two or three years ago for \$34,500, but that had some fairly good buildings on it not for business purposes, but for residences, and a garage.

Q. Was the building on that land worth more or less per front foot than the building on the Shreve property? I want to get the whole value of the building and the whole selling price.

A. I should think the building on that plot was worth—just roughly now—\$7,500.

Q. Worth only \$1,500 less than the Shreve Building?

A. I think so.

Q. And the B. M. Phillips' property which was sold to the bank, do you know the price of that?

A. \$62,250, and that was fifty foot front.

Q. And where is it located in respect to the Shreve property?

10 A. Almost directly across the street.

Q. Do you know how long ago that was sold to the bank?

A. I should say, approximately, five years ago.

Q. Is the value of land in the vicinity of the Shreve Building increasing in value, in your opinion?

A. Yes.

Q. Could you give the rate per year of this increase?

A. I could not.

Q. Could you give the percentage per year that it has increased?

20 A. No, I do not think I could. I think the demand and the supply largely covers that. There is no property for sale, that I know of, on that side of State Street.

Q. Does that tend to increase or decrease the valuation of the Shreve property?

A. It tends to increase the valuation of the Shreve property.

Q. In your opinion, would it be wise for a person who would obtain the fee on that property eight years
30 from now to sell it at the present time for \$63,400?

Objected to as immaterial, irrelevant, and it seems to me is not a proper subject matter upon which the witness should render any opinion, and the elements which go to make up the reason would be largely speculative. And also because that question has been disposed of by the decree of the Court of Chancery, upon which this pro-

ceeding was instituted, and upon which my clients, together with other interested parties, including materialmen, had liens to the valuation of approximately \$35,000, and it is, therefore, not a proper subject for any evidence of any witness.

A. I would say that the valuation of the property to-day, in the same condition it was in 1913—in other words, previous to the building of the present building—would be worth to-day \$68,300. Allowing, in my figures, 51 feet of land at \$1,300 a front foot, although the buildings would be worth to reproduce in the condition they were in at that time \$9,000, taking into consideration the fact that it would have to be torn down to make the property valuable, and adding \$2,000 to the price of the land per front foot for the salvage as a compensation to the owner for what salvage you could get out of it. 10

Cross-examination, by Mr. Scammel:

Q. In the list of buildings, Mr. Dickinson, which you have submitted, with respect to sales, I notice that you have not included the Elmore Building. Was that an oversight? 20

A. I did not look it up.

Q. That is a building nearly opposite?

A. Yes. That would be a very good comparison, providing, of course, that it was bought and sold by a willing buyer and seller.

Q. Did you ever have the Shreve Building in your office for sale? 30

A. We may have had. I do not think so. I do not tend to that department of the business enough to answer you.

Q. In 1913 and 1914 the real estate market in the city of Trenton was at a very low condition, was it not?

A. Yes. It is much better now.

Q. As a matter of fact, it has only been practically

within the last three months that there has been any movement in the real estate market to speak of, has it not?

A. I would not say that. I think the movement started a year ago this spring.

Q. The spring of 1915? Up to that time real estate was practically a drug on the market, was it not?

A. I would not say that. In the center of town there is always a market price for good properties, but the
10 dull season affects buildings outside of the business center, that are of the older constructions.

Q. During the period of, say from 1913 to 1915—in the spring of 1915 there was very little movement in any real estate among the center of town properties?

A. Yes. Not only for the reason that it was not particularly active, but also for the reason that many of the owners of real estate in the center of the city were holding their properties above the market.

Q. The Shreve Building, as you knew it, was a very old building, and had nothing adaptable to the uses of
20 an office building similar to the modern office buildings; is that true?

A. It was not in any way adaptable for an office building.

Q. So that any purchaser of the lands on the land valuation you spoke of could only be interested in the purchase of it in order to improve it.

A. Yes.

Q. Your explanation of the value of the buildings at \$2,000 would indicate that situation as to these build-
30 ings?

A. Yes.

Q. Have you any knowledge as to what income was derived from these buildings?

A. No, sir.

Q. Your recollections of the buildings in 1913 were that they were old and dilapidated?

A. Yes.

Q. The valuation, which you at present estimate, of the land in the Shreve estate is reached by reason of an estimate of the valuation of the land with the surrounding improvements at this time?

A. Yes.

Q. The principal improvements are the Bell Telephone Building, which you have mentioned; the H. M. Voorhees' store and the Broad Street Bank Building? I believe these are all the buildings that have been built since 1913?

10

A. I think so, yes.

Q. In estimating the value of the land of the Voorhees' block, you are taking into consideration the depth of the land, are you not?

A. Yes.

Q. Do you know the depth of the land of the Shreve Building?

A. The Voorhees' land is probably 150 feet or 145 feet deeper than this land.

Q. And has the use of an alley in the rear?

20

A. I think it has the use of an alley in the rear. It is also better for plotage.

Q. Do you know the cubic feet in the Trapp Building? The cubic area?

A. I could guess it. It is 120 feet—142 deep and approximately 32 feet—Mr. Baker has drawn my attention to the fact that that building is new. We will call the old building 60 feet by 20 by 32. It is about 3,600 cubic feet. Now, then, take that of the old building at $8\frac{1}{2}$ cents per cubic foot.

30

Q. Would that made any difference in the valuation that you put on the Trapp property as \$30,000?

A. Not much. I did not put a valuation on the Trapp property of \$30,000. I told you it was sold for that.

Q. I recall that you said it was sold for that. The list of sales, with the exception of the Elmore Building, was practically the only sales of property which

have been made in this vicinity, along State Street, within six or seven years, were they not?

A. Yes. I guess that is true.

Q. The Shreve property had been upon the market for quite some time, Mr. Dickinson?

A. As far as I know, it had, yes.

Q. Speaking of the changes in valuation of land in the period of eight years; in your experience, have you not seen land very rapidly depreciating in that time?

10 A. Yes.

Q. As a very noticeable instance of the depreciation of the value of property, are the South Warren Street properties an example?

A. Yes. Especially below Front Street.

Q. Warren Street was at one time the principal business street in Trenton, was it not?

A. Yes.

Q. Then the business went the other way?

A. Yes.

20 Q. And that, of course, would make a great difference in the value of the properties?

A. A big difference.

Q. The Commonwealth Building, wherein you occupy offices, is a noticeable example, is it not, Mr. Dickinson?

A. Yes.

Q. It is a matter of fact, Mr. Dickinson, that a number of offices in the Wilkinson Building have been unoccupied for a long time, is it not?

30 A. And in my opinion they will be unoccupied for a long time.

Q. Is this because of the large rent?

A. No. I think it is more the personality of the landlord.

Q. The Elmore Building, which is immediately opposite the Shreve Building, is for sale, is it not?

A. It was, but whether it is now or not I do not know. It was recently divided in half, and I believe

they are going to use it, and have an Arcade in the rear.

Q. But up to the present time it was for sale, was it not?

A. Yes, I believe it was.

Q. And has not been sold?

A. No, sir. It has not been sold.

Q. In these figures which were given upon the other buildings, with the exception of the Public Service and Bell Telephone buildings, you were just stating the price 10 for which they were sold, were you not?

A. Yes. I was stating the price at which they were sold.

Q. The \$1,000 estimate which you placed upon the value of the land of the Bell Telephone Building was recently placed there by you in an estimate, was it not?

A. An estimate made very carefully, and governed by prices along the street, for the purpose of testimony before the Public Utilities Commission.

Q. And what was the depth of that land? 20

A. It runs back to the Post Office Alley. I would say it was probably 150 feet.

Q. This value you placed upon this property was, as you say, for testimony in the Public Service Commission matter, and in order to estimate what the cost of the plot was you took into consideration the prices along the street?

A. Yes.

Q. It was a valuation gathered from the sale valuation placed upon these properties? 30

A. The valuation I placed on it was a price made up from comparative sales.

Q. And the sales you have compared it with was the list of sales you have already given?

A. Yes.

Q. In fixing that valuation did you take into consideration the size and purpose for which the property was devoted?

A. No, sir; I did not.

Q. Did you take into consideration the availability of the purpose for which the property was devoted?

A. No, sir. I made the valuation of the property from an estimate derived from the value of the properties on the street. For instance, a piece of land 50 feet front on a main street is worth more per foot than a piece of land 25 feet front, owing to the fact that a 50-foot front could be used to a much better advantage
10 than could a piece 25-foot front. A notable example of this are the sales on Tucker Street for warehouses. All the sales on that street for the past five or six years have been \$200 per foot, and I was able to obtain, in two different parcels, two pieces of land approximately 25 feet front, at the rate of \$100 per foot. That is, two small pieces were in between other large properties which had actually sold for \$200 front foot.

Q. The railroad siding had something to do with this, did it not?

20 A. Yes. The railroad siding running into the back of the Tucker Street properties was a very large factor in obtaining purchasers for this property because of the ability to use it.

Re-direct examination:

Q. Mr. Dickinson, in fixing up the knock-down value of the Shreve Building you said \$2,000, did you not?

A. I called it a salvage price. Yes.

Q. Did you take into consideration that the property had been made available for a theatre by the de-
30 struction of the center store and the rear one-story building?

A. I would say the best you could get out of this building for any purpose was \$2,000 in value.

Q. Even for renting purposes?

A. No, I would not say that, inasmuch as the buildings on it do not fit the land.

Q. For renting purposes, would the buildings be of more value than \$2,000?

A. Yes.

Q. And if a person owning the land preferred to use only the rear, and leave the front building stand, what then would be your estimate on the value of the building?

A. I would not put any more value on the buildings than \$2,000. The tenant is paying a large rental price on the location of the land, and not on the value of the buildings.

Q. Has there been any depreciation in the value of 10 land on East State Street between Broad Street and the canal?

A. Any depreciation? No, sir.

Q. In your opinion is there likely to be any depreciation in the next ten years.

A. In my opinion there will not. There is more likely to be an increase.

Q. Which way has business a tendency to proceed on East State Street?

A. East.

20

Q. Do you know at what price the Elmore Building was offered for sale?

A. I do not know.

Q. Is the Perrine property on the corner of East State and Montgomery Streets for sale?

A. Yes.

Q. Do you know at what price it is offered for sale?

A. I do not, and nobody else does.

Q. Do you know the price any purchaser has offered for that property within the past few years?

30

A. I know of no firm offers.

Alfred T. Parker, being duly sworn, testified as follows:

Direct examination, by Mr. Pierson:

Q. What business are you in, Mr. Parker?

A. Real estate and insurance.

Q. Where?

A. No. 150 East State Street.

Q. How long have you been in that business?

A. Five years in the office, and about four years outside.

Q. In all, about how long?

A. Nine years.

Q. Are you familiar with the values of land on East State Street, in the city of Trenton?

10 A. I am.

Q. Do you know the Shreve property?

A. I do.

Q. And have been familiar with it for the past four or five years?

A. Yes.

Q. In your opinion, has the value of that property, without considering the improvements that have been made upon it in the last three years, increased since July, 1913?

20 A. I think it has.

Q. To what extent has it increased from July, 1913, to the present time?

A. I would say there has been a gradual increase—I have figured it here on the land valuation at \$1,350 per foot; figuring that land value upon recent sales I have made on East State Street within 300 feet of this building. This makes a total of \$68,620 for the land, making your allowance for your buildings, approximately the same as Mr. Dickinson, in cubic feet, with
30 the deductions, my figures are about \$74,000.

Q. Upon what sales do you base this figure?

A. The building at No. 227 East State Street. The building formerly owned by Stark and Faussett.

Q. And what was the size of that property?

A. Twenty-one feet front and 150 feet deep.

Q. And that property is further from the center of town than the Shreve property?

A. I should say about 300 feet.

Q. At what price was it sold?

A. It was sold for about \$31,000.

Q. What, in your opinion, was the value of the building on that land?

A. The building upon that land was about \$9,000. That building is in two sections. While it covers one story, the entire length of the lot, the front part is three stories high. It is in an up-to-date condition. The second and third floors have all improvements.

Q. The sale price of that land was \$22,000? 10

A. \$22,000 was the ground value.

Q. In your opinion, is that land worth more or less per foot than the Shreve property?

A. That ground is worth less.

Q. Why is it worth less?

A. Further away from the center of town. Further away from the business section. There are more pieces of property for sale in that block than between Montgomery and Broad, where the Shreve property is located. Further, as Mr. Dickinson has stated, the Shreve 20 property has 51 foot frontage, and in order to get that same frontage further out, it is necessary to acquire two pieces of property.

Q. In your opinion, will the values of land on East State Street continue to increase?

A. It will.

Q. And upon what do you base your opinion?

A. Upon the demand for property on East State Street at the present time.

Q. In what direction on State Street have the im- 30
provements in business been made at the present time?

A. East on State Street, from Broad Street to the canal.

Q. And will those improvements continue in the next ten years?

A. Yes.

Q. Why do you think they will?

A. Because of certain negotiations that are now

under consideration, regarding certain properties purchased, and the buildings are to be torn down—new buildings replacing the same.

Q. In what portion of the city are the largest office buildings?

A. In the immediate vicinity of the Shreve Building. Within 200 feet of the Shreve Building.

Q. What effect has that fact upon the increase in value of the Shreve Building?

- 10 A. Well, from the Shreve property alone, with its frontage—that would be a hard question to answer. It might be for two reasons. Either for a mercantile reason—business from the office buildings, and theatre section.

Cross-examination, by Mr. Scammel:

Q. If these negotiations for this sale of property, which you speak of, were to fall through, Mr. Parker, what difference would that make, in your view, as to the increase of the value of this property on East State
20 Street?

A. None whatever. The reason I said that was that there is hardly a week that real estate men are not refusing offers on certain pieces of property in this immediate neighborhood.

Q. No sales have been made of any property in this immediate neighborhood excepting the property you sold?

A. Yes, one I did not mention. It is not quite positive in my mind at present whether it is No. 229 or not.

- 30 It is the property known as the DeCou property.

Q. That has recently been sold?

A. Yes. Twenty-one feet front.

Q. What price?

A. \$21,000 and buildings. An antiquated brick dwelling stands on that, not worth, for salvage, perhaps \$500.

Q. The property No. 227 East State Street was sold to the present occupants of the building?

A. Yes.

Q. The values, as you have testified, is an estimate on your part entirely of the values of the land and the buildings?

A. Not at all. I leased that building to the Stenography and Reporting Company, and at that time at figures showing the approximate cost of that building on the ground. The building, as estimated, would have cost 10 that much money to put it up at that time.

Q. This partly runs to an alley in the rear?

A. To Centre Court.

Q. Which is an available entrance to this property?

A. Yes.

Q. This would go to make up the value of the land, would it not?

A. Yes.

Q. In the Shreve property, where they have not the 20 availability of an alley in the rear, that would depreciate the value?

Mr. Pierson—I object to that question as based upon premises which are not true in fact.

A. It would have the same tendency to decrease the value the same as the other would have the tendency to increase the value.

Q. To what extent do you figure that that available rear entrance would increase the value of land in this vicinity? 30

A. Practically none whatever so far as the Shreve building is concerned. The Shreve property would be on the dead end, and the alley is not wide enough to turn around in, so it would be almost impossible to use it.

Q. Well, if the alley was available for use? It would have some effect upon the value of that land, would it not, if the alley was available for use?

A. Yes.

Q. Would the fact that it was available for use have some effect upon the value?

A. Yes, but not so much so, as they have more frontage in width to overcome than they have in the property at No. 227 East State Street. They have a frontage of practically 21 feet, and no entrance to get to the rear of their building.

Q. Undoubtedly that was taken into consideration in figuring the value of \$31,000?

10 A. I do not know. I cannot answer that. Whether that was taken into consideration by the parties buying it or not I cannot say. I suppose so.

Q. Neither can you say as to what these people considered in paying \$31,000, except that the property was in their possession.

A. The building practically satisfied their purpose because all improvements were already there, and in buying the printing shop had sufficient room for the Stenography and Reporting offices.

20 Q. You did not testify as to the value of this property in 1913. Had you had any experience in the buying and selling of real estate in 1913 in this vicinity?

A. I had nothing more than attempting to sell the Shreve Building.

Q. You were attempting to sell the Shreve Building?

A. Yes.

Q. Were you an agent for the Shreve Building at that time?

A. There were two brokers—Mr. Worthington and
30 myself.

Q. You are still interested in that commission, perhaps?

A. No, because the party to whom this building was sold was other than the parties I was interested in.

Q. The price for which you were authorized to sell the property in 1913 was what?

A. I cannot give you the exact amount. In the neighborhood of \$60,000.

Q. Were you able to get any purchaser for the property notwithstanding that sum?

A. Just at the time the agreement was entered into for this property I was endeavoring to buy a property for a Trenton man in this vicinity.

Q. Did you make any offer to the Shreves?

A. I made no offers to the Shreves direct; Mr. Worthington and I took it over in addition to the property. The agent in charge went to buy another property next owned by the Wood Estate. I took this 10 matter up with Mr. Wood, saying that the Shreve property at that time could be bought for \$60,000, or a little more, and offered Mr. Wood \$65,000 for his building, which he refused.

Q. Then your offer was only an offer which was contemplated to sell the two buildings?

A. Not necessarily. In the meantime agreements had been made between Mr. VanHorn and Mr. Worthington, and the parties who have since held the lease on the property. 20

Q. You mean the St. Regis have actually bought the property?

A. Yes.

Q. That was the reason you did not communicate any offer to the Shreves themselves?

A. Yes.

Q. You were acting in conjunction with Mr. Worthington, and dealing with the Shreves through him, as he was the broker of the Shreve property?

A. Yes. 30

Q. You had known that Shreve property was on the market for several years, had you not, in 1913?

A. Well, I cannot say for how long. I knew it had been on the market for a year or two prior to that time.

Q. The property is not available for an office building, is it, Mr. Parker?

A. At the present time?

Q. Yes.

A. Well, the front part first floor could be made available, and the probabilities are that the floor above could be made available for offices, and no doubt some tenants could be obtained from several office buildings in the immediate vicinity. These are all occupied with the exception of the Commonwealth Building.

Q. And but a portion of the Broad Street Bank Building is occupied?

A. I do not know. I believe there are some parts
10 untenanted.

Q. There is a portion of the American Mechanic Building unoccupied also, is there not?

A. I could not say.

Q. If these buildings are unoccupied, that would make this property unavailable for an office building, would it not?

A. Not necessarily, because there are men who have offices in the center of town who, if the second floor were made tenantable, would prefer a second-story front
20 office to the rear of these large buildings.

Q. To do that, it would incur considerable expense, to make a modern office structure?

A. It would necessitate some. It would necessitate an entrance on both sides. I do not know the condition of that floor since the change. I could have leased the entire second floor to a dentist if it was put in shape some time ago. But Mr. Vernon would do nothing, and I located him elsewhere.

Q. Did you say you located this dentist somewhere
30 else?

A. Yes.

Q. In what building?

A. This side of the St. Regis Theatre.

Q. The rental per month was what?

A. \$35 per month.

Q. That is what he is paying?

A. Yes.

Re-direct, by Mr. Pierson:

Q. Is he getting offices as large as the second floor of the Shreve Building?

A. No. He has two rooms, I suppose, 12x14, and only one other small room on the side, probably about 6x8.

Q. He has not as much a showing on the street as he would have in the Shreve Building?

A. He has two windows on State Street.

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Henry E. Finch, being duly sworn, testified as follows:

Direct examination, by Mr. Pierson:

Q. Were you the agent for the Shreve estate in the renting of the offices and stores, etc., in the Shreve Building prior to July, 1913?

A. I think I was; but I will explain that. When I first assumed that business, I only had one or two offices, and then another would come along, and so on down until I finally had the whole building; the later 20 part of the time.

Q. Just prior to your giving up that agency, what were the rentals of the rooms on the second and third floors of the Shreve Building?

A. They were unoccupied, but the rental was \$20 on the east side, \$20 on the west side, \$12.50 in the middle, in front, and \$7 in the rear of the middle front. That is the second floor.

Q. And the third floor?

A. The third floor, on the east side, was \$10; on the west side, \$10; in the middle front, \$8, and the rear middle, \$7. 30

Q. Who occupied the building in the rear of the principal building, which was afterwards torn down?

A. Hazelett and Harrison, printers, occupied a portion of it.

Q. What rent were they paying?

A. They were paying \$435 per year for the basement and one rear room in that part.

Q. Who else was occupying part of that rear building?

A. There was no one that paid rent.

Q. Opposite the part of the rear building that the printers were occupying, what room or rooms were let?

A. One next to the main building.

Q. And what was its size?

10 A. About 16x18. Maybe 14x18.

Q. In your judgment, what would the value be per month?

A. That was rented one year to the Street Railroad. I do not remember the rent.

Q. Have you got your book here to tell us?

A. Yes (producing book). That was \$16 per month.

Q. What was the rental from the Malloy and Reading store, afterwards occupied by Taylor?

A. \$65 per month.

Q. And which store did they occupy?

20 A. They occupied the second one from the west end.

Q. The center store?

A. Yes, practically.

Q. And who occupied the westerly store?

A. Mr. Hutchinson.

Q. And what rental was he paying?

A. \$65, but he had, besides that, this third floor middle room for his tailors.

Q. What was the value of the third floor middle room before she gave him that clear?

30 A. He was paying \$6 for it.

Q. Have you seen the Shreve Building since the theatre was built?

A. I have looked at it once or twice.

Q. Do you know if there is any entrance to the second and third floors from the ground floor?

A. I do not know if there is or not. I know there is a place for a stairway, but I do not know whether there is an entrance or whether it is closed.

Cross-examination, by Mr. Scammell:

Q. What did Mr. Worthington pay a month?

A. He paid \$35.

Q. Paid \$35, and he occupied the store next to the Wood property, did he not?

A. Yes. It was an office when he had it, one floor above the pavement.

Q. And the difference between the Hutchinson and the Taylor places were that they were put down to the floor level?

A. Yes.

10

Q. And it was simply an office?

A. It was simply an office.

Q. The total rental of the building, so far as you knew in 1913, was what, Mr. Finch?

A. In 1913?

Q. Yes.

A. \$3,371 for the year 1913.

Q. Do you know anything about the expense of the upkeep of the building during that year?

A. Yes.

20

Q. Did you have charge of that matter?

A. Only the expense connected with the building, taxes, etc.

Q. What were the expenses in connection with the building?

A. The expenses I paid were \$636. That did not include taxes, and it seems she paid bills outside of that.

Q. This covers coal?

A. Yes.

30

Q. You bought the coal?

A. I won't say I bought all the coal.

Q. How long have you represented the Shreves in renting the building?

A. As I said before, I started on two or three rooms at first. The other was paid direct to her, and so on, until the latter part of the time I had the whole building.

Q. All with the exception of Mr. Worthington? Did you have Mr. Worthington at the last?

A. I had him in the last year.

Q. You were a tenant in this building?

A. Yes.

Q. And it was rather difficult to get tenants, was it not, Mr. Finch, for this building?

A. Well, not altogether. There were times we could not supply the demands, and there were other times we
10 had trouble in renting. The simple reason was she wanted to get more money than the tenants would pay.

Q. The building was an old building?

A. The building was built—I moved there on October 10th, 1868, and I was the second tenant in the building.

Q. And the building in 1913 did not have modern conveniences, did it, Mr. Finch?

A. Well, the heating plant was all right.

Q. That heated by steam?

A. Yes, heated by steam. It had toilets like you have
20 here. It did not have electric lights in all parts. Some did not want them. Other parts did have.

Q. You say though that Mrs. Shreve would rather give up the rental of this room on the third floor than go to the expense of putting up a fire-escape?

A. You misunderstand me. When Hutchinson first rented he paid \$35 for the store and \$6 for the room on top. When the change from offices to stores was made the price went up to \$65. He still had the room up there for \$6. He then goes down to Riverton and
30 talks her out of \$6 for the top floor. Then comes the fuss between the State and she. On account of having tailors there the State demanded a fire-escape for the building, which would cost from \$600 to \$700, and she, rather than go—in fact I suggested the matter to her—rather than go to that expense, to give the two tailors a room on the first floor, which was vacant. That was the way we got out of paying \$600.

It is understood that the testimony is taken by A. Barrett, and written out by her; and the signatures are hereby waived.

Testimony taken pursuant to adjournment before the subscribed, Frederick W. Gnichtel, one of the Masters and Examiners of this Court, on Friday, the twenty-sixth day of May, 1916, at 2 o'clock P. M.

Appearances as before.

Ellis L. Pierson, being duly sworn, testified as follows:

10

Direct examination, by Mr. Pierson:

Q. Whom did you represent at the time of the making of the agreement and lease mentioned in the report of sale?

A. I represented Mrs. Rebecca H. Shreve, and Mrs. Lucy E. Shreve, the petitioners.

Q. When did you first have a conversation with Mr. Elfreth in regard to the Shreve property?

A. On or about April 10, 1914.

Q. Whom did he represent?

20

A. He stated that he represented Mr. William J. Vernon, of Philadelphia.

Q. Concerning what matter was that first conversation?

A. It concerned the agreement of sale which had been signed by the Shreves in February, 1914, in which William J. Vernon was named as purchaser, which agreement is mentioned in the first part of Mr. Vernon's affidavit, attached to the report of sale. And also in the first part of Mr. Elfreth's affidavit.

30

Q. What was said?

By Mr. Scammell—I object to any evidence being given as to what was said in connection with this agreement, for the reason that the

parties subsequently, and sometime in July of 1914, agreed in writing for the purchase of the premises in question, and that, therefore, all prior talks with reference to either of these instruments is inadmissible, upon the theory and claim that it may vary all the terms of the written agreement, and upon the further ground that whatever was said before has been reduced to writing, and that is the best evidence of the agreement between the parties.

10

A. Mr. Elfreth said that he was surprised to have received a copy of a letter which I had sent to Mr. VanHorn, in which I had refused to accept a check and a note, aggregating \$500, as the purchase price mentioned in the Vernon agreement. I explained to Mr. Elfreth that the two Shreves could not perform the agreement which had been obtained by Van Horn for Vernon, and showed Mr. Elfreth the files in this matter. Mr. Elfreth said that his client would take

20

no advantage of the Shreves, but hoped that some other agreement for the sale of the lands might be made. He said that his client, Mr. Vernon, was ready to purchase the property immediately. He said that the price mentioned in the Vernon agreement being greater than the price fixed in the report of the Master might be a cause for some dispute, as he thought his client should purchase at no more than the amount fixed in these proceedings. I did not then know that Mr. Elfreth had, prior to that time, heard of the Chancery proceed-

30

ings. He told me that he had not, and that he and his client had both been of the impression that the Shreves could perform the Vernon agreement.

Q. When did you next hear from Mr. Elfreth?

Mr. Scammell—Same objection as above, that it concerns the transaction which was subsequently concluded, and in the form of an agreement in writing.

A. A few days later, Mr. Elfreth came to my office, and said that his client was ready to purchase immediately, and a day or two after that visit, I received this letter, dated April 14th, 1914, from Mr. Elfreth.

PHILADELPHIA, April 14, 1914.

Ellis L. Pierson, Esq.,

Trenton, N. J.

DEAR SIR—In regard to the matter of the name which is to appear in your petition to the Court, I have consulted with Mr. Vernon and 10
am instructed to inform you that title will be taken in the name of Mr. William J. Vernon.

Very truly yours,

W. HENRY ELFRETH.

(Letter marked *Exhibit 1 ex parte* Mr. Robbins.)

Q. When was it first proposed to make a lease to Mr. Elfreth, or his client.

Mr. Scammell—Same objection to this ques- 20
tion.

A. That proposal was made by Mr. Elfreth in the early part of June, 1914. Mr. Elfreth came to my office. I asked him if he and his client were trying to borrow \$60,000 on the Shreve property in Trenton. He said "Yes," but thought that they had not been successful, and asked that some arrangement be made whereby they could go into possession immediately. During June there were several conversations had between Mr. Elfreth and me concerning the proposed lease and agreement. Mr. Elfreth offered to take a lease 30
for five years, and offered to agree to purchase the property within one year. This offer was made by him on behalf of the St. Regis Corporation, which he told me Mr. Vernon had formed.

Q. Did you represent Mr. Elfreth, Mr. Vernon, or the St. Regis Corporation during these negotiations?

A. I did not.

Q. Who did represent them?

A. Mr. Ralph Kellam was their New Jersey counsel, as Mr. Elfreth told me, and as appears in a letter of June 12th, 1914, which I offer in evidence, and as Mr. Kellam himself afterwards told me.

June 12, 1914.

*Ellis L. Pierson, Esq.,
Broad Street Nat'l Bank Bldg.,
Trenton, N. J.*

10

DEAR SIR—Will you kindly mail at your very earliest convenience the copy of the agreement of sale which accompanies the lease of the Shreve property. Mr. Kellam wants to look over this and O. K. it.

Very truly yours,

W. HENRY ELFRETH.

(Letter marked *Exhibit 2 ex parte* Mr. Robins.)

Q. Did Mr. Elfreth give any reason for making the
20 lease for a longer period than the agreement of sale?

Mr. Scammell—Objected to, as the lease and agreement of sale speak for themselves.

A. He said that in case a sale could not be made that his company would have possession of the property for a period of five years, during which they would have an opportunity of getting back the money expended on improvements. He said that in my office in June, 1914, and about June 10th. He also said that the purchase might be made immediately if more than
30 one-half of the purchase price could remain upon mortgage. I told him that a petition to that effect would be filed, and immediately started about preparing such a petition.

Q. Were your relations with Messrs. Vernon and Elfreth during this time entirely friendly?

A. They were not.

Q. Why not?

Mr. Scammell—Objected to upon the ground that it is immaterial and irrelevant.

A. About the middle of June I sent Mr. Elfreth a form of agreement, the first forms having been drawn on or about June 11th. Mr. Elfreth altered the agreement which I sent him, and took it to the Shreves in Riverton and obtained their signatures to it. He brought me the agreement a day or two later and showed it to me with Shreves' signatures. I was very angry with him for having gone to the Shreves and obtained their signatures to the agreement in terms different from the terms I had written. When Mr. Elfreth left my office both he and I were in an angry mood, although Mr. Elfreth had told me he would cancel the agreement which he had obtained. 10

By Mr. Scammell—I move that the answer be likewise stricken out as being not responsive to the question.

Q. Was the petition for the sale, with a large part of the purchase price to be left upon mortgage, made? 20

A. It was filed in this cause on or about June 30, 1914, resulting in an order made herein that the property might be sold upon the receipt of \$10,000 in cash.

Q. Did you inform Mr. Elfreth or Mr. Vernon of these proceedings?

A. I informed Mr. Elfreth that the petition was being prepared, but I do not remember informing him the result of the filing of it. At no time do I remember that he ever asked me concerning it. After the petition was filed, Mr. Elfreth gave me notice that negotiations were at an end, by letter of July 2d, 1914, which I offer in evidence. 30

July 2nd, 1914.

*Ellis L. Pierson, Esq.,
Broad Street Bank Bldg.,
Trenton, N. J.*

MY DEAR MR. PIERSON—As a result of the difficulties that have arisen with respect to the lease of the

printers, Mr. Vernon has concluded it would be unwise either to lease or buy the premises 138 to 144 State Street. Mr. Kellam, our New Jersey counsel, is strongly of the opinion that if we signed the lease we would be assuming law suits in lieu of possession of property essential to our building operations. If the printers are able to sustain their contention that their lease expires not earlier than December 31st, it would be impossible to complete our building before May or
10 June, and we would then have the unprofitable summer months to tide over; and in the meantime we would carry a \$65,000 investment which would be of no value whatever to us. I suggested one final proposition to Mr. Wallace, to wit: that we be allowed to go in possession under the lease guaranting to Mrs. Shreve an income at the rate of \$1,500 per annum until she could give us actual possession of that portion of the premises to the rear of the stores. This Mr. Wallace was certain Mrs. Shreve would not consent to. While, on
20 the other hand, Mr. Vernon would not consent to anything else. He felt that at every stage, when the proceedings had reached a critical point, he had made a concession, and he felt that in the present situation the burden was upon Mrs. Shreve to make a concession. Rather than spend any more money on an uncertainty, we have instructed our architect to discontinue his work, have written the Fidelity Trust Company to cancel our title insurance and return to us any balance due, and balanced our books at a loss.

30 I returned the lease to Mr. Wallace. If there are any papers I should return to you please inform me.

If, within the next year or so you succeed in selling the building to a purchaser who would use the property for a moving picture theatre, we should be glad to sell our plans for a comparatively small amount. If the purchaser would employ the Fidelity Trust Company to insure title, we believe that we could obtain a larger rebate upon our cancelled application.

It has been a source of pleasure and gratification that we had counsel of your standing to represent the other parties, and I trust that we come to the parting of ways with only friendly feelings.

With kind regard, I am,

Very truly yours,

W. HENRY ELFRETH.

(Letter marked *Exhibit 3 ex parte* Mr. Robbins.)

Mr. Scammell: I object to the introduction of 10 these letters, for the reason above mentioned.

Q. Were there further negotiations?

A. Very soon after the receipt of the letter Exhibit 3, negotiations were again taken up, which resulted in the lease and agreement, copies of which are attached to the report of sale. The lease had then been signed by the Shreves, and delivered to Mr. Elfreth, who refused to have the St. Regis Corporation sign because he wanted an extension of one year, making a period of two years for the purchase of the property. The 20 extension for two years was given, and the agreement attached to the report of sale was made, and delivered about the first of August, 1914.

Q. After the lease and agreement were delivered, when did you next see Mr. Elfreth?

A. I think it was not until September, 1914, after the St. Regis Corporation had gone into possession of the property.

Q. Did Mr. Elfreth make any new proposal in regard to the property in February, 1915? 30

Mr. Scammell: Objected to as immaterial and irrelevant.

A. Yes.

Q. What was it?

Mr. Scammell: Objected to on the same ground, and because if it is evidence seeking to alter or vary the terms of the written agreement, it is inadmissible.

A. His new proposition was that an extension of from two to five years for the purchase of the property, and an extension of the lease from five years to ten years be made.

Q. What reasons did he give for wishing such extensions?

10 Mr. Scammell: It is objected to on the same ground, and on the further ground that unless the agreement was consummated in the form of a written agreement, it is likewise immaterial and irrelevant.

A. He gave two reasons. One was the condition of the money market; and the other was that in case the sale by the Court of Chancery proceedings should not be made, the lease would carry his corporation in possession until the infants, Dorothy and Mercer Shreve, attained to the age of twenty-one years, and then he thought they would voluntarily make the conveyance.

20 Q. What did Mr. Elfreth do with regard to the extension and lease?

Mr. Scammell: Objected to upon the ground above stated.

A. An agreement to buy in five years, and a lease for ten years were prepared and executed by all of the Shreves, and delivered to Mr. Elfreth for the St. Regis Corporation.

Q. Were they executed by the St. Regis Corporation, so far as you know?

A. No. They were not.

30 Q. Has Mr. Elfreth lately spoken to you of them?

Mr. Scammell: Objected to upon the same ground as above stated, as immaterial and irrelevant.

A. Within the last winter, about the first of the year, Mr. Elfreth told me that the ten-year lease and the five-year agreement had not been executed, according to his recollection, by the St. Regis Corporation.

Q. After the extension agreements were made, and

delivered, were there any further propositions made by Mr. Elfreth?

Mr. Scammell: Objected to upon the same ground as above stated, as immaterial and irrelevant.

A. Either while they were being prepared, or after they were delivered, Mr. Elfreth requested that the sale be made to his company, for the payment of no cash whatever, asking that Mrs. Shreve borrow \$5,000 upon other property of hers in order to discharge the Savings Fund mortgage. 10

Q. Were any further negotiations to that end made?

Mr. Scammell: Objected to for the same reason above stated.

A. Yes.

Q. What were they?

Mr. Scammell: Objected to upon the same ground, for the same reasons.

A. Mrs. Shreve refused to borrow the money, but Mr. Elfreth insisted that a purchase money mortgage for the whole amount, outside of the \$5,000 needed for the Savings Fund mortgage, be made. In compliance with a request of his, I prepared a petition to that effect. The petition was not filed because Mr. Elfreth refused to make a deposit, which I required made, upon filing a further petition. 20

Q. What, if anything, did Mr. Elfreth say further with regard to the purchase?

Mr. Scammell: Objected to for the same reasons above stated. 30

A. In January, 1916, Mr. Elfreth said that he himself would purchase the property, and would pay the entire purchase price in cash.

Q. Did he make an offer for such a purchase?

A. He did.

Q. When?

A. Early in January, 1916.

Q. Where?

Mr. Scammell—Objected to as immaterial and irrelevant.

A. In my office. He delivered to the Master, Mr. Erwin E. Marshall, an offer to purchase, and to pay the entire purchase price in cash.

Q. What was done in regard to that offer?

Mr. Scammell—Objected to as immaterial and irrelevant.

10 A. Mr. Marshall made a report of sale in these proceedings to Mr. Elfreth, and delivered that report of sale to my office, asking that the terms of the offer be slightly altered. That was about the middle of January, 1916.

Q. What further was done in regard to that offer?

A. I believe Mr. Elfreth withdrew that offer before the report of sale was filed in the Clerk's office.

Q. Was the report of sale afterwards filed?

A. It was not.

20 Q. Was anything done by you to delay or interfere with the purchase by Mr. Elfreth's client or clients?

A. No; not at any time during the negotiations.

Q. To what cause do you attribute the delay.

Mr. Scammell—Objected to as immaterial and irrelevant, and calling for a conclusion.

A. To Mr. Elfreth's repeated changes of proposals of purchase, and back of that to his inability, as well as his clients, to raise the money.

Q. Did you at any time advise Mr. Elfreth or Mr. Vernon regarding the sale of the Shreve property?

30 Mr. Scammell—Objected to upon the same ground, that it is immaterial and irrelevant.

A. I did not.

Q. Was your advice at any time asked concerning the sale?

Mr. Scammell—Objected to upon the same ground.

A. It was not.

Q. Were plans and specifications of alterations to the Shreve Building submitted to you?

Mr. Scammell—It is objected to on the ground that it is immaterial and irrelevant.

A. They were not, except that on or about July 14th, 1914, I received this letter from Mr. Elfreth, which I offer in evidence.

July 14, 1914.

Ellis L. Pierson, Esq.,

Broad Street Nat'l Bank Bldg.,

Trenton, N. J.

DEAR SIR—The St. Regis Corporation contemplates removing the stone steps from the sidewalk and placing steps inside the hall, painting or papering this hall, installing electric light wires and fixtures, painting of the woodwork, wiring the second story hall, the installation of fixtures and wiring of the middle front room on the second floor of the building, plaster and glass partitions so as to divide the office into three parts. 10

Under the provisions of the lease of the St. Regis Corporation the company is required to give the owners notice of contemplated improvements. You will please consider this such notice, and kindly write the company giving your consent before operations are started. 20

Very truly yours,

E/C/

W. HENRY ELFRETH,

(Letter marked *Exhibit 4 ex parte* Mr. Robbins.)

Q. Was any other notice of alterations given to you, or to the Shreves, so far as you know?

Mr. Scammell—Objected to as immaterial and irrelevant. 30

A. No. No further notice was given to me, and none to the Shreves, so far as I know.

Q. Are the upper floors of the Shreve Building now rented?

Mr. Scammell—Objected to as immaterial and irrelevant.

A. They are not.

Q. Why?

Mr. Scammell—Objected to as immaterial and irrelevant.

A. Because there are no means of access to the second and third floors, at least none from the front of the building, or any other place except inside the theatre.

Q. In what respect was the main floor altered?

Mr. Scammell—Objected to as immaterial and irrelevant.

10 A. The center store is destroyed, and its place taken by an entrance to the theatre, and the westerly store is smaller than it was before the St. Regis Corporation went into possession.

Q. Was the sum of \$100 mentioned in the agreement of purchase attached to the report of July, 1914, paid?

Mr. Scammell—Objected to on the ground that it will show conditions.

A. It was not.

20 Cross-examination, by Mr. Scammell:

Q. When were the orders directing the Master, Erwin E. Marshall, to sell this property delivered to him?

A. I do not know when they were delivered to him.

Q. Was it not in January of 1916, at the time that the offer, which you stated Mr. Elfreth made under date of January 8, was handed to him?

A. Probably so. I am not certain as to that.

30 Q. When did you receive the report of sale made by the Master in this case?

A. The report of sale to Mr. Elfreth I received either one or two days after it was delivered to him by Mr. Elfreth, and I think that was about January 10th. The other report of sale, which is now filed, was received from Mr. Marshall by me on February 24th, 1916.

Q. Was the report handed to you by Judge Marshall in person?

A. I think so. I am certain it was.

Q. When was that report filed?

A. It was not filed by me for five or six weeks, at least.

Q. Did you file the report of sale?

A. I don't think I did.

Q. What did you do with the report of sale?

A. I gave it to Chancellor Walker, at his Chambers, considering that was the same as filing it.

Q. Was that because of any request by the Chancellor?

10

A. Yes.

Q. What request was made by the Chancellor, and the reason for filing the report with him?

A. The request was made on January 8th, I think it was, when I stated to the Chancellor that Mr. Elfreth offered, or was about to make an offer, for the purchase under the order of 1913, and the Chancellor said to me that when the report of sale was made, he wished it to come to him before going through the regular course in the Clerk's office.

20

Q. How long after you received the report of sale from the Master did you hand it to the Chancellor?

A. I am not certain of that. I told the Chancellor that I had the report of sale, but it is my recollection that I did not hand it to him for several weeks after.

Q. Was there any particular reason why you did not file the report with the Chancellor before that time?

A. No.

Q. Probably this fact escaped your attention, Mr. Pierson, or did not you, as a matter of fact, send the report of sale in this matter to our office?

30

A. Yes, I did. About April 8th, 1916. But prior to that time I had delivered the report of sale to the Chancellor at his Chambers, and after it had been there for a short time he either sent it back to me, or asked me to come and get it.

Q. You continued to represent, Mr. Pierson, the petitioners in this case up and until the time of the

adjourned date for the application for the confirmation of sale, if until the twenty-fifth of April?

A. Yes. I think it was the twenty-fifth of April, 1916.

Q. The application to have the sale confirmed was made by us on behalf of the purchaser, was it not?

A. Yes.

Q. Why did you not, representing the petitioners, make application for confirmation of the sale?

- 10 A. For two reasons. One was that when I told the Shreves that a sale might not take place because it seemed now not for the best interests of the infants, they told me that they wished to do nothing more than they were bound to do in regard to the sale, for fear of injuring the infants' estates; and the other reason was that Mr. Elfreth, on or about January 8th, 1916, when I first informed him of my visit to the Chancellor, stated to me that he had had assigned to him the agreement of February, 1914, made by the Shreves with Mr. Vernon, and that he would sue the Shreves upon that
- 20 agreement unless title was conveyed to him. I felt that that agreement had been clearly substituted by the agreement of the St. Regis Corporation. It had always been so considered by us. I did not then know, as I learned a few days later, that Mr. Elfreth and Mr. Vernon had knowledge of the interests of the infant owners prior to the time of the making of the Vernon agreement of February, 1914. I felt that if he was treating the Shreves so unfairly as to threaten suit on that agreement, that the Shreves might safely take advantage of
- 30 the fact that, in my opinion, they were not legally bound upon the agreement attached to the report of sale, by reason of the fact that the lease mentioned in that agreement, and also attached to the report of sale, had been broken in numerous ways by the St. Regis Corporation, and the performance by the Shreves of the agreement, attached to the report of sale, was conditioned upon the

performance of the covenants and conditions of the lease of the St. Regis Corporation.

Q. When did you convey to the Shreves the reasons that you have now given, for not proceeding with the effort to obtain the confirmation of sale?

A. Shortly after I had found in Mr. Van Horn's office letters from Mr. Elfreth and Mr. Vernon, and copies of letters of Mr. Van Horn, showing that Messrs. Elfreth and Vernon were cognizant of the inability of the Shreves to perform the agreement which they had their agent, Mr. Van Horn, obtain from the Shreves. That was, to the best of my recollection, early in February, 1916. 10

Q. As I understand, one of your reasons for refusing to obtain a confirmation of sale was that it was not to the advantage of the infants' interests to have the sale made, is that true?

A. Yes.

Q. When was it that that condition appealed to your mind? 20

A. It had occurred to me a short time before I saw Chancellor Walker, in January of 1916.

Q. How long before that time?

A. I should say a week or so before that time, when I was told by Mr. Elfreth that he was up to the point of making a purchase.

Q. Did you convey that information to the Chancellor?

A. No. I did not. It was the Chancellor's voluntary opinion without any suggestion whatever from me, that it was not to the infants' interests, at this time, to sell. 30

Q. When was it the Chancellor gave you that information?

A. It was on January 7th or 8th, 1916.

Q. In what respect, Mr. Pierson, did you consider it not to the advantage of the infants' interests to have the sale made?

Mr. Pierson: I object on the ground that it is immaterial.

A. The basis for the order of sale in this cause was lack of income during the minority of the infants. By reason of the lease, an income was procured that was ample to sustain them. The report of the Master, advising sale, and the testimony that was taken, show that it was not because of the likelihood of the depreciation of the Shreve property that the sale was advisable, but
10 because of inadequate income. The income became adequate, and the reason for sale, therefore taken away.

Q. When was it that you conveyed these reasons to the Shreves?

A. It was not until after the Chancellor had voiced the same reasons to me. The day before Mr. Elfreth visited my office, in fact.

Q. When was it that you went to see the Chancellor with respect to the rate of interest being allowed on the mortgage?

A. It was at the same time.

20 Q. Prior to that day the Chancellor had agreed that a mortgage be allowed to be taken as a part of the purchase price?

A. Yes. The Chancellor had said that a similar order had been made in another case, and he did not know why it could not be made in this case. That was in June, 1914, I think.

Q. What was the amount of the mortgage which the Chancellor was going to allow in January, or about that time, 1916?

30 A. There was no mortgage being requested. Mr. Elfreth's proposition being to pay the entire purchase price in cash.

Q. Did you discuss with the Chancellor the rate of interest to be charged on this mortgage?

A. In answer to a former question, I said that we discussed the rate of interest.

Q. At the same conversation early in January, 1916?

A. I believe we did.

Q. What was the rate of interest agreed upon to be charged?

A. I have forgotten what. What was ever offered was not agreed upon. Perhaps none was agreed upon, because Mr. Elfreth's intention at that time was to pay the entire purchase price in cash.

Q. Was not there some understanding, or some conversation by you with the Chancellor, whereby it was mentioned that the rate of interest upon the mortgage should be five and one-half per cent.?

A. I think there was. When he said that a large mortgage might be left to remain upon the property.

Q. What was the amount of that mortgage?

A. It was to be all but \$10,000 of the purchase price, namely, \$53,400.

Q. But that amount had already been authorized by the order of July, 1914?

A. Yes. That was authorized by that order.

Q. Well, I understood you to say that there had been an arrangement made with the Chancellor whereby the amount of that mortgage, with the increase, and rate of interest, was to be five and one-half per cent.?

A. When the rate of interest of five and one-half per cent. was talked over with the Chancellor, I do not now recollect positively.

Q. Had it not been agreed, though, that more than \$53,400 should remain upon mortgage on the property?

A. No. It had not been. Mr. Elfreth made that request in 1915. There was no petition filed as a result of that.

Q. The lease and agreement of sale, Mr. Pierson, were considered by your clients as a combined transaction, was it not?

A. I think so.

Q. The amount of rental upon the property was ascertained or fixed upon the basis of five per cent. upon the purchase price?

A. Yes, five per cent. upon \$65,000.

Q. That was the total consideration to be paid by the St. Regis Corporation?

A. Yes.

Q. Why was it that the agreement of sale provided that \$1,600 of the \$65,000 should be paid to Clifford

A. Worthington?

10 A. Because Mrs. Shreve had made an arrangement with Mr. Worthington to pay him a commission, which, as I recollect it, figured up to \$1,625, and it seemed unfair that she should pay the amount instead of having it come out of the purchase price, when a considerably larger amount was being procured, without counting the \$1,600, than the valuation fixed by the Master in these proceedings.

Q. The actual consideration then, so far as the sale of the property was concerned, was \$65,000?

20 A. Yes. Made up of \$63,400, mentioned in the agreement as the purchase price, and \$1,600 to protect Mrs. Shreve upon the agreement made with Mr. Worthington, but it was provided in that agreement that if Mrs. Shreve was not bound to pay the \$1,600 Mr. Elfreth's company would receive back the \$1,600, so the real consideration was \$63,400, with a contingent addition of \$1,600.

Q. But the net result would have been the same in the event that the estate was chargeable with the broker's commission for the sale?

30 A. Yes. If they were to pay a commission of \$1,600, then they would receive the amount they will receive under the present offer.

Q. I think you have already testified, Mr. Pierson, that the St. Regis Corporation would not execute the lease unless the agreement of sale provided an extension of one year or two years in which to purchase the property?

A. Yes. That was made a condition after the terms had been agreed upon, and the agreement for one year

drawn and executed by the Shreves. When presented to the St. Regis Corporation Mr. Elfreth said that the corporation would not sign the lease unless the agreement of sale were extended.

Q. And you transmitted to your clients the requested condition of the St. Regis Corporation in respect to the extension of an additional year?

A. Yes.

Q. And they agreed to it?

A. Yes.

Q. And signed the agreement of sale with this term included?

10

A. Yes.

Q. The St. Regis Corporation immediately, after the execution of the agreement and lease, went into possession and began to make improvements upon the property, did they not?

A. Several months after.

Q. When was it that they started the building operations which they made upon this property?

20

A. September, 1914, I think it was.

Q. September, 1914?

A. I think so.

Q. At the time the agreement of sale was executed were there not a number of unexpired leases held by tenants in possession of portions of the property?

A. Yes.

Q. Do you know the names of the tenants, and what length of time their leases run?

A. Frank W. Hutchinson, lease expires April 1, 1916, annual rental \$780; Commonwealth Beneficial Association, lease expired April 1, 1915, annual rental of \$240, payable monthly; J. Carroll Malloy, assigned to Wilbur Taylor, lease expires April 1, 1916, annual rental \$780, payable in monthly installments of \$65; Trenton and Mercer County Traction Corporation, lease expired July 1, 1914, yearly rent \$192, payable in monthly installment of \$16. There were other leases, of which I have no copy.

30

Q. Do you recall who it was that had the longest lease on the property?

A. Worthingtons.

Q. When was it that his lease expired?

A. I think it was on April 1, 1917, or April 1, 1918.

Q. And what rental did he pay?

A. \$35 per month.

Q. In connection with the \$1,600, payable to Mr. Worthington as agent, did you represent Mr. Worthington at this time, in his matters other than the brokerage claim that he had against the Shreves?

A. Yes. But I told him that I would not represent him in this claim.

Q. This allowance of brokerage to him was made, however, upon the understanding that he was likewise to vacate, or give up his present lease?

A. That was disputed. I am not sure of that.

Q. Was there some understanding with Mr. Worthington that he was to give up his lease in the event that he was made this brokerage?

A. I think so, but I never had such an understanding with him myself.

Q. Did you know if the Shreves had such an understanding with him?

A. I did not know.

Q. Did the Shreves report to you that they had such an understanding with him?

A. I can't say that they did.

Q. You represented the St. Regis Corporation, Mr. Pierson, up and until sometime in January, 1916?

A. In certain matters, but not in the Shreve matter; and not at all in the matters that were then going on, in which the St. Regis Corporation was interested.

Q. The amount of the purchase price in the agreement of sale was more than the amount recommended by the Master at which the property could be sold?

A. Yes.

Q. Under the original order for sale, what was the

amount at which the Master recommended the property to be sold?

A. As \$61,200.

Q. When was it that you considered that the Shreves had made a sale to the St. Regis Corporation, if any?

A. I do not consider that they ever made a sale to the St. Regis Corporation.

Q. You did not consider that they had made a sale under the agreement of July, 1914?

A. No.

10

Q. Did you prepare both the agreement of sale and the lease?

A. Yes, I did. Mr. John S. Wallace, who is a nephew of Mrs. Rebecca H. Shreve, an attorney in Philadelphia, submitted a draft of lease which I think was in the form of the lease as signed.

Q. The question of the terms of the lease, and the agreement of sale was discussed with you, was it not, Mr. Pierson?

A. Yes.

20

Q. He was also one of the persons having a contingent interest in the property?

A. Yes.

Q. And he was also acting as an advisor in some references for the Misses Shreves?

A. Yes.

Q. After the original agreement of sale was signed? That is to say, after the agreement of sale of July, 1914, was signed, you say you then filed a petition to have authority given to accept all of the purchase price?

30

A. On a mortgage, with the exception of \$10,000 cash. Such a petition was prepared in June, and sent to the Shreves after the middle of June, and filed on June 30th. The lease was signed at about the same time, but the agreement dated July 11th, 1914, was not signed until about August 1st. It took two or three weeks, up to August 1st, to obtain the signatures of the various Shreves' relations.

Q. The lease on the part of the St. Regis Corporation was not signed, however, until July 10th, 1914?

A. Yes.

Q. But the lease was signed upon the understanding that the agreement of sale should provide for two years in which to purchase?

A. Yes.

Q. Did you not, in September, 1915, forward to Mr. Elfreth a form of offer that you desired him to make
10 to the Shreves for the purchase of this property for the sum of \$61,400?

A. No.

Q. I show you a letter dated September 1st, 1915, signed E. H. Pierson, and ask you whether that was not a letter that you forwarded to Mr. Elfreth in connection with this property?

A. Yes. It is.

(Letter offered in evidence and marked *Exhibit 1* Purchaser.)

20 Q. I show you another letter dated September, and ask you whether that was not a letter that you forwarded?

A. Yes. It is.

(Letter offered in evidence and marked *Exhibit 2* Purchaser.)

Q. You still think, then, Mr. Pierson, in September of 1915, that the amount of the purchase price agreed to be paid by the purchaser in this matter, was a fair and adequate price for the premises?

30 A. I did not consider that because I thought the price previously fixed was the price at which the property could be sold.

Q. You were still representing all of the interests in this matter, was you not?

A. I was representing the Shreves, but was not representing Mr. Elfreth or the St. Regis Corporation.

Q. I mean, when I speak of the interests, the Shreve interests?

A. Yes.

Q. In this form of offer which you stated should be made to the Shreves' interest, the price fixed was the sum of \$61,400, which is the amount fixed by the order made in July, 1913, at which the property could be sold?

A. The amount then fixed was \$61,200, so that the paper marked Exhibit 2 Purchaser is not correct, and I do not now recall why the sum of \$61,400 was mentioned, since no price less than \$63,400 had ever been 10 agreed upon between the parties, so far as I know. For that reason, I am not absolutely certain that the Exhibit Purchaser 2 was written by me.

Q. Was it not your purpose, upon the receipt of this offer, duly signed, to present a fresh petition to the Court of Chancery for the sale upon the basis therein mentioned?

A. It was, so far as the terms of payment were concerned, but not as to the amount of the purchase price.

Q. This offer was to include, in addition, certain ex- 20 penses, was it not?

A. Yes. Mentioned as \$700 in my letter, and in the offer, \$1,000 to C. A. Worthington, the real estate broker, the sum actually due by the Shreves to Worthington, if any, being uncertain.

Q. Were you authorized to make this offer by the Shreves?

A. I do not believe I was, under the terms as stated in that paper Exhibit 2 Purchaser.

Q. The offer provides that it should remain open for 30 three months from date, and it would be taken up, unless sale could be made; was it not your idea, upon the signing of this offer, to immediately take steps to obtain the confirmation of the sale?

A. No. There was necessary a new petition, as stated in my letter *Exhibit 1 Purchaser*.

Q. Why did you consider a new petition necessary?

A. Because Mr. Elfreth then wished to purchase

without the payment of any cash, except \$5,000 to be paid to the Savings Fund Society, and the orders in this matter then provided for the payment of at least \$10,000 in cash.

Q. Then it would be only a petition to modify the previous order as to the terms of sale?

A. Yes.

Q. And the amount of mortgage really to be taken?

A. Yes.

10 Q. It would make no difference in the purchase price really?

A. No. There was no intention to make any difference in the purchase price.

Q. You always considered, did you not, Mr. Pierson, that the two Misses Shreves, the successive life tenants, were the persons who controlled the proceedings, did you not?

A. Yes. They were the petitioners, and in so far as the petitioners controlled the proceedings, I considered
20 they did.

Q. This could not be taken were the inception on their part?

A. No.

Q. You had been trying, up until January, 1916, to obtain more favorable terms as to a mortgage upon the property, had you not?

A. On the occasion of filing the petition in 1914; on June 30th. The other attempts at some favorable terms were made by Mr. Elfreth, but were not presented to
30 the Court by me because Mr. Elfreth would not comply with the requests I made.

Q. These requests were as to the payments of expenses in one case, and as to the other, the deposit of \$1,000 to cover the expenses in the other case?

A. No. The deposit of \$1,000 to act as an assurance that the sale, under the new terms, would take place.

Q. That was the subject matter of the talk in 1914, was it not?

A. In the fall of 1914.

Q. Fall of 1914?

A. Yes.

Q. The later one being in September, 1915, which we have recently referred to?

A. Yes. The latest one, we might say.

Q. Do you know, of your own knowledge, about what are the value of the improvements which the St. Regis Corporation has placed upon the property?

A. I suppose that the amount is about \$30,000, but 10 whether or not that is the value is a question that I am not competent to speak of, the old building being considerably lessened in value, while the new building has been put up on a part of the property.

Q. Do you know, of your own personal knowledge, as to whether the St. Regis Corporation was required to pay any sum of money to obtain possession of the different portions of the premises?

A. I do.

20

Q. Do you know to what extent in amount; about?

A. I do not know.

Q. The rental value which you say leads you to feel that it was not to the interest of the infants to make this sale, is created by the St. Regis Corporation?

A. Partly that, and partly by the expiration of time. Several of the original Shreves' leases having expired, so that if Mrs. Shreve were still in possession of the premises in their old condition, she might now receive 30 rentals considerably in excess to the rentals she received in 1913.

Q. That is the reason that you came to the conclusion that it would not be to the best interests of the infants to have this property sold?

A. Yes. Owing to the fact that the property would now provide an adequate income, due to two causes; the expiration of time, and the building of the theatre.

Q. Did the Shreves direct you not to make a report of this sale to the Court?

A. No.

Q. Did they, in any way, direct you not to attempt to have the sale confirmed?

A. No.

Q. Had they in writing, or in person, notified you prior to April 25th, 1916, not to do all in your power to obtain a confirmation of this sale?

A. They had not.

Q. Why was it then that you did not immediately attempt to have a confirmation made of the sale, when you still represented the Shreves' interest?

A. That was answered before. I object to the question as being answered before.

There were two reasons why I refrained from moving the confirmation of the report of sale. One was that Mr. Elfreth, the principal owner of the St. Regis Corporation, as I believed, had stated to me that he would sue the Shreves upon the old Van Horn-Vernon agreement of February, 1914; and the other was that
20 Mrs. Rebecca H. Shreve and Mrs. Lucy E. Shreve, the grandmother and mother, respectively, of Mercer and Dorothy Shreve, infant owners, had expressed to me their wish not to do anything beyond what they were legally bound to do in promoting a sale that might injure the estate of the children.

Q. Just when did they notify you to adopt the attitude you have last mentioned. That is, the second reason?

A. When I first told them that the Chancellor had
30 suggested that it was not now necessary for the sake of the infants to make a sale of the Shreve property. I told them that in person at Riverton on or about January 26th, 1916.

Q. Did you not at the time that you filed a report of sale in this matter represent the minors as well as the life tenants' interest?

A. No. I represented the petitioners, who were Mrs. Rebecca H. Shreve, and Lucy Ellen Shreve, a guardian

ad litem, had been appointed for the infants. One of the cousins who was an infant at the time the proceedings were instituted was a person I had never seen. I did not consider that I represented the infants at that time.

Q. Did you make a demand on behalf of the interest that you represented of the St. Regis Corporation to comply with the agreement of sale?

A. Not specifically, but I urged both Mr. Elfreth and Mr. Vernon constantly to make the purchase when Mr. Elfreth had stated to me that the agreement as originally made would be completed within a short time. 10

Q. Did you ever make that demand in writing?

A. I do not think so, except as contained in my letters urging them to hurry with the proposition.

Q. Did not Mr. Elfreth ask you to obtain the deed, so that he could have the form of the deed examined, and so place himself in a position ready to purchase whenever the sale was made?

A. No. Mr. Elfreth asked that the deed be delivered to him at the same time that he would borrow money upon a mortgage in order to pay for the deed. I told him that was impossible. He said he had always made his real estate transactions in that manner. I told him that this was peculiar in that it was not an individual, but a Master of this Court, that would make the conveyance. 20

Q. It was not necessary, however, for Mr. Elfreth, on behalf of his company, to make a tender of the money, or attempt to carry out the purchase, until the Master had reported the sale and had the deed ready for delivery, was it? 30

A. No, and I never told him it was.

Q. That was never done, was it, Mr. Pierson?

A. No. Because there was never any firm offer made by Mr. Elfreth. Mr. Elfreth, on at least six occasions, changed his proposal of purchase, and never at any time made a deposit until the offer now reported was made.

Q. That was the first time, however, that the matter had been placed in such a shape that the Master could report the sale, was it not?

A. No. Mr. Elfreth had made an offer on his own behalf some days before the present offer was presented. There was no money accompanying that offer, and that sale was reported, and the report would have been filed by me had Mr. Elfreth complied with the request of the Master that the terms of the offer be
10 altered.

Q. That offer was prepared in the form that you suggested, was it not?

A. Yes.

Q. And in connection with that you did not require any payment of any earnest money?

A. I did not.

Q. The Master was perfectly willing to make a report without the deposit of any earnest money?

A. The Master did make a report without the de-
20 posit of any earnest money, although I had previously thought that that could not be done, and had so told Mr. Elfreth.

Q. But it was afterwards found that it could be done?

A. It was done.

Q. It was done, and when the sale was made, as at present reported, and the Master suggested a deposit of earnest money, the same was immediately deposited, was it not?

A. I did not know that the Master had demanded
30 that, but there is a sum of \$1,000 deposited at the present.

Q. And those conditions were complied with?

A. If there were such suggestions, yes.

Q. As I recall, you stated that you suggested in January, 1916, that Mr. Elfreth seek other counsel?

A. Yes.

Q. And shortly thereafter you were advised that we represented Mr. Elfreth and his corporation?

A. Yes, by you when you came to my office.

Q. The reasons which you have given above for not asking or urging a confirmation of sale was not made known by you to either the St. Regis Corporation, Mr. Elfreth or myself?

A. Yes. On the day that you were there I told you that the Shreves would not take any stand upon the offer until the VanHorn-Vernon agreement of February, 1914, was wiped out.

Q. But nothing was stated about any infants' interest at that time?

A. No. Except that I said that that was the reason that the Chancellor had given me when I notified him.

Q. Did you at that time state to me that the Chancellor had told you that the facts, which you have above enumerated, to be his reason why he thought the sale should not be forced?

A. My recollection is that I did. I told you that I had given Mr. Elfreth these reasons for asking that he change counsel.

20

Testimony taken pursuant to adjournment before the subscriber, Frederick W. Gnichtel, one of the Masters and Examiners of this Court, on Monday, the twenty-ninth day of May, 1916, at 2 o'clock P. M.

Appearances as before.

Gardner H. Cain, a witness produced, being duly sworn, testified as follows:

30

Direct examination, by Mr. Scammell:

Q. Mr. Cain, you were a witness before in these proceedings, were you not?

A. Yes, sir.

Q. And gave certain testimony as to the value of the Shreve property?

A. Yes, sir.

Q. I believe you testified as to the condition of the property in 1913?

A. Yes, sir.

Q. Assuming that the Shreve property was owned in July, 1914, by the estate of a deceased person, which was financially unable to improve it extensively, and assuming that a prospective purchaser offered to purchase the fee in this property for \$63,400 free of the mortgage thereon, and in addition agreed to assume a brokerage commission of \$1,600; and assuming that this offer was made upon condition that the purchaser
10 should go into possession at once, and furnish to the estate an annual net income from the property of \$3,250, and should assume the payment of all taxes and carrying charges, except the interest on the \$5,000 mortgage, until such time as the purchaser should take title; and assuming that this offer was on the condition that the purchaser should take title within two years from its date, and assuming that the annual net income from the property would be increased by this arrangement by about \$2,150, would you advise the acceptance of the said offer?

20 Mr. Pierson—I object to the question because of the assumption of increase, as it does not appear there would be an increase of \$2,150, and because the net income annually would not be \$3,250, but would be reduced by the amount of \$250 in this case.

A. Yes, sir.

Q. Assuming that such an offer had been accepted, and that the prospective purchaser had gone into possession, paid the taxes and carrying charges, and the in-
30 creased income above mentioned, from July, 1914, until the present time; and assuming that the purchaser now tendered himself ready to take title upon payment of the said sum of \$63,400, would you say that this sum, so offered as a purchase price for this property, and under these circumstances, was an adequate or inadequate price for the property at the present time?

Mr. Pierson—I object to that question because it does not appear in this case that the income has been paid to the Shreves as agreed upon.

A. It would be an adequate price.

Q. Would you say that under these circumstances which I have just related, the increase of the value of the premises was overcome by the increase in income from the property?

A. Practically the same under the increase in the value and the increase in the income. About the same 10 thing.

Q. Assuming that the property in question, at the time it was offered for sale was subject to leases, running from a period of one to three years in the future, so that the prospective purchaser would be unable to gain possession of the building to improve it for his own purposes, and in order to make it profitable to him, would you consider that the fair sale price for the lands and building would be decreased for this reason?

A. It would be. 20

Q. Assuming that the purchaser would be compelled to pay \$4,000 to obtain possession of the entire building by purchasing the leases, etc., by what amount would your estimate of a fair sale price be decreased?

A. By the sum he would have to pay to get the leases. Be decreased by that amount. The basis of my estimate was on the property, without any leases that would have to be bought.

Q. What is the usual brokerage charge for sale of city property? 30

A. Two and one-half per cent.

Q. The value which you have given upon the property in the case of a sale would be subject to a deduction of a broker's commission, would it not?

A. Yes, sir.

Cross-examination, by Mr. Pierson:

Q. Assuming that there was a bona fide offer by a responsible purchaser of \$65,000 pending at the time you were giving your testimony as to the value of the property, would that alter the value which you have placed upon the property at the former hearing in this case in 1913?

A. My affidavit says that the sum of \$63,275 was a fair value for it, so I will stand by that affidavit that it
10 was a fair value. If anyone offers more, it was more than I considered it worth, in my judgment. I may say the reason for this is that you cannot put two and two together and say that it is four. You must find your customer, and the valuation I placed upon the property was not upon the ground that they had made their sale, but was simply the value of the property.

Q. Would the fact that there was such an offer, if brought home to you, have altered your opinion as to the value of the property at that time?

A. Not as to the value of the property, if you were
20 compelled to go into a market to find a customer. Customers often pay more than, in my judgment of deals, the property at that time was worth, they having a special use for it.

Q. Mr. Cain, in your affidavit attached to the report of sale, which I show you, you state that there has been, in your opinion, an increase in the value of the Shreve property, not considering the improvements that have been made. What has that increase been from 1913, when you made your first affidavit, and the present
30 time?

A. I would think about \$100 per front foot.

W. Meredith Dickinson, being duly sworn, testified as follows:

Direct examination, by Mr. Scammell:

Q. Assuming that the Shreve property was owned in July, 1914, by the estate of a deceased person, which

was financially unable to improve it extensively, and assuming that a prospective purchaser offered to purchase the fee in this property, for \$63,400 free of the mortgage thereon, and in addition agreed to assume a brokerage commission of \$1,600; and assuming that this offer was made upon condition that the purchaser should go into possession at once, and furnish to the estate an annual net income, from the property, of \$3,000, and should assume the payment of all taxes and carrying charges, except the interest on the \$5,000 10 mortgage, until such time as the purchaser should take title; and assuming that this offer was on the condition that the purchaser should take title within two years from its date, and assuming that the annual net income from the property would be increased by this arrangement by about \$2,150; would you advise the acceptance of the said offer?

Mr. Pierson: I object to the question because of the assumption of increase, as it does not appear there would be an increase of \$2,150. 20

A. I think I would advise acceptance of that offer.

Q. Assuming that such an offer had been accepted, and that the prospective purchaser had gone into possession, paid the taxes and carrying charges, and the increased income above mentioned, from July, 1914, until the present time; and assuming that the purchaser now tendered himself ready to take title upon payment of the said sum of \$63,400; would you say that this sum, so offered as a purchase price for this property, and under these circumstances, was an adequate or in- 30 adequate price for the property at the present time?

Mr. Pierson: I object to that question because it does not appear in this case that the income has been paid to the Shreves as agreed upon.

A. \$63,400 would be an approximately fair sum for the property.

Q. Would you say that, under these circumstances,

the increase in value of the premises, was overcome by the increase in income from the property?

A. I would say that the increase in value was to the owner against getting possession and not getting possession. All my answers are conditioned, and rest upon the fact whether or not the new purchaser can obtain possession at the time he tenders the money.

Q. Of the entire property?

A. Of the entire property.

10 Q. Assuming that the property in question, at the time it was offered for sale was subject to leases, running from a period of one to three years in the future, so that the prospective purchaser would be unable to gain possession of the building to improve it for his own purposes, and in order to make it profitable to him, would you consider that the fair sale price for the lands and building would be decreased for this reason?

A. I would say to that that the market price of property at the time should be decreased by what it would
20 cost to purchase the leases.

Q. Assuming that the purchaser would be compelled to pay \$4,000 to obtain possession of the entire building by purchasing the leases, etc., by what amount would your estimate of a fair sale price be decreased?

A. It would be decreased by the sum of \$4,000, which, it is assumed, was the cost of obtaining possession of the property.

Q. What is the usual brokerage charge for sale of city property?

30 A. Two and one-half per cent.

Q. Your estimate of value is an estimate of a gross sales price and is subject to deduction of broker's commission?

A. Yes.

Cross-examination, by Mr. Pierson:

Q. In your judgment, is the value of the property increasing at the rate of \$2,150, or almost that sum, each year?

A. I would say that the property was not increasing that much a year. Well, approximately, I should say yes, it might be increasing that.

W. Henry Elfreth, being duly affirmed, testified as follows:

Cross-examination, by Mr. Pierson:

Q. Are you one of the attorneys for the St. Regis Corporation?

A. I am.

Q. Are you an officer of that corporation? 10

A. I am not.

Q. Have you been an officer of that corporation?

A. I have been, yes.

Q. When did you cease to be?

A. Within the past week.

Q. When was the company organized?

A. In the spring or summer of 1914.

Q. Under the laws of what State?

A. Under the laws of the State of Delaware.

Q. Did you become an officer upon its organization, 20
or shortly after?

A. I did.

Q. What office did you hold?

A. Secretary and treasurer.

Q. Did you hold those offices until within the past
week?

A. I did.

Q. Who was president of the corporation from the
time of its organization?

A. William J. Vernon. 30

Q. Do you know whether or not he is still president?

A. I believe he is.

Q. You signed the offer attached to the report of
sale, did you not, on behalf of the St. Regis Corpora-
tion?

A. I signed, as secretary of the St. Regis Corpora-
tion, a petition and offer of sale dated the third day
of February, 1916.

Q. That offer states that pursuant to the terms of a certain agreement, describing the agreement, the offer of purchase is made. Is it upon that agreement that the St. Regis Corporation bases its right at this time to purchase under the orders for sale in this case?

10 Mr. Scammell—It is objected to as immaterial and irrelevant, as the paper itself is the best evidence of what the St. Regis Corporation considers. And, further, upon the ground that the St. Regis Corporation claims that the sale has been made, and that the offer was one and part of the proceedings necessary for the effectuation of the sale by the delivery of the deed to either the company or its assigns.

A. That offer was executed in order that the terms of an agreement of sale, executed in 1914, might be brought before the Court in order to consummate the agreement of 1914.

Q. Are you a stockholder of the St. Regis Corporation?
20

A. I am.

Q. How many shares do you hold?

Mr. Scammell—Objected to as immaterial and irrelevant.

A. I hold ninety-four shares of common stock, par value \$10 per share, and as nearly as I can recollect about \$1,000 preferred stock.

Q. What is the total amount of shares?

30 Mr. Scammell—Objected to for the same reason.

A. The amount that I have stated, plus six additional shares of common stock.

Q. Do you personally now own an agreement of sale made with Mr. Vernon, and mentioned in the first part of your affidavit, attached to the offer of purchase?

Mr. Scammell—Objected to as immaterial and irrelevant.

A. I do not.

Q. Was such an agreement of sale assigned by Mr. Vernon to you?

Mr. Scammell—Objected to as immaterial and irrelevant, for if such an agreement of assignment was executed, the assignment itself would be the best evidence.

A. Yes.

Q. When was it assigned to you?

Mr. Scammell—Objected to for reason above stated.

10

A. I do not remember, but I can tell by looking at the agreement.

Q. Was it soon after the agreement was executed?

Mr. Scammell—It is objected to for same reason.

A. My recollection is that it was assigned to me about a year ago.

Q. Was not the agreement attached to your offer made in substitution of the Vernon agreement?

Mr. Scammell—Objected to as immaterial and 20 irrelevant, and calling for a legal conclusion.

A. I can't give a legal conclusion, but I can say that the agreement and offer mentioned were prepared and signed on advice of counsel in order that an agreement between the Shreves and various remaindermen, executed in 1914, might be brought before the Court in order to consummate a sale of the property in question.

Q. At the time of the execution of the agreement attached to your offer were you acting as counsel for the St. Regis Corporation, and also for William J. Ver- 30 non?

Mr. Scammell—It is objected to as immaterial and irrelevant.

A. I was acting as general counsel at the time, with Mr. Ralph M. Kellam, as representing the company in regard to all New Jersey matters. I never presumed to pass upon the matter involving New Jersey law.

Q. When were the taxes upon the Shreve property paid by the St. Regis Corporation?

A. In the respective sums of \$1,378.78 and \$1,397.17, being all the taxes due and payable at that date.

Q. When was the \$1,600 mentioned in the agreement of sale, deposited in the Broad Street Bank?

A. January 17, 1916, I believe.

Q. What amount of money has been expended in improvements to the Shreve property since July, 1914?

A. My recollection is that about \$25,000 or \$30,000 has been paid in cash; and liabilities incurred to the extent of \$15,000 or \$20,000.

Q. You have been treasurer of the St. Regis Corporation during that entire period until within the past week, have you not?

A. I have.

Q. How much has been expended by the St. Regis Corporation upon improvements to the real estate of Shreve property, exclusive of chattels, and exclusive of purchasing the leases?

A. \$27,108.23.

20 Q. How much has been paid, and how much remains due?

A. Paid \$11,472.21. Due, \$16,000. This money was paid wholly by proceeds loaned by me to the company, and which is still due to me from the company.

Q. How much insurance is St. Regis Corporation carrying upon the property?

A. \$10,000 upon the building.

Q. How much has it carried from the time of making the agreement of purchase in 1914?

30 A. Same amount from building being erected.

Q. Has your company made any improvements or repairs to the upper stories of the original Shreve Building?

A. In 1914, just about the time the agreement of sale was executed, it is my recollection that possibly \$100 was spent in wiring the offices, or some of them.

Q. Was the stairway from the ground floor to the second floor torn away?

A. During the building operation, yes.

Q. Has it been replaced?

A. It has not.

Q. Have any mechanics' liens been filed by reason of building upon the premises?

Mr. Scammell: I object to that question as immaterial and irrelevant.

A. I believe so.

Q. Do you know by whom?

A. I don't remember who filed them.

10

Q. Have they been filed by Morris, Dowling, Parker and Flannigan?

A. It is my recollection that they have filed liens.

Q. Have they, or any of them been satisfied?

A. They have not been paid. Some of the amounts are in dispute, and will not be paid until the amounts are determined, or until we can come to some agreement with them as to amount due. No lien claims have been paid where there was any question as to the amount due.

20

Q. Have any lien claimants at all been paid?

A. I believe not.

Q. Did you give notice, on behalf of the St. Regis Corporation, of the improvements and alterations, in accordance with the terms of section D, paragraph 8, of the lease attached to the offer of purchase?

Mr. Scammell: I object to that as immaterial and irrelevant.

A. I believe I did not, but Mr. Vernon supplied Mr. Pierson, counsel for the Shreves, with copies, or the original contracts and plans for the building about to be erected.

30

Q. Was that done in your presence?

A. It was not, to my recollection.

Q. Does the St. Regis Corporation now run the theatre?

Mr. Scammell: Objected to as immaterial and irrelevant.

A. It does not.

Q. Has the St. Regis Corporation received any income from the improvements which it has made upon the Shreve property?

Mr. Scammell: Objected to as immaterial and irrelevant.

A. I do not recall the terms of the lease made by the St. Regis Corporation to the Tenant Motion Picture Company, now operating the theatre, but my recollection is that the Tenant Motion Picture Company assumed the obligation by paying the exact amount of rental which was due and payable by the St. Regis Corporation to the Shreves; and as a further consideration for the lease, advanced sums of money to the St. Regis Corporation, and loaned its credit to the St. Regis Corporation to the extent of several thousand dollars.

Q. In the lease as recorded, the consideration is given as the sum of \$2,500, plus a rental of \$3,250 per annum. How was the \$2,500 paid?

20 Mr. Scammell: Objected to as immaterial and irrelevant.

A. My recollection is that \$2,500 was paid by note.

Q. Whose note was it?

Mr. Scammell: Objected to upon the same ground, and for the same reason.

A. I could not answer it without going over the minutes of the company.

Q. Will you produce the minutes of the company at the next meeting?

30 A. Yes.

Q. Is the Tenant Motion Picture Company now in possession of the Shreve Building, with the exception of the office occupied by Mr. Worthington, and the store occupied by Mr. Taylor, under the terms of the subletting?

A. Yes.

Q. Are you a stockholder in the Tenant Motion Picture Company?

Mr. Scammell—Objected to upon the ground that it is immaterial and irrelevant.

A. I am.

Q. How many shares do you own?

Mr. Scammell—Objected to upon the same 'ground.

A. I do not recollect.

Q. Do you own a majority?

Mr. Scammell—Objected to on the ground that it is immaterial and irrelevant, and also im- 10
pertinent.

A. I believe I do.

Q. How many shares are held outside of the shares you own?

Mr. Scammell—Objected to on the same ground.

A. I do not recall.

Q. Is Mr. Vernon president of the Tenant Motion Picture Co.?

Mr. Scammell—Objected to on the same 20
ground.

A. Yes.

Q. Is Mr. Vernon managing the theatre for the Tenant Motion Picture Co.?

Mr. Scammell—Objected to on the same ground.

A. Yes.

Q. He managed the theatre for the St. Regis prior to the lease to the Tenant Motion Picture Co., did he not? 30

A. He did.

Q. Are you a creditor of the St. Regis Corporation?

Mr. Scammell—Objected to upon the ground that it is immaterial and irrelevant.

A. I am.

Q. To what amount?

Mr. Scammell—Same objection.

A. Between \$20,000 and \$25,000, I imagine.

Q. Have you received any dividends from the Tenant Motion Picture Co.?

Mr. Scammell—Objected to on same ground.

A. I have not.

Q. Have you received a salary from the Tenant Motion Picture Co.?

Mr. Scammell—Objected to.

A. I have not.

10 Q. Are you an officer of the Tenant Motion Picture Co.?

A. I am not.

Q. Who is treasurer of that company?

Mr. Scammell—Objected to as immaterial and irrelevant.

A. G. S. Claire.

Q. Is he a clerk in your office?

Mr. Scammell—Objected to.

A. Yes.

20 Q. How many shares of stock does he own?

Mr. Scammell—Objected to as immaterial and irrelevant.

A. I do not know.

Q. Has the Tenant Motion Picture Co. made profits during its management of the St. Regis?

A. I refuse to answer that on advice of counsel. If you will let me make a statement I can shorten the matter.

Q. All right.

30 A. Neither the Tenant Motion Picture Co., nor the St. Regis Corporation, nor Mr. Vernon personally, nor myself personally, nor anyone else who have loaned money to the St. Regis Corporation have ever received anything in return in the way of interest, or principal, or profits, or dividends, or any other advantage whatsoever, except that I personally was voted a salary for acting as secretary and treasurer and counsel, which has never been paid, and prospects of payment are very,

very remote. All that I have to show personally for my connection with the company in question, are unpaid notes, and unpaid interest, and a resolution of the board of directors voting me a salary to the exact amount of which I do not recall. The only thing I have to show for my connections with the St. Regis Corporation, or the Tenant Motion Picture Co. are very big liabilities.

Q. Who owns the seats in the theatre?

A. I believe the title to those is in the company who sold them. Hayward and Wakefield.

10

Q. In your affidavit you say that \$250 were paid as earnest money to bind the bargain. I call your attention to a clause of the lease in which it is stated that the sum of \$250 are an inducement for the signing of this lease. See that clause in the lease (showing same)? Do you wish to correct the part of your affirmation in which it is stated that \$250 were given to bind the bargain?

A. My impression was that \$250 was paid on account of the purchase price, because after practically all the terms of the lease and agreement of sale had been agreed upon, almost that very night, there was a clause inserted in either the lease, or the agreement of sale, for the payment of \$250, which was a great surprise to me, but which I recommended being paid, but I do not know to this time whether it appears in the agreement of sale or the lease. It is my impression that it was paid on the purchase price, but I believe that it was called to my attention, possibly a year later, that the \$250 did not apply to the purchase price, but was an amount of earnest money, and would not be deducted at the time of sale, as I had supposed it would be.

20
30

Q. I call your attention to a clause in the agreement of sale in which \$100 are mentioned as being paid at the time the agreement was signed, and having that in mind, do you still answer the former question in the same manner?

A. I was quite unaware that that amount was either in the agreement of sale or lease, and was unaware of the amount until you cross-examined someone recently in the last week or so on that point. I recommended the signing of the lease and the agreement of sale upon the advice of Mr. Kellam, without giving them a final reading, and upon his statement and recommendation the papers were executed.

Q. Did you represent Mr. Vernon when negotiations
10 were made through Mr. Van Horn for the purchase of the Shreve property, which resulted in the February, 1914, agreement?

A. I did.

Transcript of shorthand notes taken at Riverton, N. J., June 2, 1916.

Present—Harold B. Wells, Esq., of counsel with petitioners; Scott Scammell, Esq., and Charles Besore, Esq., of counsel with St. Regis Corporation, purchaser; Ellis L. Pierson, Esq., of counsel with Robert H. Mc-
20 Adams, guardian *ad litem*, etc.

R. Taylor Middleton, being duly sworn, testified as follows:

Direct examination, by Mr. Scammell:

Q. Where do you live, and what is your business?

A. I am a conveyancer, and I reside at 47 North Tenth Street, Philadelphia.

Q. Your office?

A. 703 Walnut Street, Philadelphia.

Q. Do you also, as a part of your business, negotiate
30 loans upon real estate?

A. Yes, I negotiate loans upon real estate; that is part of my business as a conveyancer.

Q. Did you negotiate a loan for Messrs. Vernon, Elfreth, and the St. Regis Corporation upon a property known as the "Shreve property," in Trenton?

A. Yes; along in April, nineteen fourteen, Mr. William J. Vernon gave me the particulars of a property in Trenton which he proposed to purchase under an agreement that he stated he had with the present owners of the property, and that he proposed tearing down a portion of the building thereon erected and constructing a moving-picture theatre building, removing the front part of the building, according to the plans and specifications which he submitted. I examined the property and submitted the application, with the plans 10 and specifications, to one of my parties in the City of Philadelphia, who subsequently sent and had the property appraised, and agreed to make a loan of sixty thousand dollars, to be secured by a first mortgage upon the premises fronting on State Street, Trenton, N. J., conditioned upon the giving of a collateral security of a bonding company that the building would be completed according to the plans and specifications. We waited for the papers—the deeds—to be produced, but Mr. Vernon failed to produce them, and about June 20 first I called for the production of them, and he said he was unable to do so, as he could not obtain title at that time, and the matter then fell through. He asked me to remain in touch with my people, stating that he proposed taking such steps as were necessary to secure the conveyance of the title, and as soon as that was obtained would give my parties the first mortgage as agreed upon. I have kept in touch with him on the matter, and have visited the property during the construction. I made several visits; I don't remember 30 how many—

Q. To Trenton?

A. Yes; and the loan as applied for, I have a great belief, will be granted and the matter consummated as soon as the title is perfected in the applicant, provided unforeseen changes in the financial world do not happen—I refer to the war, or a panic, or something of that sort.

Q. Then was there a second application?

A. Yes.

Q. What amount was available under the second application?

A. After the building was erected Mr. Vernon asked for an additional amount, and I secured an additional amount of ten thousand dollars, to be secured by a second mortgage on the property as then erected.

Q. Making a total amount—

10 A. Of \$70,000.

Q. Which has been available at all times since, and up to the present?

A. I have to make this a statement with a certain amount of conditions. It has been ready up to the present time and is available provided no changes should come about in the financial world. I don't want to be committed as having it right in hand ready to pay over.

Q. Your clients are ready?

A. They approved of it, and it is left pending this final settlement of title.

20 Q. You consider that you have earned your commission for the loan?

A. Under the law in Pennsylvania, and which, I believe, is the same in New Jersey—I have tested it somewhat, as I carried a case to the Supreme Court once—when the broker brings the minds of the two people together, he earns his commission, whether the matter falls through or not.

Mr. Scammell—I think that's all.

30 Cross-examination, by Mr. Pierson:

Q. Is Vernon the principal in the loan?

A. The principal in the loan? Why, there was some changes in the title made, I believe, and Mr. Elfreth's name was substituted for Vernon's.

Q. Who owes you the commissions?

A. Mr. Elfreth, because he assumed the obligation. I have a contract that is to that effect.

Q. Is there any legal rate of commission provided for in the Pennsylvania law?

A. No, there is none; not like New Jersey. It's a matter of custom. The Brokers' Association has adopted a rule, but people either keep it or break it, as the case may be. It's a matter of custom.

Re-direct examination, by Mr. Scammell:

Q. I want to ask you this: the loan of \$70,000 was to have, in addition to this property, certain other securities, was it not? 10

A. They took two mortgages, one of \$60,000 and one of \$10,000; the second mortgage of \$10,000 was to have additional security.

Q. That is, certain property in Pennsylvania which Mr. Elfreth owned?

A. Yes.

Re-cross examination, by Mr. Pierson:

Q. For how long a period has the amount of \$70,000 been available? 20

A. Since about June 1st, 1915.

Q. For what period before that was the loan of \$60,000 available?

A. Well, the first mortgage of \$60,000 was available since May, nineteen fourteen, and the ten-thousand-dollar second mortgage was subsequently negotiated and available since about June first, nineteen fifteen.

Q. Do you know what the appraisement was in nineteen hundred and fourteen? 30

A. I had nothing at all to do with it. That is a matter made up by the people in question; they very seldom tell me about it.

Q. Did Vernon give any reason why he did not produce the deed?

A. In nineteen fourteen?

Q. At any time.

A. As I understood it, title was being taken from the Shreve estate, under an agreement, but that the matter had to be referred to the Court of Chancery for a decree on account of minor children. The decree of the Court of Chancery has not been handed down and therefore he has been unable to tender his money and take the deed as they agreed.

Q. Did you see the agreement of sale that he entered
10 into?

A. No; I don't recall it; if he showed it to me, I don't recall it.

Q. Mr. Elfreth is now the principal in the transaction?

A. Yes.

Mr. Pierson—That's all.

Rebecca H. Shreve, being duly sworn, testified as follows:

Direct examination, by Mr. Scammell:

20 Q. You are one of the petitioners in this cause?

A. Yes.

Q. And testified in a former hearing in this matter some time in the year nineteen thirteen?

A. In Trenton; I did.

Q. I don't suppose you have any recollection of the exact figures you testified to at that time relative to the income of the property in 1913?

A. I think I can remember that. I am very good at remembering figures, because I am the financier of the
30 family.

Q. Your testimony at that time was, I think, to the effect that the gross income was thirty-three hundred and thirty-three dollars per year, and that the annual expenses were the sum of twenty-five hundred and four dollars and fifty cents, leaving you a net income of eight hundred and twenty-nine dollars per year?

A. Yes.

Q. How long had that income been approximately the same; for how long prior to 1913?

A. Every year it went down a little until it got down to eight hundred.

Q. Why was that?

A. The taxes got so much more expensive every year.

Q. The taxes increased and the income stayed the same?

A. And the building was going down, deteriorating.

Q. For how long prior to nineteen thirteen had you **10** been trying to make a sale of the property?

A. Only once before, I think, we had an offer, during my son's lifetime, and we refused it because my son thought that the property would increase more rapidly, and on account of the children we thought we would not sell then. I was running the Lawn House and able to live; I had an income from that.

Q. Prior to the so-called VanHorne-Vernon agreement of February, nineteen fourteen, you had made a sale or tentative arrangement for a sale of this property **20** to H. M. Voorhees and Brother, hadn't you?

A. Yes.

Q. About how long was that before the VanHorne-Vernon agreement?

A. I think it was about six or seven months before.

Q. When the offer was made to you for the purchase of the property in February you considered that an advantageous offer for you and the interests which you represented?

A. I did not think it was all we ought to get; but **30** we were willing on account of the children; they were getting at the age when they wanted that money spent on them for their education, and that is the only thing that made us sell. The income was too small to live on comfortably.

Q. When you say the income was too small to live on comfortably, do you mean yourself and family?

A. Yes.

Q. Your family at that time consisted of whom?

A. My daughter-in-law, my two grandchildren, and myself.

Q. They had no other means of support or income except from this estate?

A. That's all.

Q. Why was it that the Voorhees sale fell through?

A. Because we could not give the title immediately.

Q. And it was after that, then, that you instituted
10 these proceedings to obtain the order to make a sale of this property?

A. It was while the Voorhees offer was still pending that the proceedings were begun.

Q. How long had Mr. Worthington been the agent for the sale of this property?

A. Just at the time he came to make this proposition from the Voorhees; just when he came with this offer.

Q. Was he your agent for the collection of the rents
20 at that time?

A. No, Mr. Finch was.

Q. Did Mr. Worthington bring you any other offers besides the Voorhees offer for this property while he was broker?

A. No.

Q. After the Van Horne-Vernon agreement was signed by yourself and your daughter-in-law, it was found that you could not give a clear title because of certain leases upon the property, was it not?

30 A. Yes.

Q. Then you negotiated a new agreement with a corporation known as the St. Regis Corporation, which was sort of a successor in interest to Mr. Vernon—

A. Yes.

Q. And you then arranged different terms, and I mean by that that they were to take the property subject to whatever leases were on the property?

A. Yes.

Q. The Van Horne-Vernon agreement contemplated that you would have to arrange to take care of the leases on the property, I think?

A. I did not understand it that way.

Q. I mean the first agreement.

A. I didn't understand that at all.

Q. You considered that Mr. Worthington was the man who had the sale of the property, and if sale was made he was to have the commission?

A. Yes.

10

Q. And that was fully explained to Mr. Van Horne, was it not?

A. Yes, fully.

Q. And he knew those conditins, that whatever commission he expected to get he would have to divide with Mr. Worthington?

A. Yes, I told him that, and when he came he said he had just seen Mr. Worthington on the street, and that he would go to see Mr. Pierson.

Q. Under the agreement which was made by the St. Regis Corporation with you and all the other interests in the Shreve estate, it was provided that the purchaser was to take care of the leases on the property?

20

A. It was.

Q. It also provided that they should take care of the commission to Worthington, but upon the understanding that Worthington was to vacate, did it not?

A. That was it exactly.

Q. Did Mr. Worthington have that understanding with you?

30

A. He had.

Q. And that understanding was made here at your home with him, or in Trenton?

A. It was talked about at every time we met.

Q. Why, in the second agreement of sale, did you provide, as to Worthington's commission, in the form that it is in in the agreement—that sixteen hundred

dollars in dispute—that that was to be paid to Worthington by the St. Regis Corporation?

A. Because we didn't have the money, and because of the advice of my counsel. We thought that that amount of commission would not be allowed by the Court of Chancery for the sale of the property, and had better be taken out of the purchase price in the beginning.

Q. The increased income that you received under the
10 sale was used for the maintenance and education of these infant children, was it not?

A. Yes, and comfortable living.

Q. You desire, Mrs. Shreve, to carry out the agreement to which you have affixed your name in 1914?

A. I do.

Q. For the sale of the property?

A. I do; yes.

Q. Since the sale was made the St. Regis Corporation, or someone in its behalf, has paid the taxes upon
20 the property, have they not, so far as you know?

A. Yes, they have, reluctantly.

Q. You have not paid the taxes?

A. No, I have not; they paid them.

Q. It took some considerable time arranging the details of both the lease and the agreement of sale, did it not?

A. It did.

Q. How often did you confer with Mr. Pierson and Mr. Wallace over the two papers, the lease and the
30 agreement of sale?

A. Several times.

Q. Did you ever instruct Mr. Pierson not to file any papers or take any action in the Court of Chancery not to put through this sale?

A. Never.

Q. You still think that the sale should be carried through, do you not, Mrs. Shreve?

A. I do.

Cross-examination, by Mr. Pierson:

Q. Mrs. Shreve, the second agreement is conditioned upon the performance by the St. Regis Corporation of all the conditions of the lease made between you and the other Shreve interests and the St. Regis Corporation?

A. Yes.

Q. Has the rent been paid according to the terms of that lease?

A. Not entirely.

10

Q. To what extent is it not paid?

A. It has not been paid in advance; it was for one year and then stopped.

Q. So that the rent for the month of June, nineteen sixteen, is now due and unpaid, is it not?

A. Yes.

Q. Do you know when the taxes were paid?

A. January seventeenth, nineteen sixteen.

Q. Had you requested that the taxes be paid?

A. Yes; they were on my mind.

20

Q. Were the plans and specifications, or either of them, for the improvements to the Shreve Building ever submitted to you?

A. Never.

Q. Was any notice given to you by the St. Regis Corporation of improvements proposed to be made?

A. No; except Mr. Elfreth spoke about them to me; I had no notice, but he talked a good deal about them.

Q. In a general way or in a definite form?

A. Telling me what was going on.

30

Q. Did he tell you, for instance, that there would be no stairway to the second floor of the Shreve Building?

A. He spoke as if he contemplated putting one there in the future.

Q. Were you served with any papers in any mechanics' lien suits?

A. No.

Q. Were you served with the summons in the mechanic's lien suit of Dowling?

A. No; I had a man come down and interview me; Mr. Morris, that's all.

Q. Did Van Horne ever claim any commissions from you?

A. Never.

Q. He was never your agent, was he?

A. Never.

10 Q. Did you explain to Van Horne that the property could not be sold except the purchaser buy it subject to the lease?

A. I did.

Mr. Scammell—I object to that as immaterial, irrelevant, and not proper cross-examination. I did refer to the agreement, but not as to its terms. The agreement will speak for itself, I presume.

Q. Is there some other part of the estate of your
20 late husband producing income besides the Shreve Building, in Trenton?

A. Nothing but the Lawn House, in Riverton, and the Shreve Building, in Trenton.

Re-direct examination, by Mr. Scammell:

Q. How long have you been receiving rent from the St. Regis at the end of the month?

A. A year from this May. They paid to me in advance up to a year ago last April, and then they didn't pay in advance. They lapsed the May rent, and on
30 the first of June they sent the money, at the end of the month instead of the first.

Q. And they have continued to pay you at the end of the month, instead of the beginning?

A. They are very prompt; at the first day of the following month they pay me.

Q. Did you complain of this arrangement?

A. I complained to Mr. Pierson and to my nephew, Mr. Wallace, but I don't think I wrote to them about it. Mr. Scammell—I think that's all.

Lucy Ellen Shreve, being duly sworn, testified as follows:

Direct examination, by Mr. Scammell:

Q. You are one of the petitioners in this case, and mother of the two infant children mentioned in the proceedings?

10

A. Yes.

Q. Did you have personal knowledge of the condition of the property in Trenton on or about the time that the offer or agreement of sale was made in this cause with the St. Regis Corporation?

A. Yes.

Q. Just prior to the sale which was made according to the agreement in this cause you had signed an agreement of sale so-called as the VanHorne-Vernon agreement, had you not?

20

A. Yes.

Q. Prior to that agreement you had also entered into an agreement with H. M. Voorhees and Brother, of Trenton, for the sale of the same property?

A. Yes.

Q. What was the consideration in the Voorhees agreement, if you recall?

A. I am not so good at remembering figures as mother. It made no impression on me; but it seems to me it was something like sixty-five thousand.

30

Q. It was not over that sum?

A. No; I think not.

Q. That agreement of sale didn't go through for what reason, if you know?

A. Because we didn't have a clear title, or something of that kind; we couldn't deliver the property.

Q. And you had to take some proceedings in order to obtain a deed for the purchaser?

A. Yes.

Q. It was after ascertaining this fact that you then filed a petition in this present proceeding?

A. After that—as soon as I learned that.

Q. The income received from the sale of this property has been applied to the maintenance of your children and yourself in the household of your mother-in-law, Mrs. Shreve, with the exception of the property known as the Lawn House, and the Shreve Estate had
10 no other productive property other than the Shreve Building in Trenton?

A. That's right.

Q. By this increased income you have been enabled to live more comfortably than before, and to educate your children, have you not?

A. I didn't see any particular difference, but it must be so.

Q. What do you mean by "it must be so."

A. I mean that up to that time something had always
20 been sold—

Q. Some personal effects?

A. Yes, some personal property had been converted into cash; now we live off the income.

Q. That was one of the reasons that led you to join in the application for the sale of the property, was it not?

A. Yes.

Q. The eldest child is now how old?

A. Eighteen.

30 Q. And the youngest?

A. Thirteen.

Q. Is it your desire to complete this agreement of sale which you signed with the St. Regis Corporation?

A. Yes.

Q. Have you advised your counsel, Mr. Pierson, or Senator Wells, your present counsel, to oppose a sale in any manner?

A. No.

Mr. Scammell—I think that's all.

Mr. Pierson—I don't think I have any questions.

Testimony taken before the subscriber, Frederick W. Gnichtel, one of the Masters and Examiners of this Court, on Friday, the 8th day of June, 1916, at ten o'clock in the forenoon.

Appearances as before.

Nelson B. Gaskill, a witness produced on the part of the purchasers, being duly sworn, testified as follows:

Direct examination, by Mr. Scammell:

10

Q. Mr. Gaskill, you were counsel, or you represented certain material men who had furnished material and labor for the erection of the buildings on the Shreve property in the city of Trenton, did you not?

A. Yes. I represented James H. Morris, trading as W. J. & J. H. Morris; John T. Flannigan, Fred R. Parker, Payne and Scammell, and the Newton A. K. Bugbee Company.

Q. Was an arrangement made with you on behalf of your clients, whereby those lien claimants were to be paid by giving them a security upon this property? 20

Mr. Pierson—I object to that as immaterial.

A. Yes.

Q. What was the total amount of moneys due to your clients, which still remain unpaid for the improvements which they put upon the Shreve property?

A. There was due to James H. Morris on the fourteenth of October, 1915, the sum of ten thousand one hundred and fifty-nine dollars and fifty-three cents; to John T. Flannigan, one thousand and seventy-five dollars and seventy-eight cents; to Fred R. Parker, six hundred and ninety-four dollars and sixty-one cents; to Newton A. K. Bugbee Company, two hundred and seventeen dollars and fifty cents, and to Payne and 30

Scammell, one hundred and seventy-one dollars and seventy-seven cents.

Q. This arrangement with your clients contemplated a mortgage secured upon this property?

Mr. Pierson—I object to that as immaterial.

A. Yes.

Q. And is only waiting to be completed upon the deed being obtained for the property?

Mr. Pierson—I object to that question.

10 A. Yes.

Cross-examination, by Mr. Pierson:

Q. With whom was such an arrangement made?

A. The arrangement was negotiated with Mr. Elfreth.

Q. By whom was it signed?

A. The agreement was never signed in fact. It was drafted and its terms agreed upon. When we met to have the agreement executed, it was stated that there was some possibility that Mr. Elfreth might not acquire
20 the title, and under those circumstances it was agreed that the agreement should not be signed until that fact was determined.

Q. Then you have no agreement with the St. Regis Corporation, the purchaser in these proceedings?

A. My recollection is that the agreement was between the creditors which I represented and Mr. Elfreth. I can verify that fact by getting a copy of the agreement from my office.

Q. What sums have been paid to your clients?

30 A. I am informed by Mr. Flannigan that certain small installments have been paid to him from time to time, the exact amount of which I am not informed. I have no knowledge that any payments have been made to any others.

Q. Do you know whether any payments had been made prior to the dates upon which the sums given were due?

A. Yes. The claims all represented balances of amounts upon which payments were made prior to the dates fixed.

Q. Do you know what those payments were?

A. Yes. I have statement of the amounts which were attached to the mechanics' lien claims filed, setting up the claims in full, and credits. I can get those, if necessary. The amounts paid on these claims were as follows (after getting papers):

Mr. Morris received on November 11, 1914, \$527; 10
February 9, 1915, \$2,388.50; March 11, 1915,
\$2,031.50; April 20, 1915, \$1,772.25; May 28, \$500;
June 8, 1915, \$500; June 11, 1915, \$500. Then there
was an allowance for deduction on account of boilers,
concrete work in alley pavement, retaining wall; \$900
in all. That was an abatement for work not per-
formed by Morris. As I say, I did not know the
know that he stated he had obtained some small
amounts from time to time on his own efforts. I only
know that he stated he had obtained some small 20
amounts. I do not think there has been any payments
made to Parker or to Payne & Scammell, or to Bugbee.

Q. In your agreement with Mr. Elfreth, how were payments to be made upon the proposed mortgage?

A. The agreement provided that a second mortgage should be placed upon the property to James H. Morris, as trustee for the group of creditors whom I represent. The claims to bear interest from the date when the claims were due, and principal and interest to be paid 20
by installments of not less than \$1,000 a year; the mortgage to become due within periods that would be determined by dividing the amount of the claims by yearly payments of \$1,000.

Q. The mortgage would then run from thirteen to fourteen years, would it not?

A. This agreement provided that Mr. Elfreth, the mortgagor, should pay on the first day of July in each year, the sum of \$2,000, with interest on balances at the

rate of six per cent. per annum, until the whole of the aggregate of debts, with interest, was paid and discharged. Although not expressed in the agreement, that was stated as the minimum to which the mortgagor was to be bound, with freedom on his part to make earlier or larger payments as he saw fit.

Q. Then the term of the mortgage would be about six or seven years?

A. About six or seven years; unless the payments
10 were increased.

Q. Did that provide for the payment of any other creditors besides those named as represented by you?

A. It did not.

Q. Was any stipulation as to the amounts of the encumbrances, prior to your mortgage, made?

A. Yes.

Q. What was such arrangement?

A. That the encumbrance prior to this mortgage was not to exceed \$70,000.

20 Q. Was the mortgage for your clients then to be subjected only to a \$70,000 mortgage?

A. Yes; or about a mortgage comprising that amount.

Q. Was that agreement made after a bill in the United States District Court had been filed by you, praying for the appointment of a receiver for the St. Regis Corporation?

A. Yes. And on the execution of that agreement,
30 the enforcement of that suit was by agreement stayed. I had also filed mechanics' lien claims in the Mercer County Circuit Court for each of the claims I represented.

Q. Was that agreement with Mr. Elfreth personally?

A. Yes. The agreement was made with Mr. Elfreth personally. Reciting that he was a stockholder, a director, the secretary and treasurer of the St. Regis Corporation, and claimed to be a creditor of that corporation; and also a stockholder and director of the Tenant

Motion Picture Company. This agreement refers to the filing of the bill in the United States Court.

Q. The Tenant Motion Picture Company did not execute that agreement?

A. No.

Q. Was it a party to the agreement?

A. It was not a party to the agreement. The agreement was negotiated by Mr. Elfreth as the party interested in both of these corporations, and a creditor of the St. Regis Corporation, with the parties whom I 10 represented, and was, as he stated to me, made for the purpose of saving the St. Regis Corporation.

Q. Did Mr. Elfreth represent to you that he controlled both of these corporations?

A. No. He said that he was largely interested as a stockholder, and for advancing money to these corporations, and that it was the interest he had in these corporations by reason of having advanced money that lead into this step, as he said, to save his investments, if he could. 20

Q. Was anything said in the agreement about leases on the property?

A. In reference to the property itself, it is spoken of as No. 142 and No. 144 East State Street, Trenton, N. J., now owned by Rebecca H. Shreve and others, and leased by the said Rebecca H. Shreve to the St. Regis Corporation, and by it leased to the Tenant Motion Picture Company. I think that is the only reference to the leases.

Q. Were the terms of the leases to the Tenant Motion Picture Company disclosed to you? 30

A. I saw a copy of the lease to the Tenant Motion Picture Company, and attached it to my bill for receiver in the United States Court. I know nothing else that was set out in that lease.

Q. Then your mortgage was to be subject also to that lease?

A. Yes.

Q. You knew that that lease was made by the St. Regis Corporation to the Tenant Motion Picture Company?

A. Yes.

Q. Did you know the terms of the lease to the St. Regis Corporation?

A. Yes. That was of record.

Q. Was the source of revenues out of which to pay installments upon your mortgage disclosed to you?

10 A. I cannot say definitely whether it was stated to me by Mr. Elfreth or anyone, but certainly I was under the impression that the receipts of the theatre were the source from which these payments were to be made. Although it is to be taken into consideration also that one of the features that led me to accept this mortgage was that I would have the personal bond of Mr. Elfreth as security for any deficiency there might be in the value of the mortgage itself.

Q. Was your agreement conditioned upon Mr. Elfreth's obtaining title to the Shreve property?

20 A. Yes. That was the reason why the signatures were not actually put to it.

Q. Then, if the St. Regis Corporation, and not Mr. Elfreth, obtains title to the Shreve property, Mr. Elfreth is not bound upon his agreement, is he?

Mr. Scammell—Objected to as being a legal conclusion.

30 A. The agreement as drafted contained two statements; one to be executed by the St. Regis Corporation, and one to be executed by the Tenant Motion Picture Company. The St. Regis Corporation, by agreement, was to execute this statement in consideration of the benefit "thereby acknowledged to be received by the St. Regis Corporation by and from the forbearance of suit against it, as set out in the foregoing agreement. The St. Regis Corporation hereby assents to, ratifies and confirms the foregoing agreement, and each and every part thereof, and this action is taken with due

authority on the part of said corporation, to its officers executing this statement, and a like statement for the Tenant Motion Picture Company;" and I told Mr. Elfreth that I would require a copy of a resolution passed by the directors of each of the corporations in question, ratifying the execution of this agreement by the officers of each, or authorizing them so to do.

Q. Such stipulations were not signed by either of the corporations, were they?

A. No.

10

Q. Have you any agreement in writing from Mr. Elfreth to pay the St. Regis' debts?

A. No. I have not.

Re-direct examination, by Mr. Scammell:

Q. It was understood that Mr. Elfreth was to obtain the title to this property in order to comply with this agreement, was it not?

A. Yes. As a matter of fact I understood, upon the element of security in having Mr. Elfreth personally on a bond, and Mr. Elfreth said that it was immaterial to him whether title was taken in his name or in the name of the St. Regis Corporation; I think really on my insistent that the agreement was negotiated with him personally in order to have his bond.

20

Q. Mr. Elfreth also, by this agreement, postponed the payment of all his claims against the St. Regis Corporation to that of the creditors you represent?

A. Yes.

Q. In other words, the creditors were to be paid first before he received any money from the St. Regis Corporation?

30

A. Yes.

Re-cross examination, by Mr. Pierson:

Q. Was there anything in the agreement that all of the profits of the theatre should go to the payment of your clients' claims?

A. I think not. No. There was no mention of the source from which the payments should come, except from Mr. Elfreth.

Q. Then if the profits of the theatre amounted to more than \$2,000 a year, Mr. Elfreth might have kept this agreement, and retained the profits in excess of that amount for whatever other purpose he wished, might he not?

A. Under the terms of the agreement, yes.

10 Q. Your only interest is to have your clients paid, is it not?

A. That's all.

W. Henry Elfreth, being previously affirmed, testified as follows:

Direct examination, by Mr. Scammell:

Q. I am referring now, Mr. Elfreth, to your testimony given on Monday, the twenty-ninth day of May, 1916, page 9, in answer to the following question: "Was not your agreement attached to your offer made
20 in substitution of the Vernon agreement?" Do you desire to explain the answer which you gave on that page, to that question?

A. Yes. I cannot give a legal conclusion, but I can say that the offer that was finally made to the Master, and upon which he has acted, was made upon advice of counsel. In regard to the St. Regis Corporation agreement with Rebecca H. Shreve et al. at the time of the execution of the agreement the matter of substitution was not discussed at all. Mr. Pierson's objection to the Vernon-Shreve agreement was simply
30 that the Shreves could not perform their agreement for the reason that there were leases in existence. This was the final objection made to the agreement. It was then suggested that another agreement be drafted between St. Regis Corporation and the life tenants and remaindermen, of such character as could be performed by the Shreves, it having been represented that the

Chancery proceedings were entirely within the control of the Shreves, and only the simple formalities remained to be complied with. The Vernon-Shreve agreement was not cancelled at the time, and so far as the St. Regis Corporation was concerned, it was paying very little attention to the Vernon agreement because under both agreements the total amount to be paid, namely, \$65,000, was the same; the practical difference in the two agreements being that the St. Regis Corporation undertook to take title subject to the leases. 19

Q. Was it represented to you that the Shreves could perform the agreement of July, 1914?

A. It was represented that they could perform at once.

Q. How soon after the execution of that agreement did the St. Regis Corporation, by you or anyone on its behalf, request that a deed be given for the property?

A. I requested that the deed be given at once, in order that our conveyancer might prepare his mortgage papers and recite the deed. 20

Q. Did you take any steps to obtain title insurance as well on the property, in anticipation of taking title thereto?

A. My recollection is that shortly before the signing of the St. Regis-Shreve agreement, the Real Estate Title Company of Trenton, was consulted with regard to the insurance of the title. I asked the Title Company what formalities would have to be complied with before title insurance was granted. I was informed by letter from Mr. Chamberlain, of the Title Company, 30 that the proper course was for the owners of the property to report the sale, and thereupon a deed would be prepared which would be submitted to the company or its counsel, for approval, and that under the Chancery proceedings, ample time would be allowed the company to inspect the deed in order to determine whether it was obtaining a marketable title, and that thereupon the purchase price of \$65,000 would be due and pay-

able. It was upon the suggestion of the title officer of the company that I therefore demanded the preparation of the deed at once. I was unacquainted with the actual legal proceedings necessary to obtain that deed, and, therefore, my demand was always made simply in the form of asking that the deed be prepared.

Q. Who did you ask to submit to you the deed?

A. Mr. Pierson.

Q. Upon how many occasions have you asked him
10 for this deed?

A. I have asked him for the deed on numerous occasions. By numerous personal calls at his office, and by telephone calls.

Q. Did Mr. Pierson ever say anything to you with respect to preparing the deed?

A. Upon several occasions when I thought that all the parties, the Title Company, our mortgagor, and the Shreves, as represented by Mr. Pierson, were ready to proceed with settlement, and I again demanded the
20 preparation of the deed. Mr. Pierson refused to prepare the deed, giving at various times various excuses. On one occasion he demanded the payment of the full purchase price of \$65,000. On another occasion he demanded to know from what source we were borrowing the money on first mortgage. On another occasion he refused to prepare the deed on the plea that it would take time, and would be costly, and perhaps the sale might not be consummated, and the preparation would,
30 therefore, be lost work. I suggested that the cost of preparing the deed was very slight, and that rather than bother him our company would assume the cost of the preparation of the deed. The deed was never prepared, nor any draft made of any kind whatsoever.

Q. Did you assure Mr. Pierson that the company was ready at all times to take the title to this property, and pay the consideration mentioned in the agreement of sale, as soon as he would obtain the deed and attend to the same?

A. I did.

Q. As a matter of fact he never did prepare or submit to you a deed for this property, did he?

A. He did not.

Q. At the time that you took up the agreement of sale of July, 1914, with the Shreves, did you make known to them what you intended to build upon this property, or utilize the property for?

A. They were fully apprised of the use to which the property would be put, and informed in detail of our 10 proposed plans.

Q. Did you see the Shreves at any time during the course of the improvements upon the property?

A. I saw them on several occasions during the progress of the building operations.

Q. And they knew what your company was doing there?

A. They did.

Q. Who prepared the first offer made to the Master?

A. The first offer was dictated by Mr. Pierson in 20 his office on January 8th, 1916, the original of which I offer as an exhibit, upon my demand that he comply with the provisions of the agreement of 1914, namely, that the Shreves should do all in their power to obtain a conveyance of the property in question. I insisted that Mr. Pierson's stenographer come into the room, and he dictated to her the form of offer necessary to get the matter before the Master, or other proper judicial officer, in order that we might have the Court's decision in regard to our agreement. That offer, which 30 was typewritten by Mr. Pierson's stenographer, I took it to Philadelphia and read it over carefully, and upon advice of my conveyancer added the following: "The above terms are acceptable to all the parties that I represent." That was appended to the offer as dictated by Mr. Pierson; signed by him, and Mr. Pierson's signature requested. The question of the Vernon agreement came up during the conversation. Mr. Pierson

became very angry after having signed the appended portion of the offer, tore the signature off and threw it in the scrap basket. That is as near as he ever came to doing anything toward the confirmation of the sale. I then rewrote the offer, changing the terms to the extent of offering to pay \$10,000 in cash, and asked the name of the Master, and where his office was located. I then took it over to the office of the Master, Judge Marshall, who was not in. I then went to Judge
10 Marshall's home, but was unable to find him there. That, I believe, was on January 8th, 1916. On the following Monday I called at Judge Marshall's office, and presented the offer, and requested that he take the necessary legal steps to bring the matter before the Court. Several days elapsed, and I was informed that the Master had suggested some slight changes in the form of the offer. The offer was re-executed in compliance with the Master's request. I then called at
20 the office of the Master, and requested that I be shown the form of report that he would make upon the offer as presented. Judge Marshall prepared his report at that time, and submitted it to me for my inspection. I then informed him that in the past two days or so I had retained Mr. Scammell as counsel, and requested that I be allowed to show the offer and the proposed report of the Master to Mr. Scammell; and the same day I submitted the offer and report to Mr. Scammell, and was advised to withdraw.

30 (Offer put in evidence and marked *Exhibit A Purchaser.*)

Q. The offer as made to the Master, and the sale to your company was made after your conference with respect to the proper form of the same?

A. It was.

Q. The reason that you made the offer in your name was because the agreement of sale had been assigned to you, was it not?

A. The agreement of sale had been assigned to me.

My recollection is that the St. Regis-Shreve agreement was assignable by its terms; that is, that they would make a conveyance from the St. Regis Corporation or its assigns, and for the reason that the plan for the mortgage loan involved the first mortgage of \$60,000; a second mortgage of \$10,000; the second mortgage being secured not only by the Shreve property, but by property of mine in Philadelphia; and for the further reason that the mortgagee preferred a personal bond to a corporate bond, and because the creditors of the 10 St. Regis Corporation and myself had come to an understanding for a personal bond and not a corporate bond.

Q. Was the Company and yourself in a position at all times to complete the sale, and pay the amount of the purchase price?

A. We were.

Q. Did you have an understanding with Mr. Pierson as to the amount of the mortgage which he thought could be obtained upon the property, along in Decem- 20 ber, 1915, or January, 1916?

A. In December of 1915, for the first time I learned that the Court had been petitioned to allow a larger loan than the original \$32,500. Up to that time I was under the impression that \$32,500 was the largest amount that the Court would allow to remain on purchase money mortgage.

Q. Was it suggested that the Chancellor might be willing to allow a portion of the purchase price to remain upon the property to be secured by a mortgage? 30

A. Shortly after or at the time of the execution of the original St. Regis-Shreve agreement, I suggested that it might be possible to secure a larger loan from the Chancery than the statutory sum of fifty per cent., or \$32,500. My thought being that there was a decided difference between a purchase money mortgage and an investment money mortgage, and that it was proper to ask that a larger loan be allowed by the Court. I was

informed by Mr. Pierson that a larger loan could probably be obtained, but I was never informed that such a loan was actually allowed until December, 1915.

Q. In connection with the different suggestions as to the amount of mortgage to be placed upon the property, did they have anything to do with the fact that your Company and yourself were ready to take conveyance whenever the same was offered to you?

A. They did not.

10 Q. You were merely making arrangements for the purchase price, if you could, but were always ready to pay when required?

A. Yes.

Q. Did you at any time state to Mr. Pierson as one of the reasons for the obtaining of a loan for the period of five years, that you expected during that period of time, if a sale could not be made, that your Company would be in a position to get back the money expended on improvements on the property?

20 A. I had a good many conversations with Mr. Pierson, in which we discussed a great many matters as to the purchasing of leases on the property, and matters relating to the building operations, but at no time did I state that we expected to realize any gain from the operation through our leasehold. The purpose of the lease, and the agreement of sale of 1914, was in order that the Company might go on the premises and begin the building operations at once; that Mr. Pierson might proceed at once with the preparation of his
30 deed, in order that the erection of the building, and the Chancery proceedings such as they might be, might be started at once, and be completed as quickly as the two parties were able to complete them. It was my expectation, upon the representations of Mr. Pierson, that the Chancery proceeding be completed before the building was completed. I could not think of any other method of getting into possession of the premises to

start the building operations, except by the means suggested.

Q. Was it the intent of either the Company or yourself by any of the suggested offers, to in anywise alter or vary the agreement of sale into which your Company had gone into possession?

A. It was not.

Q. You have here the testimony of Mr. Gaskill, given in these proceedings, and his statement of your arrangement with the creditors he represented, correctly represents an agreement made by you on behalf of the Company and yourself with the creditors of the St. Regis Corporation?

A. It does.

Q. It was only upon my advice that you should not sign this agreement personally or have the Company sign it until the sale had been confirmed, that you did not immediately sign the agreement, was it not?

A. It was.

Q. But you are, and the Companies are, ready to 20 comply and complete that agreement?

A. We are.

Adjourned until 4 o'clock P. M.

Testimony continued pursuant to adjournment.

Cross-examination, by Mr. Pierson:

Q. On page ten of your testimony you swear that the amount expended by the St. Regis Corporation for improvements to the real estate of the Shreve property, exclusive of chattels and exclusive of purchasing the leases, is \$27,108.23. In Mr. Gaskill's testimony of 30 this morning, it appears that he represents creditors whose claims aggregate \$11,719.19, and to whom have been paid \$9,119.25, making a total of \$20,838.44, has any arrangement been made for the payment of the remainder due for those improvements?

A. While the arrangements have not been concluded with all the creditors, an arrangement practically

similar to the one made with Mr. Gaskill's clients will be tried to be effected with the balance of the material-men, and persons having any claim upon the property.

Q. Does such an arrangement postpone their claims to the claims represented by Mr. Gaskill?

A. That is not my idea, but I intend to get the mortgage to secure them as I have given to the creditors represented by Mr. Gaskill, and all to be included in the same mortgage.

10 Q. At the time of making the agreement with Mr. Gaskill no arrangement was then made for the payment of other creditors, was there?

A. There was no arrangement made when the agreement with Mr. Gaskill was made, except the creditors named in that agreement. I believe that some payments were being made on some claims.

Q. In your previous testimony at the top of the page nine, you say that you do not now own the Vernon agreement. When did you transfer the Vernon agree-
20 ment, and to whom did you transfer it?

Mr. Scammell—Objected to as immaterial and irrelevant.

A. The agreement would be canceled of record and surrendered.

Q. Who now owns the agreement?

A. It has been transferred to my mother, Virginia A. Elfreth.

Q. When?

A. February 7th, 1916.

30 Q. Does she now have it?

A. Yes.

Q. She does?

A. Yes. It was transferred as collateral security for some loans.

Q. Are you the beneficial owner of the agreement?

A. On payment of the loan, the agreement would be surrendered to me, yes.

Q. Have you considered that agreement as a binding

one from the time it was executed up until the present time?

Mr. Scammell—Objected to as immaterial and irrelevant, and calling for a conclusion.

A. I never gave the agreement any consideration after the execution of the subsequent agreement with the St. Regis Corporation until about December of 1915. I do not think that I am well enough based on the law of New Jersey to know the full legal value of the agreement. I would be guided by the opinion of 10 my counsel entirely in the matter. The subject of the Vernon agreement would never have arisen had the subsequent agreement with the St. Regis Corporation been carried out according to its terms.

Q. In what respect has it not been carried out in accordance with its terms?

A. The provisions of the St. Regis-Shreve agreement were that the Shreves life tenants and remaindermen would do all in their power to obtain a conveyance of the property to the St. Regis Corporation, 20 and, as far as I am informed by counsel, the record in the Court of Chancery states that absolutely nothing has been done by the Shreves nor the remaindermen nor their counsel.

Q. In July of 1914 you were ready to cancel the Vernon agreement, were you not?

Mr. Scammell—Objected to upon the same ground above stated, as immaterial and irrelevant.

A. The question of cancellation, as I recall, did not 30 come up at that time. We were never requested to cancel the agreement of record. The agreement passed very largely out of my mind as soon as the Shreve agreement was executed. I recollect saying at the time that no advantage would be taken of the Vernon agreement. Only one objection had been made to the Vernon agreement, and that was the Shreves did not control the leaseholds, and, therefore, could not convey in

fee simple. The St. Regis Corporation was willing to take the property subject to the leaseholds, and it seemed, therefore, that the Vernon and St. Regis agreements could have both been performed. It was stated that the proceedings in Chancery were entirely under the control of the Shreves, and their counsel, and that the point of difference regarded the matter of the leaseholds. There was nothing to prevent the sale being consummated.

10 Q. Were you advised by your counsel that it was so that the proceedings were entirely under the control of the life tenants and their counsel?

A. I was advised by Mr. Pierson that such was the case.

Q. If the objection to the Vernon agreement was only the inability of the Shreves to deliver free of the leases, why did you accept a conditional agreement such as the second agreement was, or an agreement on the part of the Shreves to do what they could to give you
20 title in the place of an absolute agreement, such as you had insisted upon at first?

Mr. Scammell—Objected to on the ground that it calls for a legal conclusion of the agreement of sale in question, and upon the further ground that it is immaterial and irrelevant.

A. Because you, as counsel for the Shreves, represented that the sale was entirely within your control. I thought that you, as a member of the New Jersey bar, and a lawyer in good standing, meant exactly what
30 you said, and I relied absolutely and entirely upon that statement, that the proceedings were entirely within your control; that it merely remained to comply with some simple formality, which I was not acquainted with, in order to tender a deed.

Q. The agreement was submitted to your New Jersey counsel, was it not?

A. Yes.

Q. Then you did not rely entirely upon my statement?

A. I did rely entirely upon your statement as to your power to control the sale absolutely and entirely. My New Jersey counsel, Mr. Kellam, or the New Jersey counsel of the Company, at that time, never passed upon that point, whether the control of the property was solely with you, or not.

Q. Why did you insist upon a two year period in which to purchase, in the place of a one year period, 10 which was as agreed upon?

A. I think one reason for that was the slowness of the proceedings under your management, and as they had dragged out for a period of several weeks, it seemed to me that if that was the rate at which papers could be prepared, it would be best to extend the period. In other real estate matters it had been my experience that when we calculated upon three or four months, transactions would run into a year or more.

Q. What did you think remained to be done when 20 you insisted upon the increase in time?

A. We were negotiating in regard to the loan, and the agreement of sale, and that was running into several weeks' time, and it seemed to me best to obtain an agreement of sale for as long a period as the other side was willing to grant. If I could have had a period of five or ten years longer, I would have done so, simply upon the theory that it would take us as long a time as the other side would allow us.

Q. On July 2d, this letter, *Exhibit 3* at a former 30 hearing, calling off the negotiation, was sent to me by you, was it not?

A. Yes. It was.

Q. Were not the negotiations resumed, and the agreement of sale fully prepared within ten days of that date, namely, on July 11, 1914?

A. Not on the eleventh of July; within three or four days of that time. Negotiations in regard to the St.

Regis-Shreve agreement were begun in the early part of April, and the matter pretty well threshed out, with the exception of one or two points upon which we could not agree, and which led to the calling off of the negotiations. Within a few days after writing the letter of July 2, concessions were made by the Shreves, and changes were made in the agreement, which would slightly change them, so far as the amount of work was concerned, and under the circumstances the agreement
10 should have been ready for signature within two days at the most.

Q. Within two days at the most of what?

A. After our minds had met.

Q. When, in your opinion, did our minds meet?

A. My recollection is that the point of difference was the matter of \$1,600 to be paid to Mr. Worthington. It was finally stipulated that that amount might be deposited, awaiting the result of any suit which Mr. Worthington might bring for commission for the sale.

20 Q. After the agreement was signed in July, 1914, you several times made propositions for the purchase of the property; at one time offering to pay the total purchase price in cash; at another time offering to pay \$10,000 in cash; and at another time desiring to pay no cash whatever; and at another time desiring to pay \$5,000, and no other sum, leaving the purchase money mortgage. In various instances in which all cash was not to be paid outside of the amount that you offered to pay in cash to be left upon a purchase money mort-
30 gage, did you not?

A. No offer for the purchase of the Shreve property was ever made by the St. Regis Corporation, or Mr. Vernon, or myself, except the offer which was necessarily contained in the two agreements of sale. Those agreements were agreements on the part of Mr. Vernon, on the part of the St. Regis Corporation, to purchase the property, and on the part of the Shreves and the

remaindermen to sell the property. We considered ourselves bound absolutely to take the conveyance under the terms of the agreement, and considered that the Shreves and the remaindermen were obligated to convey. The written agreement was never altered in any respect whatsoever. From about the time of the execution of the St. Regis-Vernon agreement, I made requests on behalf of the St. Regis Corporation for the Court of Chancery to be petitioned in order that the corporation might know what amount the Court would allow to remain on mortgage in the event that the corporation wished to avail itself of such a mortgage loan. At about the time of the execution of the St. Regis agreement, I suggested that as the mortgage was a purchase money mortgage that perhaps the Court would be free to allow a larger mortgage than the usual fifty per cent. investment mortgage. It was requested that the corporation be informed as to the amount of mortgage that the Court would allow upon the building before the improvements were made, and after the improvements were made, but on one of those occasions I expressly stated to Mr. Pierson that at the time of settlement the mortgage loan would, in all likelihood, if allowed, not be accepted; that the corporation was entitled to know in negotiating for the sale of the property, what amount might remain on first mortgage, in order that it might be free to accept or reject the loan, but that it did not wish to be bound to accept it.

Q. You have testified that your Company was ready at all times to take title to the building, and pay the purchase price. Did you not, in the year 1915, ask that the lease be increased from five to ten years, and the agreement from two to five years?

A. I did.

Q. Did you not give as a reason that, the money market being tight, you were not able to borrow the money necessary to purchase the property?

A. I did.

Q. Do you recall what reason you did give, if any?

Mr. Scammell—Objected to as immaterial, and inasmuch as the testimony is that such an offer was not accepted.

A. I said at the time that financial conditions, as a result of the war, were unsettled, and that I should like, for that reason, to have an extension of time on the lease for the Company, and on the agreement of sale. The mortgage loan had been negotiated in Philadelphia with responsible parties, and there was no reason at that time to believe, and there has been no reason since to believe that the money would not be forthcoming. But in view of the unusual financial conditions at the time, I considered it only good policy for the Company to put itself in as strong a position as it was possible. One reason for asking that the term of the lease and the agreement of sale be extended was in order that we might conduct other negotiations with our brokers in Philadelphia, looking toward the placing
10 of a larger loan which had already been negotiated, namely, \$60,000, I obtained the extended agreement of sale and the lease from Mr. Wallace, one of the remaindermen, an attorney in Philadelphia, and a nephew of Mrs. Shreve. At the time I was delivered the papers I told him that they would never be executed by the St. Regis Corporation in all probability, but would be immediately shown to our brokers, and I hoped that thereby they might increase the amount of the loan in view of the fact that the building operation was com-
20 pleted, or about completed, and in view of the fact that we had a lease for ten years and the agreement of sale for five years, and that the Company's position was a strong one. Within a short while the loan was increased by second mortgage, secured by the property in Trenton, and by property of my own in Philadelphia, to the extent of \$10,000.

Q. The St. Regis Corporation through its own resources was never at any time able to carry out the agreement it had made with the Shreves, was it?

A. The St. Regis Corporation, with resources consisting of negotiating mortgage loans, and money to the extent of \$21,000 paid into its treasury, and investments in the building operation, was, from the time of the signing of the St. Regis agreement until the present time, in the best of financial condition, and well able to meet payments of all claims of creditors. The amount that the St. Regis at present is unable to pay is approximately the amount of money lost by reason of its not being able to obtain title. I will say further 10 that the St. Regis Corporation would never have been in any financial difficulties whatsoever had its contract of sale with the Shreves been performed by the Shreves and the other remaindermen parties to the agreement.

Q. In what respect did their action, or lack of action, prevent the St. Regis Company purchasing immediately after the agreement was made.

A. The St. Regis was never able to come to a point of settlement. It was necessary in the preparation of the mortgage deed that the deed of conveyance from 20 the Shreves to the Court of Chancery be recited in the mortgage deed. It was never possible to get to the point where settlement could be made. I think I could have it shortened by having the sale confirmed and the deed tendered for delivery.

Q. You waited, then, a year and one-half for a deed to be presented to you, did you?

A. I demanded the deed almost immediately upon the execution of the agreement of sale to the St. Regis Corporation. 30

Q. How much was paid into the treasury of the St. Regis Corporation for stock purchase.

Mr. Scammell—Objected to as immaterial and irrelevant.

A. My recollection is that all the stock was paid for in cash.

Q. The \$21,000 in cash which you mentioned was money loaned to the Company, was it not?

A. On bonds and warrants.

William J. Vernon, being previously sworn, testified as follows:

Cross-examination, by Mr. Pierson:

Q. Under what circumstances was the lease of the St. Regis Corporation to the Tennant Motion Picture Co. made?

Mr. Scammell—Objected to as immaterial and irrelevant.

A. Circumstances? I do not understand what you
10 mean.

Q. By circumstances I mean what negotiations preceded the making of the lease. What the consideration for the lease was?

A. The St. Regis Company owed me for services since the Company has been in operation. I accepted the St. Regis Company's note, and the Tennant Motion Picture Company at that time had guaranteed large sums in relation to equipment of the theatre, and that
20 Company was desirous of operating the theatre, and so it opened negotiations with the St. Regis Corporation. An agreement was reached whereby for the sum of \$2,500 the St. Regis Company would lease the entire building to the Tennant Motion Picture Company, provided the Tennant Motion Picture Company would agree to assume payment of rent of \$270.00 and some cents a month to Mrs. Rebecca H. Shreve.

Q. Was the lease made under those terms?

A. It was.

Q. Was the \$2,500 paid?

30 A. The \$2,500 was paid by a St. Regis note to myself, for services rendered and the building of the theatre.

Q. That note was returned by the Tennant Motion Picture Co. to the St. Regis Corporation in payment of the \$2,500 consideration?

A. Yes it was returned to the St. Regis Company.

Q. The St. Regis Company was not able to pay that note at any time, was it?

A. Well, of course, we felt that—we did not even consider that point about the ability to pay, with the exception that the St. Regis Company had received the note.

Q. Who accepted it on behalf of the St. Regis Corporation?

A. I think the board of directors.

Q. Consisting of whom.

A. Of Mr. Elfreth, Mr. Maloney and myself.

Q. By whom was the offer made?

10

Mr. Scammell—I object to that question as immaterial and irrelevant.

A. It was made by the Tennant Motion Picture Company.

Q. By their board of directors?

A. Yes.

Q. Consisting of whom?

A. Mr. G. S. Claire and myself.

Q. Mr. Claire is a clerk in Mr. Elfreth's office, is he not?

20

A. Yes.

Q. When did Mr. Elfreth first become interested financially with you in the purchase of the Shreve property?

A. I think it was at the time of the formation of the St. Regis Corporation. I intended to sell stock in the Company to build the building, and buy the property, but at the time after we formed the Company, war broke out, and we could not give stock away.

Q. Had not the first agreement made with you been assigned to Mr. Elfreth before the formation of the St. Regis?

30

A. No it had not.

Q. Then Mr. Elfreth was your counsel, and only your counsel up until after the formation of the St. Regis Corporation?

A. Well, Mr. Elfreth did act on my behalf while I

was negotiating for the property here, but I can't remember exactly when the relations changed, because, of course, when the corporation was formed, Mr. Elfreth was an officer in the Company, and acted then on behalf of the Company.

Q. And Mr. Elfreth became the principal stockholder of the Company, did he not?

A. Yes, he did.

Q. And you own but three shares of the stock of
10 the Company, do you not?

A. Yes.

Q. Do you own any more than that now?

A. No. I may own an extra share or two, but not of any amount to make any material difference. My idea for getting a larger interest in the Company was through services and through inducing other investors to come in.

Q. You were not at any time personally able to carry out the agreement which was made by you with the two
20 Shreve ladies?

A. I always felt that I could raise the money on a mortgage, but I did not have the actual cash.

Q. Then you considered the price very low, did you not?

A. No, I did not. I will tell you the truth, I objected to the St. Regis Corporation taking it subject to the leases. I considered that \$65,000, and get possession was really the only way we could make anything on the property, and I did not want to take any speculative
30 chances on getting rid of the tenants, because I had already approached them, and their demands were up to about \$10,000 or \$12,000, to get possession. I really felt at that time it would take almost that much money to get rid of the tenants.

Q. It did not cost that much, however, did it?

A. No, it did not; but I felt that it would.

Testimony taken pursuant to adjournment before the subscriber, Frederick W. Gnichtel, one of the Masters and Examiners of this court, on Monday, the twenty-first day of August, 1916, at 10:30 o'clock in the forenoon.

Appearances—Ellis L. Pierson, Esquire, and Charles DeF. Besore, Esquire.

William J. Vernon, being previously sworn, testifies as follows: 10

Direct examination, by Mr. BESORE.

Q. Mr. Vernon, you hold what office in the St. Regis Corporation?

A. President.

Q. And you are familiar with the transactions in relation to the obtaining of possession of the Shreve premises in the reconstruction of the building?

A. Yes.

Q. When did the St. Regis Corporation take possession of such portions of the building as were not 20 occupied by tenants with unexpired leases?

A. We took possession about August 1, 1914.

Q. And when did you begin to make your improvements?

A. About the first of November, 1914.

Q. When were the improvements sufficiently completed so that the building could be used by tenants and yourselves?

A. About July 1, 1915.

Q. Mr. Hutchinson had a lease, had he not, on part 30 of the premises?

A. Yes, he had a lease.

Q. On what portion?

A. On the store that I think was No. 142 E. State St.

Q. Was it a front store?

A. A front store.

Q. Know the width of it?

A. It was about sixteen feet wide, fronting on E. State street.

Q. Was it the middle or one of the side stores.

A. It was a side store.

Q. Which side?

A. The most westerly side.

Q. How many stores were there?

A. Three stores.

Q. How long did his lease run, if you remember?

10 A. I really do not recall. My impression is that it was fifteen months from January 1, 1915.

Q. Was he willing to vacate?

A. He was willing to vacate upon the payment of \$1,800.

Q. Did you pay him this amount?

A. I paid him about \$1,000 in cash and \$800 in notes. The St. Regis Company has since paid \$400 of the notes, and has made arrangements with Mr. Hutchinson, through his attorney, to pay the balance of \$400.

20 Q. When you say you paid him, you mean the St. Regis Company.

A. Yes, I mean the St. Regis Corporation. I did on behalf of the St. Regis Corporation.

Q. When did he get out?

A. He wanted it—I think it was the first week in January, 1915.

Q. Mr. Taylor also had a lease on part of the Shreve property, did he not?

A. He did.

30 Q. What store had he a lease on?

A. He had a lease on the store in the center of the three stores fronting on E. State St.

Q. About how wide?

A. About sixteen feet wide.

Q. How long did his lease run?

A. His lease ran until April 1, 1916.

Q. Was he willing to move?

A. Yes, he was willing to move upon the payment of \$2,000 in cash.

Q. Did you pay him \$2,000 in cash?

A. No. We finally arrived at an agreement, and Mr. Taylor was to receive all moving expenses and the rental of a store while we were making the alterations. He was also to receive an extension of two years over his original lease, which expired in April, 1915.

Q. That is an extension until what date?

A. That is an extension until April 1, 1917.

10

Q. At what rental?

A. At a rental of \$50 a month.

Q. You entered into this arrangement?

A. Yes.

Q. You paid for his temporary quarters?

A. Yes.

Q. How long was he in temporary quarters, and what did it cost?

A. He was in temporary quarters about three months.

Q. From what date?

20

A. I do not remember just the exact date. I think it was from the latter part of April, 1915, until July, 1915.

Q. Until the first or latter part of July?

A. Latter part of July.

Q. What was the cost of these temporary quarters?

A. At the rate of \$233.34 per month.

Q. And for three months?

A. Yes, for three months.

Q. During that time was he paying you rent?

30

A. He was; at the rate of \$65.00 a month.

Q. Was that the original rental on his lease?

A. That was the original rental on his lease.

Q. Had Mr. Worthington a lease on one of the stores?

A. He had, on the most easterly store of the three fronting on East State St.

Q. And that included how much of the balance of the frontage of the building?

A. That included all the lower floor.

Q. That is, with the other two leases?

A. Yes. That is including the other two leaves.

Q. There was a hallway, was there not?

A. Yes. About four or five feet wide in front.

Q. That stairway with the three stores of Taylor, Hutchinson and Worthington included the entire frontage?

A. Yes. It included the entire frontage on State St.

10 Q. How long did Mr. Worthington's lease have to run?

A. Mr. Worthington's lease had to run until January 1, 1917.

Q. At what rental?

A. At a rental of \$35.00.

Q. And what was the width of his room?

A. It was about fifteen feet wide.

Q. Was he willing to vacate?

A. Yes. He was willing to vacate, at first upon the
20 payment of \$2,000, but we finally agreed to give him an extension to July, 1919, in consideration of his being willing for us to cut down the size of his store, and make the alterations.

Q. You preferred to do that rather than give him the \$1,000?

A. No. We preferred to give him the \$1,000.

Q. And why did you prefer to make that arrangement?

A. Mr. Worthington refused to move to allow us
30 to make the necessary alterations, which contemplated cutting down about fifteen feet from the rear portion of his store and building a wall through it, unless we gave him an extension of the lease.

Q. Then he was not willing to vacate for a thousand dollars?

A. Well, he refused to vacate when we tendered him the \$1,000.

Q. Now the extension of lease was at what rental?

A. For Worthington it was at \$35.00 a month; same as the prior lease.

Q. What did he do while making alterations?

A. We moved him into temporary quarters.

Q. Was that a part of the agreement?

A. That was a part of the agreement.

Q. He was to be paid for that?

A. We were to pay for that.

Q. By agreement with Mr. Worthington?

A. By agreement with Mr. Worthington.

10

Q. And what did it cost you?

A. \$65.00 a month.

Q. For how many months?

A. Three months.

Q. And he was paying rent during the three months?

A. He was paying rent at \$35.00 a month for the three months.

Q. Did the Commonwealth Beneficial Association have a lease?

A. Yes. They had a lease on two rooms on the second floor. Their rooms were the most westerly rooms.

Q. How long did their lease run?

A. I am not certain about that. I think it ran until April 1, 1915.

Q. Well, were they willing to vacate?

A. They were willing to vacate, yes; on payment by us of the moving expenses and \$75.

Q. Did you pay it?

A. We agreed to pay it. We have not paid it yet.

30

Q. You are still liable for it?

A. The St. Regis Corporation, yes.

Q. How much was it?

A. \$75.

Q. How about the Hazlett, Harrison Company, did they have a lease?

A. They had a lease. There is some dispute as to the length of their lease, it being a verbal lease.

Q. What time did it run for, approximately?

A. Mr. Pierson advised us that there was some doubt as to the length of time it run, as it might be probable that it would run for another year from September, 1914, as near as I can remember now.

Q. What did you do about getting them out?

A. We paid them \$250 in cash; and they owed us two months' rent, which we allowed them on the lease.

Q. Mr. Vernon, why did you make these efforts to
10 get these people out?

A. Because it was necessary to have possession of the entire building in order to make the necessary improvements.

Q. And during at least part of the time, when you were making your improvements, you did have possession of the entire building, did you not?

A. Yes; we did.

Q. You obtained such possession by virtue of these various agreements and arrangements you have testified
20 to?

A. Yes. By reason of these various agreements with the tenants.

Q. Mr. Vernon, when were the two storerooms on State Street, now occupied by Mr. Taylor and Mr. Worthington, ready to be occupied after the improvements were made?

A. My recollection is that it was the latter part of July, 1915.

Q. For three months prior to that, I understand you
30 to say, that they were not tenantable?

A. For three months prior to that we were using them for the purpose of improvements.

Q. Then they were not tenantable?

A. No.

Q. Did you have any offers from any one to rent these stores?

A. We did. We had an offer of \$125 a month for either one of the two stores.

Q. For either one?

A. For either one, yes.

Q. Who made that offer?

A. Mr. Trapp, the jeweler.

Q. Were you able to accept it?

A. We told him we could not accept it until we had purchased Mr. Worthington's lease.

Q. Were you able to?

A. No.

Q. Did you have any other offer?

10

A. We were dickering with a confectioner. I can't recall the name; they were Greeks. They wanted it for a confectionery store.

Q. What did they offer?

A. I asked \$125.00 a month, but I am not certain they would have paid it.

Q. Did they make any offer?

A. I think they offered \$110.

Q. You were unable to accept the offer of these propositions for what reasons?

20

A. Because we had tenants, and they would not give up possession.

Q. How much was the Hazlett, Harrison rent which you allowed them?

A. Thirty dollars a month for two months.

Cross-examination, by Mr. Pierson:

Q. Has the building ever been completed?

A. There is no stairway up to the second and third floors, and the upper floors need some slight painting and plastering. The reason that we cannot complete it is because we can't get a stairway unless we cut through Mr. Worthington's or one of the other tenant's stores. We have to take out the upper part of the store front in order to get a stairway up.

30

Q. Was there any stairway in the plans as originally made by Mr. Slack?

A. No; there was not. Mr. Slack originally simply made plans and specifications for the rear portion.

Q. Only for the theatre?

A. Only for the theatre.

Q. When was the check paid to Mr. Hutchinson for his lease?

A. Mr. Hutchinson? I think it was the latter part of November, 1914.

Q. Was that before he moved?

10 A. Yes. That was a little over a month before he moved.

Q. Whose notes were given him?

A. St. Regis Corporation's notes.

Q. Endorsed by anyone?

A. Endorsed by myself.

Q. For what period were those notes given?

A. They were given for different periods. First, for one month after date; second, for two months after date; third, for three months after date, etc.

20 Q. For what sum was each note given?

A. For \$100.

Q. The last of them becoming due eight months after November, 1914?

A. I really can't recall. It was eight months after January 1, 1915, or eight months after December 1, 1914.

Q. Was any of the notes paid at maturity?

A. Yes.

Q. How many?

40 A. Four.

Q. Did Mr. Hutchinson bring suit against the St. Regis and yourself?

He did.

Q. How many suits?

A. On four notes. I am not sure how many suits.

Q. Did he obtain judgment?

A. He did.

Q. That judgment has not been paid?

A. No; judgment has not been paid.

Q. What agreement have you made with him for the payment of the judgment?

(This question is objected to as being immaterial and not proper cross-examination, having no relation to the subject matter of the testimony.)

A. We have agreed to pay him at the rate of \$50 a month from the rents received from Wilbur H. Taylor and Worthington.

10

Q. Who has agreed to do that?

A. The Tenant Motion Picture Company, I guess, is the proper company who agreed to pay it.

Q. Is the agreement in writing?

A. No.

Q. Has he issued execution against the property of the St. Regis Corporation?

(This question also objected to as immaterial and not proper cross-examination.)

A. Yes.

20

Q. And advertised the lease of the St. Regis Company for sale, has he not?

A. Yes.

Q. When was the agreement as to payment made with him?

A. I think it was during the month of June, 1916.

Q. When the lease was about to be sold by the sheriff?

A. Well, I did not know the sheriff was going to sell it.

30

Q. You knew it was advertised for sale, did you not?

A. Yes, but we never thought of permitting the lease to be sold at any time, or we would not have made arrangements to pay the judgment.

Q. When Mr. Taylor requested to be let into possession of the store which you agreed to give him, was he let into possession voluntarily, on the part of the St. Regis Corporation?

(Objected to on the ground that it is immaterial and not proper cross-examination.)

A. Yes; I told Mr. Taylor, on behalf of the company, that I would give him exactly what we had given him, but he thought he should receive more because he said the store was too small. I told him we could not tear down the building and give him any larger store than we were then, and so he insisted that there was about \$25,000 damages coming to him by reason of the
10 failure to give him a large store, and he said he was going to take legal action to make us pay him some large sum.

Q. He was not put into possession until after a decree was made by the Court of Chancery compelling the St. Regis Corporation to put him into possession, was he?

A. We were always willing to put him in possession, but chancery decreed practically what I offered him, except that they allowed \$15 a month in the rental for the loss of the space; whereas he had insisted upon me giving
20 him exactly the space which he had before, or the payment of a large sum of money, which he said he was damaged. He wanted the money, though, above everything else, when dealing with me.

Q. But he did not sue at law for damages; do you know why he did not?

A. Upon advice of counsel, I suppose.

Q. Then it was not by agreement that his rent was fixed at \$50 a month, but by a decree of the Court of Chancery, was it not?

30 A. Mr. Taylor refused to have any negotiations whatever as to the payments of rent. There was a great doubt as to whether or not he had any contract whatever for the extended lease, and he simply went into the Court of Chancery to get the terms of the contract fixed. Mr. Pierson advised us that in his opinion Mr. Taylor did not have a valid extended lease on the property, as it was merely a parole agreement, and had never been signed by the corporation.

Q. Were his temporary quarters paid for by you prior to his moving back into your building?

(Question objected to as immaterial and not proper cross-examination.)

A. We paid at the time of his moving \$233.34 for one month's rent. But for the remaining two months Mr. Taylor himself personally paid, and has since deducted it from his rents to the company.

Q. When he moved out, had you agreed to pay for his temporary quarters as the rent came due? 10

(Question objected to as immaterial.)

A. Why, I personally told him that I would see that he was paid, but at that time we thought he would only be out about a month, and, of course, we thought we could get the store built in about a month's time, as the contractors had agreed to have the building completed by the first of June, 1915. We expected to have it done before this month that we had paid for had expired.

Q. After he moved out of the building, you paid him no money whatever, did you? 20

(Objected to as immaterial.)

A. We did not.

Q. But he was in temporary quarters because the building was not completed for a period of three months, was he not?

A. Yes.

Q. And he was reimbursed for the payments of temporary quarters made by him by reason of the provisions of the decree in the suit of the Court of Chancery, was he not? 30

A. He was.

Q. Has the Commonwealth Beneficial Association sued the St. Regis Company for the money agreed to be paid for a consideration as their moving?

(Objected to as immaterial.)

A. I think not. We told them we would pay it, and I think the lawyer probably has relied on our word.

Q. Were the two stores that remained, namely, the

ones now occupied by Worthington and Taylor, lessened in floor area by reason of the building operations of the St. Regis Corporation?

A. They were lessened in floor area about seven and a half feet by fifteen feet.

Q. Or about one hundred and twelve square feet?

A. Yes.

Q. That is, each of them was lessened about that amount, is that not so?

10 A. Yes, each of them was lessened about one hundred and twelve square feet.

Q. And for one of the new stores with lessened floor area Mr. Thomas Trapp offered \$125 a month?

A. I do not recall Mr. Trapp's first name, but Mr. Trapp, the jeweler, offered \$125, and we agreed to give him the refusal of the store at \$125 a month, provided, that we could buy Mr. Worthington's lease.

Q. And you asked \$125 a month for one of the new stores from the Greeks?

20 A. He came to me to rent one of them, yes.

Q. Was it the St. Regis Corporation that paid the cash that you have testified was disbursed to the tenants?

A. The St. Regis Corporation paid part of the cash.

Q. Which part?

A. They paid the cash to Hutchinson.

Q. How much?

A. \$1,400; and paid the cash to the printers, Hazlett, Harrison and Company, of \$250.

30 Q. Did the St. Regis Corporation pay any of the other amounts in cash?

A. Well, they paid \$233.34 in cash which Taylor received for the one month's rent for the store which he occupied while the alterations were being made.

Q. Were the sums loaned to the company by Mr. Elfreth.

Objected to as being immaterial.

A. They were.

Q. Then the St. Regis Corporation still owes Mr. Elfreth this amount of money?

Objected to as immaterial.

A. I can't tell whether it does or not, without consulting the books of the company.

A. Who is the present treasurer of the St. Regis Corporation?

Objected to as immaterial.

A. Mr. William G. Adams.

Q. Has he charge of the books showing receipts and disbursements of the St. Regis Corporation? 10

A. I do not believe the St. Regis Corporation has any books.

Q. Then there are no books of account of the St. Regis Corporation that would show as to the disbursements to which you have testified?

A. No. Our books would show it I presume. Most of the payments were made in cash by myself as president of the St. Regis Company.

Q. Whence did you procure the cash? 20

A. From the St. Regis Corporation.

Q. From what officer of the St. Regis Corporation?

A. The corporation borrowed money from W. Henry Elfreth.

Q. From whose hands would you receive the cash that you disbursed?

A. I received it from the paying teller at the bank, as a rule.

Q. On the presentation of whose checks? 30

A. The St. Regis Company's checks at times, and at other times on presentation of Mr. Elfreth's checks, I presume. I do not recall exactly the circumstances.

Q. It is not possible for the St. Regis Corporation, under the present arrangement with the Tennant Motion Picture Company, ever to reimburse itself from the proceeds of the theatre for the disbursement of the sums you have testified to, is it?

Objected to as being immaterial and not proper cross-examination, and calling for a conclusion.

A. We feel that if we can gain title to the property that we can clean up all the obligations of the St. Regis Company.

Q. The St. Regis Corporation receives no part of the income from the theatre or building, does it?

10 Objected to as immaterial and not proper cross-examination.

A. I do not know of any income which it is receiving at present from the building or from any other source.

Q. And so long as the lease now existing between it and the Tennant Motion Picture remains in force, it will not receive any income from the building or theatre, will it?

Question also objected to on the same ground.

A. No, I can't see how it would.

20 Q. Who does receive, or what corporation receives the income from the building and from the theatre?

Question objected to on same ground..

A. Tennant Motion Picture Company.

Q. Is that a corporation?

Question objected to as immaterial.

A. It is.

Q. Are you a stockholder in that corporation?

Objected to as immaterial.

A. Yes.

30 Q. How many shares do you own?

Objected to as immaterial.

A. Three, I think.

Q. Who owns the remaining shares?

Objected to as immaterial.

A. I really do not know.

Q. Does W. Henry Elfreth own most of the shares of the corporation?

Objected to as immaterial.

A. I am not sure whether he does or not. Somebody else does. I really do not know.

Q. Are you an officer of that corporation?

Objected to as immaterial.

A. Yes.

Q. What office do you hold?

Objected to as immaterial.

A. President.

Q. How long have you been president?

Objected to as immaterial.

10

A. Ever since the incorporation of the company.

Q. At the incorporation of the company how many shares did Mr. Elfreth receive?

Objected to as immaterial.

A. About forty-five, I think.

Q. How many were issued altogether?

Objected to as immaterial.

A. Fifty.

Q. Do you know whether or not he has transferred any of those forty-five shares?

20

Objected to as immaterial.

A. I do not.

Q. Do you sign certificates of stock as president of the Tennant Motion Picture Company?

Objected to as immaterial.

A. I do.

Q. Have you signed all certificates thus far issued?

Objected to as immaterial.

A. I am not sure whether I have signed all of them or not.

30

Q. In whose possession is the stock certificate book?

Objected to as immaterial.

A. I do not know whose. I do not know whether it is in the Corporation Trust Company's, or at the office of the Tennant Motion Picture Company, 115 Stephen

Q. Is that also your office?

Objected to as immaterial.

A. Yes.

Q. Do you know of any transfer of the forty-five shares, or any part of them, made by Mr. Elfreth?

Objected to as immaterial.

A. I do not, except at one time I held most all of the shares. I held about forty out of the fifty in the Tennant Motion Picture Company, and pledged those to Mr. Elfreth for a loan.

Q. How many shares are issued altogether of the Tennant Motion Picture Company?

10 Objected to as immaterial.

A. I think forty-nine or fifty.

Q. No new stock has been issued since the organization?

Objected to as immaterial.

A. You mean any additional stock than before referred to?

Q. Yes.

A. No.

Q. Were the forty shares held by you transferred
20 back to Mr. Elfreth?

Objected to as immaterial.

A. I am not certain whether they were or not.

Q. He has at all times been the beneficial owner of those shares, has he not?

Objected to as immaterial.

A. No, I think not.

Q. Who has been?

Objected to as immaterial.

A. Well, during part of the time I was. During the
30 first year, I think, of the company's existence.

Q. Where did you get them?

Objected to as immaterial.

A. I bought them.

Q. From whom?

Objected to as immaterial.

A. Mr. Elfreth.

Q. What did you pay him?

Objected to as immaterial.

A. I do not recall what I paid him for them.

Q. Pay him in cash?

Objected to as immaterial.

A. Partly.

Q. How much?

Objected to as immaterial.

A. I can't recall the amount.

Q. Was a certificate, or were certificates, for forty shares made to you?

Objected to as immaterial.

10

A. Yes.

Q. Do you still own those certificates?

Objected to as immaterial.

A. No.

Q. Who does?

Objected to as immaterial.

A. I really do not know, Mr. Pierson.

Q. To whom did you transfer them?

Objected to as immaterial.

A. To Mr. Elfreth.

20

Q. Was the new certificate, or were the certificates representing those forty shares, or a part of them, made in the name of Mr. Elfreth, and were they delivered to Mr. Elfreth?

Objected to as immaterial.

A. I think new certificates were delivered to Mr. Elfreth.

Q. For how many shares?

Objected to as immaterial.

A. For about forty shares.

30

Q. For all that had been purchased by you from him?

Objected to as immaterial.

A. Yes.

Q. Did anyone else procure from you any of those shares?

Objected to as immaterial.

A. They did not.

Q. So far as you know, is Mr. Elfreth the owner of those shares?

Objected to as immaterial.

A. Yes, so far as I know, he is. I am not sure whether he has pledged them for loans.

Q. Then, if dividends were declared upon the stock of the Tennant Motion Picture Company, so far as you know, Mr. Elfreth would receive nine-tenths, or about nine-tenths of the dividends?

10 Objected to as immaterial.

A. Yes, so far as I know; but as I say, I can't tell you of my own personal knowledge that he has those shares. So far as I know he would receive them.

Q. You and Mr. Elfreth have offices in common, have you not?

Objected to as immaterial.

A. Yes.

Q. You see him almost every day?

Objected to as immaterial.

20 A. I see him once or twice a week about.

Re-direct examination, by Mr. Besore:

Q. Whether by a decree of the Court of Chancery, or by voluntary agreement, the arrangement you originally testified to between Taylor and the St. Regis Corporation was carried out, was it not?

A. Yes. I am certain that it was.

Q. Why were not all of these sums paid that the St. Regis Company obligated itself to pay in connection with
30 the obtaining possession?

A. Well, the main reason was that the St. Regis Company could not borrow any more money, owing to the fact—of the way the situation stood.

Q. What do you mean the way the situation stood?

A. The fact that it did not own the property after making the improvements.

Q. You mean because it did not get title?

A. Yes, that is what I mean.

Q. The offers of \$125 a month and \$110 for these two stores were for the stores in the condition in which they were after the St. Regis Company had made its improvements?

A. They were.

Q. Was there any change in these stores except the cutting down in area?

A. Well, I think the doors and bulk windows; and I think Worthington's store was lowered to the street level, which was a great improvement.

10

Q. Had they been modern storerooms before the improvements?

A. Well, they seemed to me to be the ordinary average store of Trenton before the improvements.

Q. Would you say they were modern, up-to-date storerooms before the improvements?

Objected to as having been answered, and also on the ground that it calls for a conclusion, which this witness has not shown himself able to give.

20

A. I would have called the two stores modern stores; that is, the Taylor and Hutchinson stores. All they needed was paint and paper, but Worthington's store was not what I would call a modern store, because it was hard to get into, having to go up a flight of steps before you could get into the store.

Q. Well, the Worthington store is one of the stores which remains to-day, is it not?

A. Yes. Worthington still occupies the same store.

Q. And one of the two modern stores, as you term 30 them, was taken out to make room for your entrance, was it not?

A. Yes. The center store, the most modern of the two, being occupied by Tip Taylor, was disposed of to allow for an entrance to the theatre.

Re-cross examination, by Mr. Pierson:

Q. Part of the reason why the St. Regis Corporation could not pay its debts was that it had made a sub-

lease to the Tennant Motion Picture Company, which deprived the St. Regis Corporation from all income from the Shreve property, was it not?

A. No. Because the Tennant Motion Picture Company agreed to pay to the Shreves the amount of rental I think they were paying. At and up until that time the St. Regis Corporation had been steadily drained by reason of these various leases holding back the operation at least six or eight months. They had practically
10 no source of income even before renting to the Tennant Motion Picture Company. In fact, the St. Regis Company had to pay out to Mrs. Shreve about \$150 more rent than they received from all the tenants, besides having to pay the taxes on the property.

Q. Did the St. Regis Corporation run the theatre at a time prior to the sub-lease to the Tennant Motion Picture Company?

A. Well, the St. Regis Corporation never operated the theatre.

20 Q. Then whatever profits were to be derived from the theatre never went to the St. Regis Corporation?

A. Well, there had not been any profits derived as far as I know. The establishing of a new theatre usually requires the payment of moneys out during the first two years of the operation.

Q. Who ran the theatre prior to the lease to the Tennant Motion Picture Company?

A. The theatre was never operated prior to that time. In fact, the Tennant Motion Picture Company started
30 at the beginning; since it was opened.

I certify that the foregoing testimony was taken before me, by consent, by a stenographer, and the foregoing is a true transcript of the testimony.

F. W. GNICHTEL,

Master and Examiner in Chancery.

IN CHANCERY OF NEW JERSEY.

IN THE MATTER OF THE APPLICATION
 OF REBECCA H. SHREVE AND LUCY
 E. SHREVE FOR THE SALE OF LANDS } 36-505.
 LIMITED OVER, &C.

MEMORANDUM.

(Filed February 13, 1917.)

On application for confirmation of sale.

Mr. Scott Scammell, for St. Regis Corporation.

Mr. Harold B. Wells, for petitioners.

10

Mr. Ellis L. Pierson, for Robert H. McAdams, guardian *ad litem*.

WALKER, Chancellor (orally).

On July 28, 1913, an order was made to sell certain lands in the city of Trenton limited over, etc., at public or private sale in fee, for not less than \$56,200, subject to a mortgage of \$5,000. On February 23, 1916, the Master who was ordered to make the sale reported that he had secured the St. Regis Corporation to purchase the real estate in the order described, subject to the mortgage of \$5,000 at private sale for the sum of \$58,400, \$1,000 having been paid to the Master upon the acceptance of the offer and the balance of \$57,400 to be paid in lawful money upon the delivery of a proper deed, provided that the sale should be confirmed by the Court; the \$1,000 to be returned in the event of non-confirmation. The offer to purchase was made pursuant to the terms of a certain agreement in writing dated July 11, 1914, between Rebecca H. Shreve and Lucy E. Shreve, life tenants of the premises, and Lucy E. Shreve, guardian of Dorothy I. and E. Mercer Shreve, infant remaindermen, and certain other con-

20

30

tingent remaindermen, of the first part, and the St. Regis Corporation, of the second part. The agreement, among other things, recited that upon its signing the St. Regis Corporation would deposit in the Broad Street National Bank of Trenton, in the names of W. Henry Elfreth and Ellis L. Pierson, trustees, the sum of \$1,600 to secure the payment to Clifford A. Worthington, a real estate broker, commissions claimed by him for the sale of the premises in question. The
10 time of conveyance under the agreement was to be July 1, 1916. Of course this agreement did not obligate the infants. It is because their estate in the premises could only be sold by sanction of this Court that these proceedings were instituted.

On July 11, 1914, an indenture of lease was entered into between Rebecca H. Shreve, the life tenants, and Lucy E. Shreve, guardian of Dorothy I. and E. Mercer Shreve, infant remaindermen, and the other contingent remaindermen, of the first part, and the St. Regis Corporation, of the second part, wherein the premises in
20 question were demised to the party of the second part for the sum of \$3,250 per annum, for the term of 5 years, payment to be made solely to Rebecca H. Shreve if she should live throughout the term, and, in the event of her death, then to Lucy E. Shreve for the balance of the term, and in the event of the death of both during the term, then to a certain attorney for the persons entitled to receive the same. By the terms of the lease the party of the second part was to pay all taxes, water
30 rents and municipal assessments; keep the buildings insured against loss by fire; make all necessary repairs to the demised premises; the leases then in existence between Rebecca H. Shreve and the tenants of rooms, offices and stores in the building were assigned to the party of the second part, together with rents reserved therein; the party of the second part at its own expense might make alterations, improvements and additions to the demised premises, and tear down all or any por-

tion of the buildings then or subsequently on the premises and erect other buildings in their place, upon certain conditions set out.

On April 8, 1916, an order was made on application of the solicitor of the St. Regis Corporation that the other parties in interest show cause why the report of the Special Master should not be ratified and confirmed and the Master directed to execute a good and sufficient deed to the purchaser upon its compliance with the terms of the sale. On the return day confirmation was resisted by Robert H. McAdams, guardian *ad litem* of the infants, Dorothy Inskeep and Edwin Mercer Shreve. An order was made that testimony be taken, which was done, and the matter is now before the Court on the question as to whether or not the sale shall be confirmed. 10

The ground of objection to the sale is that the property has appreciated in value between the time that the order for sale was made and the time of the hearing, and that the interests of the infants no longer require a sale of the property. 20

The petitioners, Rebecca H. Shreve and Lucy E. Shreve, are the owners of successive life estates in the property and the infant remaindermen, who are the children of Lucy E. Shreve and grandchildren of Rebecca H. Shreve, are entirely dependent for their support, maintenance and education on the income derived from the property in question and a small income derived from another property in Riverton. The net income derived from the Shreve Building (the premises in question) when the order for sale was made was \$800 odd dollars per annum, which together with the income derived from the other property was insufficient for the proper support and maintenance of the parties dependent on it, to say nothing of the education of the minors. The building, which was used for office purposes, was unsuitable and its value was constantly diminishing, and its carrying expenses constantly increasing. The land on which it stood was worth ap- 30

parently \$1,200 per front foot, and the building was of comparatively little value. The difference between the income at 5 per cent. on the proposed selling price and the net income derived from the property at that time, it appeared, would equal any reasonably anticipated increase in value of the property. The confirmation of the Master's report and the order for sale of the premises at the price proposed, was an adjudication of the adequacy of the price and of the advisability
10 of the sale at the time it was entered. As title was not to be passed immediately upon the making of the agreement above mentioned, the scheme of the lease was adopted, the rental being fixed at 5 per cent. of the gross sale price, namely, \$65,000, that is to say, \$58,400 to be paid to the owners of the fee, \$1,600 to be deposited to cover Mr. Worthington's commissions, and \$5,000, the amount of the mortgage on the premises, making \$65,000 in all. By order of July 18, 1914, a modification was made to the order for sale so as to
20 permit of it free of the mortgage and for a payment of \$10,000 in cash and the balance in a purchase money mortgage. The St. Regis Corporation went into possession almost immediately after the execution of the agreement and lease, and has paid the taxes and the rent and improved the property (a motion picture theatre) at considerable cost, approximately \$11,500 by cash outlay and an indebtedness incurred of some \$16,000.

The ground of objection to the confirmation of the
30 sale is, as already stated, that the land has increased in value since the making of the order to sell, and real estate agents have testified that that increase has been about \$100 per front foot, or \$5,100 in all.

There can be no doubt that if we were dealing with adults alone in this case, that the sale ought to be confirmed, and the mere presence of infants ought not to defeat it. It is not disputed but that the order for sale was properly made, that is, based upon a proper show-

ing. In reliance upon that order, the St. Regis Corporation has gone into possession and improved the property by expenditure of a considerable sum of money and the incurring of considerable liability, and it is therefore quite apparent that it would be ruinous to it if the sale were not confirmed. Those who are *sui juris* have rights against infants; in fact, I do not understand that infants' rights are superior to those of adults, only that the rights of infants must be protected by the courts, while those of adults must be looked after by themselves. It is for this reason that whenever infants are present, a guardian is appointed for them, which was done in this case, and these infants have had their day in court. If the sale had been reported and confirmed immediately upon its authorization, the infants' situation would be the same now as then, and, it appears, will continue the same for years, for they cannot come into possession until the termination of the particular estates upon the death of their grandmother and mother, and this only upon surviving both of them. During the lifetime of the grandmother, she has the entire income, and upon her death, the mother surviving, she will have it, and upon the death of both, the infants will possess the estate, if living. While they have no present legal interest in the income from the property, the testimony shows that their support, maintenance and education are derived from it, and the other small property of the Shreve estate, and that they are and have been beneficiaries of the income derived under the agreement, which increases that income approximately fourfold from what it had been previously. The agreement and lease were executed in reliance upon the lessee ultimately acquiring the property under these proceedings, and to defeat that expectation now would do far greater injustice to the St. Regis Corporation than confirmation of the sale would do the Shreve children. On any theory of balancing equities the case is with the former. I do not understand that the company's equities are to be defeated because the adversary parties are infants.

In my opinion, the sale should be confirmed, and that will be done. The terms of the order will be settled on application.

IN CHANCERY OF NEW JERSEY.

IN THE MATTER OF THE APPLICATION
 OF REBECCA H. SHREVE AND LUCY
 ELLEN SHREVE FOR THE SALE OF } On Petition.
 LANDS LIMITED OVER, &C.

10 ORDER CONFIRMING SALE AND FIXING
 ALLOWANCES.

(Filed November 1, 1916.)

This matter coming on to be heard on motion of Scott Scammell, Esq., solicitor of the St. Regis Corporation, a corporation of the State of Delaware, the purchaser of the lands and premises described in the petition in this cause, in the presence of Harold B. Wells, Esq., solicitor of the petitioners, and Ellis L. Pierson, Esq., solicitor of Robert H. McAdams, Clerk of this Court, guardian *ad litem* of the infant defendants, Dorothy Inskeep Shreve and Edwin Mercer Shreve, and upon reading a report made in the above matter by Erwin E. Marshall, one of the Special Masters of this Court, dated February 23, 1916, and duly filed, whereby it appears that in pursuance of an order made by the Chancellor in this matter, dated July 24, 1913, it was ordered that the said Erwin E. Marshall, one of the Special Masters of this Court, do sell the lands and premises mentioned and described in said order and in the petition in this cause, at public vendue or at private sale, giving notice of the time and place of sale in case the same be sold at public vendue, in fee, subject to a mortgage of \$5,000, for a price not less than

\$56,200, pursuant to the statute in such case made and provided, the said Special Master has sold said lands and premises to the St. Regis Corporation, a corporation organized under the laws of the State of Delaware, and authorized to do business in the State of New Jersey, subject to said mortgage of \$5,000, at private sale, for the sum of \$58,400 over and above said mortgage, and that the sum of \$1,000 of said purchase price has been paid to said Master and the balance of said purchase price is payable to said Master upon delivery 10 of a proper deed and upon confirmation of said sale by this Court; and

It further appearing that upon the filing of said report no proceedings to obtain confirmation of said sale were taken by the petitioners in this case, and that on the 8th day of April, A. D. 1916, on motion of Scott Scammell, Esq., as aforesaid, solicitor of the said St. Regis Corporation, purchaser as aforesaid, this Court ordered that the petitioners and all other parties in interest herein show cause before the Chancellor at the 20 State House, in the City of Trenton, on Tuesday, the 8th day of April, 1916, at 10:30 o'clock in the forenoon, why said report and the sale of said lands and premises, according to the terms and conditions in the said report mentioned, should not be ratified and confirmed and said Special Master directed to execute a good and sufficient conveyance of said lands and premises to the said St. Regis Corporation or its assigns on its or their complying with the terms of said sale; and 30

It further appearing that a copy of said order was duly served upon the petitioners by their solicitor and each of the other parties in interest, in the manner in said order prescribed, and that upon the return day of said order the said Robert H. McAdams, guardian *ad litem* as aforesaid, by his solicitor, Ellis L. Pierson, objected, on behalf of said infant defendants, to the confirmation of said sale, on the ground that the price

at which said sale was made was inadequate, and thereupon it was referred to the Honorable Frederick W. Gnichtel, one of the Special Masters of this Court, to take testimony in reference to the adequacy of the price at which such sale was made; and said testimony having been duly considered by the Court, and the Court having heard the arguments of Scott Scammell, Esq., solicitor of the purchaser; Harold B. Wells, Esq., solicitor of the petitioners, and Ellis L. Pierson, Esq.,
10 solicitor of Robert H. McAdams, guardian *ad litem* as aforesaid; and

It appearing that the price at which said sale was made is fully adequate, and that said sale is for the advantage of said infant defendants and all parties in interest in said premises, and no cause being shown or appearing against confirming said report, and the Court being advised that said St. Regis Corporation has duly assigned all of the title, right, and interest acquired by it in said lands and premises under and by virtue of
20 said sale, to one William Henry Elfreth, of the City and County of Philadelphia and State of Pennsylvania, by deed of assignment;

It is, on the fourteenth day of November, A. D. 1916, on motion of Harold B. Wells, Esq., of counsel with the purchaser herein, ordered, and it is hereby decreed, that the price at which the lands and premises mentioned in said Master's report were sold by him is fully adequate;

And it is further ordered that the said Master's report
30 and all matters therein contained do stand ratified and confirmed, and that the sale made by said Master of said lands be and the same hereby is approved and confirmed;

And it is further ordered that the said master do make, execute and deliver to the said William Henry Elfreth, assignee of the said St. Regis Corporation, a good and sufficient conveyance in the law for the said lands so, as aforesaid, sold, upon the filing with the

clerk of this Court of his said assignment, and upon his complying with the conditions of said sale, and upon payment by him of the costs of these proceedings and one-half of the allowances to the counsel for the petitioners and said infant defendants hereinafter made; and, further, upon payment by him of the costs of a certain proceeding in this Court, wherein Rebecca H. Shreve and Lucy Ellen Shreve are complainants and William J. Vernon and said William Henry Elfreth defendants, brought by the complainants therein for 10 the cancellation of a certain written agreement of sale of the lands and premises described in the petition in this cause, which said agreement is dated February 24, 1914, and which said agreement is recited in full in the Bill of Complaint in said cause, and upon the execution and delivery to the petitioners in this cause of a full release, releasing them from all claim or liability by reason of the execution of said agreement, signed and properly acknowledged for record by all parties in interest in said agreement; 20

And it is further ordered that such conveyance, when made in pursuance of this order, shall convey to the said William Henry Elfreth all the estate in said lands held or limited over, as described in the petition in this matter, or held by or limited over to any of the persons named or designated therein as present or prospective owners in being or not in being, and that such conveyance be valid and effectual forever, and do operate as an effectual bar, both at law and in equity, against all the persons in this matter and all persons claiming by, 30 from or under them or any of them, and that the said purchaser, or its assignee, as aforesaid, shall have thirty days from the date of this order to make settlement under the terms of said sale;

And it is further ordered that the sum of \$1,000 be allowed and paid to Ellis L. Pierson, Esq., solicitor for the petitioners and for Robert H. McAdams, guardian *ad litem* of said infant defendants, as compensation for

his services, and that the sum of \$200 be allowed and paid to Harold B. Wells, Esq., solicitor of the petitioners, as compensation for his services, one-half of which sum so allowed shall be paid by said purchaser or its said assignee, and one-half whereof shall be paid out of and from the purchase price of said lands and premises;

And it is further ordered that the said petitioner or its said assignee do pay the solicitor of the petitioners
10 in this cause their costs of suit to be taxed.

E. R. WALKER, C.

NOTICE OF APPEAL.

(Filed November 23, 1916.)

IN CHANCERY OF NEW JERSEY.

Samuel K. Robbins, guardian *ad litem* of Edward Mercer Shreve and Dorothy Inskeep Shreve, infant defendants in the above-entitled cause, hereby appeals from so much of an order confirming sale and fixing allowances made in this court in this matter on November 14, 1916, as decrees that the price at which the lands
20 and premises mentioned in the Master's report herein were sold by him is fully adequate and as orders that the Master's report of sale stand ratified and confirmed and that the sale made by the Master is approved and confirmed and that the Master make and deliver a conveyance for the lands so sold, to the Court of Errors and Appeals in the last resort in all causes.

ELLIS L. PIERSON,

*Solicitor for and of counsel with
Samuel K. Robbins, guardian ad
litem.*

30

Dated Nov. 21, 1916.

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

ELLIS L. PIERSON,
Solicitor for and of counsel with
Samuel K. Robbins, guardian ad
litem.

COURT OF ERRORS AND APPEALS.

IN THE MATTER OF THE APPLICATION OF REBECCA H. SHREVE AND LUCY ELLEN SHREVE FOR THE SALE OF LANDS LIMITED OVER, &C.	}	10
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PETITION OF APPEAL.

(Filed October 12, 1916.)

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

The petition of Samuel K. Robbins, guardian *ad litem* of Edwin Mercer Shreve and Dorothy Inskeep Shreve, infants, the appellant in the above-stated cause, respectfully shows that your petitioner finds himself aggrieved by an order confirming sale and fixing allowances made 20 in the Court of Chancery by his Honor Edwin Robert Walker, Chancellor of the State of New Jersey, bearing date November 14, 1916, and filed in the said Court of Chancery on November 15, 1916, in a cause wherein Rebecca H. Shreve and Lucy Ellen Shreve were petitioners for the sale of lands limited over, and Edwin Mercer Shreve and Dorothy Inskeep Shreve were parties defendant, by reason of their owning a vested remainder in fee simple in the lands petitioned to be sold, in this respect, to wit, that the order decrees that 30

the price at which the lands and premises were sold by the Master is fully adequate, and further orders that the Master's report stand ratified and confirmed and that the sale made by the Master of the said lands is approved and confirmed, and further orders that the Master make a conveyance in the law for the said lands so sold.

Your petitioner humbly appeals from those parts of the order of the Chancellor which order and decree as
10 aforesaid, upon the ground that the order is erroneous in that it adjudges and decrees that the price at which the lands and premises were sold by the Master is fully adequate and that the report of sale should be ratified and confirmed and that the sale is approved and confirmed and that the Master make a conveyance for the lands so sold.

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

ELLIS L. PIERSON,
Solicitor for and of counsel
with appellant.

NEW JERSEY COURT OF ERRORS AND APPEALS.

IN THE MATTER OF THE APPLICATION
 OF REBECCA H. SHREVE AND LUCY
 ELLEN SHREVE FOR THE SALE OF
 LANDS LIMITED OVER, &C. } On Appeal.

ANSWER.

(Filed January 5, 1917.)

The answer of Rebecca H. Shreve and Lucy Ellen Shreve, respondents in the above-named cause, to the petition of appeal of Samuel K. Robbins, guardian *ad litem* of Edwin Mercer Shreve and Dorothy Inskeep Shreve, infants, appellant: 10

These respondents, not acknowledging all or any of the matters which in the said petition of appeal are contained, to be true, for answer thereto, nevertheless, say and admit that an order was, on November 14, 1916, made in the Court of Chancery, and entered therein on November 15, 1916, in the cause for that purpose mentioned in the said petition, as is therein stated; but as to the substance and form thereof, these 20 respondents pray to refer thereto when the same shall be produced.

And these respondents are advised and believe that the said order is agreeable to equity, and they pray that the same may be affirmed, with costs to be adjudged to them.

HAROLD B. WELLS,
Solicitor for and of Counsel with
Rebecca H. Shreve and Lucy
Ellen Shreve.

NEW JERSEY COURT OF ERRORS AND APPEALS.

IN THE MATTER OF THE APPLICATION
OF REBECCA H. SHREVE AND LUCY
ELLEN SHREVE FOR THE SALE OF
LANDS LIMITED OVER, &C. } On Appeal.

ANSWER.

(Filed December 28, 1916.)

The answer of William Henry Elfreth, respondent in the above-named cause, to the petition of appeal of
10 Samuel K. Robbins, guardian *ad litem* of Edwin Mercer Shreve and Dorothy Inskeep Shreve, infants, appellant:

This respondent, not acknowledging all or any of the matters which in the said petition of appeal are contained to be true, for answer thereto, nevertheless, says and admits that an order was, on November 14, 1916, made in the Court of Chancery, and entered therein on November 15, 1916, in the cause for that purpose mentioned in the said petition, as is therein stated; but
20 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 the said order is agreeable to equity, and he prays that the same be affirmed, with costs to be adjudged to him.

SCOTT SCAMMELL,

*Solicitor for and of Counsel with
Respondent, William Henry El-
freth.*

EXHIBIT I FOR PURCHASER. .

ELLIS L. PIERSON
Counsellor at Law,
Broad Street Nat'l Bank Bldg.,
Trenton, N. J.

Sept. 1, 1915.

*W. Henry Elfreth, Esq.,
Stephen Girard Bldg.,
Phila., Pa.*

DEAR SIR—I am preparing a fresh petition for Mrs. Rebecca H. Shreve and Mrs. Lucy E. Shreve to present to the Chancellor, regarding the sale of the Shreve property. It occurs to me that some evidence on their part that a sale can be made without undue delay would aid in the granting of the petition. The petition will pray that the total purchase price less the \$5,000 mortgage held by the Savings Bank and less the expenses of suit in the Court of Chancery for the sale of the property, which will be about \$700, including my fee to be allowed by the court for acting for the owners, remain upon a mortgage to the Chancellor. I believe such a petition will meet with success in view of the increased value of the property by reason of the new building. To that end, I have prepared the enclosed offer to be made by you personally to the Shreves. Please sign the offer and return it to me.

Yours very truly,

Signed: ELLIS L. PIERSON.

Enc 1
ELP/P.

EXHIBIT 2 FOR PURCHASER.

PHILADELPHIA, PA., Sept. 2, 1915.

Mrs. Rebecca H. Shreve and
Mrs. Lucy E. Shreve,
Riverton, N. J.

DEAR MADAMES:

I hereby offer to purchase the property known as the Shreve Building and the land on which it stands at 138-142 East State Street, in the city of Trenton, for the sum of \$51,400, the price which I have been informed was fixed by an order of the Court of Chancery of New Jersey as the price at which the property should be sold. I will pay the purchase price by cash in the sum of \$5,000, the amount of the present mortgage held by the Trenton Savings Fund Society and cash in a sum sufficient to pay the costs of the application for the sale of the property, providing that sum does not exceed \$1,000, and by my bond for the remainder, secured by a purchase money mortgage, which will be a first lien upon the property. The bond and mortgage I understand will have to be made to the Chancellor of the State of New Jersey. Beyond the purchase price above mentioned, I will pay to Clifford A. Worthington, a real estate broker, the sum of \$1,000, which you are now obligated to pay upon the sale of the property.

This offer will remain good for three months from this date and will be taken up as soon as I learn that the sale under the terms above indicated can be made.

Yours very truly,

ELP/P.

New Jersey Court of Errors and Appeals

IN THE MATTER

of

The Application of REBECCA H.
SHREVE and LUCY E. SHREVE
for the Sale of Lands Limited
Over, etc.

On Appeal
from Or-
der Con-
firming Sale.

BRIEF OF W. HENRY ELFRETH, PURCHASER-RESPONDENT.

This is an appeal from an order of the Chancellor confirming a sale made under the Act for the sale of lands limited over, the sole ground of appeal being that the lands involved were sold at an inadequate price (Case, p. 193).

The appeal is taken in the name of two infant remaindermen by the solicitor on whose motion the order of sale itself was made, and who appeared for the respondents, Shreve, in all of the proceedings and acted as their counsel in all their negotiations up to April 8th, 1916. Then other counsel was substituted for him on his own motion to allow him to oppose confirmation of the sale which his former clients had obligated themselves to have consummated on his advice.

But one point in appellant's brief (the sixth) refers to the real grounds of appeal, namely, inadequacy of price. The first four points are devoted to a stultification of the method adopted by the petitioners and the purchasers under appellants' present counsel's advice to accomplish a sale of the property. The fifth point is devoted to a discussion of whether or not the interest of either the life tenants or remaindermen require a sale. As the life tenants have not appealed from the order of confirmation and their testimony shows that they desire to consummate the sale, the suggestion as to their interest, at least, is submitted to be highly impertinent. Being *sui juris*, they must be assumed not to require the counsel of their former advisor, by whose advice they were led into what he devotes a large portion of his brief to prove, an unconscionable position of advantage toward their own children and grandchildren, the appellants.

In discussing the merits of this appeal, this respondent proposes to take up, first, the real question involved, namely the adequacy of the price at which the property was sold, and to deal with the other points raised thereafter.

Statement of Facts.

The petitioners in this cause are successive life tenants, under a will, of property on East State Street, in the City of Trenton. They are the grandmother and mother respectively of the appellant remaindermen, who are infants. The devise is to the petitioners for their successive lives with remainder to the appellants, and with remainder upon failure of issue to nine other persons.

On July 1, 1913, petitioners filed a petition for sale of this property under the act for the sale of

lands limited over (2 Compiled Statutes, pp. 4688 *et seq.*). On July 28, 1913, an order for sale was entered after reference and hearing before a Master of the Court of Chancery. This order provided for a public or private sale of the property in fee, subject to mortgage of \$5,000.00, at a price not less than \$56,200.00.

The petitioners being unable to find a purchaser for the property at this price, and upon these terms, filed a new petition on July 6, 1914, alleging their inability to sell the property, and praying an order allowing all but \$10,000.00 of the purchase price to remain on mortgage. Such an order was made on July 18, 1914; the sale then being authorized to be made free of the mortgage and at the same gross price.

Two of the difficulties standing in the way of a sale were the fact that title had to be made through the Chancery proceedings, and that the property was subject to a number of leases to tenants for terms running from several months to several years.

Just prior to the filing of the latter petition, this respondent's assignor, The St. Regis Corporation, began negotiations for the purchase of the property for the purpose of operating it as a motion picture theatre. To accomplish this purpose, it was necessary that the leases then existing on the building should be bought up and the building greatly improved and altered. The company's plan of finance was to place a mortgage upon the building, from the proceeds of which payment of the purchase price would be made, and it was necessary to make some arrangement by which the purchaser could go into possession and make the improvements at once, taking title thereafter when title could be made.

This was accomplished under the device of a lease and agreement of sale, which, while separate documents, were contemporaneous and constituted one transaction. This is admitted by all parties. By

the agreement of sale, the life tenants, acting individually and as guardians of the appellant remaindermen, and all other persons in interest, bound themselves to use every means in their power to effectuate a conveyance of the property through these proceedings to The St. Regis Corporation within two years, at the price of \$65,000.00, \$1,600.00 of which was to be deposited by the purchaser to take care of certain commissions claimed by a real estate agent on the sale, and the balance of which was to be paid to the Special Master on the making of the deed. This balance exceeded by \$2,200.00 the price at which the order of sale authorized the sale to be made. The St. Regis Corporation further agreed to take the property subject to the outstanding leases, but free of the mortgage. The lease provided that The St. Regis Corporation should go into possession for a term of five years, and should pay all taxes, insurance charges, and repairs, and a yearly sum, called rent, which was estimated on the basis of five per cent on the gross sales price of \$65,000.00.

In all of these negotiations, as well as in the proceedings of the Court of Chancery, the petitioners were represented by Mr. Pierson, the present solicitor of the appellant remaindermen, and the lease and agreement of sale which he so vigorously attacks in his brief were actually drawn by him.

The effect of these two instruments was to place The St. Regis Corporation in possession of the property until such time within two years as title could be made and permit it to make its improvements upon the assumption by it of the carrying charges of the property; namely, the insurance, taxes, and repair charges, and five per cent on the purchase price. The owners, on the other hand, were relieved of these charges and received an income greater in amount than they would have received had the sale been consummated on the day the agreements were executed and the proceeds of sale invested at five per cent.

Acting under these agreements, The St. Regis Corporation entered upon the property and spent approximately \$35,000 in buying up the leases and improving the property. When the building was nearing completion, the officers of the company applied to Mr. Pierson for a draft of the Master's deed for the purpose of having the conveyancers begin work on the mortgage. They met with delay after delay, and were unable to accomplish anything until January, 1916. Then, for the first time, the orders of sale were placed in the Master's hands and a formal offer for the property immediately followed.

The sale was made in February, 1916, and the Master promptly made report and transmitted it to Mr. Pierson. The report of sale was not filed until six weeks later, and then only after the purchaser had employed independent counsel, who filed it themselves.

No proceedings were taken by the petitioners to bring on confirmation of the sale, and when these proceedings were finally brought on by the purchasers themselves, Mr. Pierson, the petitioners' solicitor, asked leave of the Court to be relieved from his representation of the petitioners, and to be appointed to represent the infant defendants in order that he might oppose the confirmation. His motion being granted, voluminous testimony was then taken and confirmation of the sale strenuously opposed at the hearing. The Chancellor, however, confirmed the sale. But on the very day fixed for settlement, and when all parties were present for the purpose of making settlement, a notice of this appeal was served on the purchaser and the petitioners.

Since July, 1914, the purchasers have been in possession of the premises, and have paid the taxes and rents, and kept the same insured and in repair in accordance with the terms of the lease and agreement of sale. The so-called rent has been accepted by the life tenants without objection, and has been applied

by them in part at least to the maintenance and education of the appellant infant defendants.

No effort has ever been made to revoke or annul the order of sale under which this sale was made, nor have the petitioners ever made tender of the deed or placed the purchaser in any position where he could either take title or default.

The guardian *ad litem* of the appellant infant defendants is the Clerk in Chancery, whose participation in the litigation has been purely formal. The life tenants are willing and anxious to have the sale consummated, not only for their interest, but for the interest of the infant remaindermen who are the children of one life tenant and the grandchildren of the other.

The sole ground of appeal, as stated in the petition of appeal, being inadequacy of price (Case, p. 193), the case of the purchaser stands thus:

Upon the faith of an order of the Court of Chancery authorizing the sale of the property at a fixed price made in 1913, and reaffirmed in 1914, the purchaser entered into an agreement of sale and lease, the effect of which was to consummate the sale as far as possible at once, leaving the detail of the making of title to be effectuated later. On the faith of this lease and agreement of sale and the order of the Court of Chancery, the purchaser entered upon the property, purchased the outstanding leases upon it, and then proceeded to improve it by an investment of about \$35,000.00, all the while paying to the life tenants for their, and the appellants' benefit, an income of five per cent on a purchase price greater than the price fixed by the order of sale, and relieving the owners of the property of the payment of the taxes, insurance, and repair charges. Upon the making of an offer to a Special Master of the Court of Chancery, a sale was made at a price exceeding the price authorized by the Court, which sale was duly confirmed by the Chancellor in person.

Under these circumstances, it is respectfully submitted on behalf of the purchaser:

POINT I.

The price at which the sale was made is fully adequate.

In attempting to prove the inadequacy of price, the testimony of W. Meredith Dickinson and Albert T. Parker was adduced. Mr. Dickinson testified to a valuation of \$1,300 per front foot of land at the present time, and \$9,000 for the building, rating it by the cubic foot of material (Case, p. 59). He later qualified the value of the building by saying that while the buildings would be worth to reproduce in the condition they were in in 1913, \$9,000, on a sale of property they would be worth only their salvage value, which he estimated at \$2,000 (Case, p. 63). The net result of Mr. Dickinson's testimony on this branch of the case would be a gross value for the land of \$66,300, and of the building of \$2,000, making a total of \$68,300 gross, and after deducting the \$5,000 mortgage, a net value of \$63,300. He was afterward produced by the purchaser, and testified that this value would be subject to the deduction of a broker's commission of two and one-half per cent, and was based on a sale free of existing tenancies; that it should be reduced by the cost of buying any leases outstanding on the property (Testimony, p. 56).

Mr. Parker's estimate of value made no allowance for existing tenancies or broker's commission.

Gardner H. Cain was produced by the purchasers, and testified to an increase in value of land of about one hundred dollars per front foot since 1913 (Case, p. 112). He was one of the experts who testified to a valuation of \$1,200 per front foot on the original

Master's hearing in this cause. He also agreed that this valuation was subject to the deduction of a broker's commission of two and one-half per cent and that whatever sum would have to be paid by the purchaser to obtain possession of the entire building by purchasing leases, and so forth, should also be deducted in determining a fair value or an adequate price. Both he and Mr. Dickinson testified specifically that, in their judgment, the annual increase in income secured to the life tenants and remaindermen, estimated on the basis of the operation of the lease and agreement of sale above described, about equaled the annual increase in value, and that the price for which the Master had sold this property was an adequate price under the circumstances as stated in the hypothetical questions (Case, pp. 110, 113).

At the time the arrangement of sale and lease were made, the property was subject to certain outstanding leases at low rentals, the unexpired terms ranging from a few months to almost two years (Case, pp. 99, 100), and by the agreement of sale, the purchaser assumed the burden of getting rid of these tenancies.

The testimony as to the cost of obtaining possession will be found on pages 163 to 169 of the case. It shows that it required \$1,800 to procure the vacation of the tenant Hutchinson; that the tenant Taylor agreed to vacate for a payment of \$2,000, but that an arrangement was made by which his lease was extended for two years from April 1, 1915, at \$50.00 a month and temporary quarters provided for him at a cost of \$223.54 for the three months during which his actual vacation of the premises was required to make the contemplated improvements; that in order to procure the vacation of the tenant Worthington, his lease was extended for two years from April 1, 1915, at \$35.00 per month, and temporary quarters provided for him for the three months at a cost of \$195.00; that the cost of procuring the vacation of the tenant Commonwealth Beneficial Association was

\$75.00, and of the tenant Hazelett-Harrison Company, a payment of \$250.00 and an allowance of two months' rent amounting to \$60.00; and that by reason of the necessity of making these arrangements, the purchasers were compelled to refuse offers of \$110.00 per month and \$125.00 per month for the two stores occupied by Taylor and Hutchinson. The following is a schedule of the costs of obtaining possession as shown by this testimony:

Hutchinson,	\$1,800.00
Taylor. Difference between two years' rent at \$50.00 per month from April 1, 1915, and the rental value of \$110.- per mo.,	2,140.00
Cost of temporary quarters,	700.00
Worthington. Difference between two years' rental at \$35.00 per month from April 1, 1915, and rental value of \$125.- 00 per month,	2,160.00
Cost of temporary quarters,	195.00
Commonwealth Beneficial Association,	75.00
Hazelett-Harrison Company,	310.00
Total,	\$7,380.00
Deduction account of Taylor and Worthington for three months during which building was not rentable on account of repairs,	705.00
Total cost of obtaining possession,	\$6,685.00

The net result of the testimony of Mr. Cain and Mr. Dickinson is submitted to be as follows:

Valuation of the property in 1916.

Land, 51 ft. frontage, at \$1,300 per ft.	\$66,300
Building	2,000
Total gross value	68,300
Less amount of mortgage	5,000
	63,300
Less deduction of 2 1/2 per cent commission	1,580
	61,720
Less cost of obtaining possession	6,685
Total net value	\$55,035

It will be noted that the above calculation makes no allowance for a credit of increased income during the two years in which the five per cent on the purchase price has been paid by The St. Regis Corporation. The annual increase in income amounts to \$2,170, and as inadequacy of income was the ground for obtaining the order of sale and the moving consideration in making the sale, it would seem fair to take this item into consideration in determining the adequacy of the price paid. This is particularly true in view of the fact that both the petitioners testify (Case, pp. 132 and 136), that the increase in income has been applied, in part at least, for the maintenance and education of the appellants themselves.

POINT II.

The appellants must show gross inadequacy of price to reverse the order of confirmation.

It is submitted that the rule is well established in New Jersey that mere inadequacy of price is not sufficient to prevent the confirmation of a judicial sale, unless the inadequacy be so great as to raise the presumption of fraud or imposition. See *Hoffman vs. Godfrey*, 79 N. J. Eq., 617; *Morrisse vs. Inglis*, 46 N. J. Eq., 306; *Brady vs. Carteret Realty Co.*

This rule applies to private sales made under order of the Court as well as to public sales. See *Rogers vs. Rogers Locomotive Co.*, 62 N. J. Eq., 111, at pp. 118 and 119; *In re Leary*, 50 N. J. Eq., 383.

The theory as laid down in the above-named cases is that the purchaser at a regularly conducted judicial sale, whether public or private, becomes the owner of an equitable title upon his purchase, the legal title being vested upon confirmation and execution of the deed. The English doctrine that the purchaser is a mere bidder appears never to have been accepted in this state; the reason for its rejection and the adoption of the rule above stated being one of public policy to encourage bidders at judicial sales by assuring them that, if successful in purchasing, they will reap the fruits of their bid. In a number of the cases above quoted, a higher price was offered after the sale had been made, and in each instance, this element was not allowed to prevail over the result of the judicial sale.

In considering the question as to what amounts to such gross inadequacy of price as raises the presumption of fraud, attention is called to the fact that in *Morrisse vs. Inglis*, above quoted, over ten per cent advance over the sale price was offered. In *Bethlehem Iron Co. vs. Philadelphia and Seashore Ry. Co.*,

49 N. J. Eq., 356, twenty-one per cent was offered; and in *Bliss vs. New York Life Insurance Company*, 51 N. J. Eq., 630, \$1,000 advance was offered. The Court did not consider this proof sufficient to prevail.

The cases in which the amount of the bid has been held to be grossly inadequate are submitted to be the cases in which the actual value is many times the amount of the bid. Such was the case of *Marlatt vs. Warlick*, 48 N. J. Eq., 108, where the value of the property was \$11,410, and it was sold for \$1,786. *Kloepping vs. Stellmacher*, 21 N. J. Eq., 328, was an instance of a \$1,500 property which was sold for \$52. In each of these cases, the Court first carefully points out the fact that mere inadequacy of price is not sufficient to set aside a judicial sale, nor is it in itself proof of fraud; but where gross inadequacy coupled with fraud or oppression is found, it is sufficient to set aside the sale or to prevent confirmation.

The case of *Howell vs. Mills*, 53 N. Y., p. 352, cited on appellants' brief, is authority for the same proposition; namely, "that mere inadequacy of price unattended by other circumstances is not sufficient" (to set aside a judicial sale). "A resale will be ordered when there has been fraud or misconduct in the purchaser or of some person connected with the sale, or for surprise created by the purchaser or other interested person, and inadequacy of price is of greater or less weight, depending upon the other circumstances of the case." In that case a property worth \$18,000.00 was sold for \$3,000.00; an excellent example of gross inadequacy of price.

POINT III.**The interest of the minor remaindermen cannot be prejudiced by confirmation of the sale.**

So far as the question of the advisability of the sale is concerned, it is submitted that this is not the appropriate time to discuss or consider that question. The advisability of the sale was fully considered and passed upon when the original order of sale and the judgment of the Court was reaffirmed in the order of July 18, 1914. If the infant remaindermen desired to show that this sale was against their interests, the proper and appropriate proceedings for them to have taken would have been to have these orders set aside before they were acted upon by third parties.

It is pertinent, however, to consider whether the action now asked of the Court, to wit, affirmance of confirmation, will prejudice the infants' interests in view of the length of time which has elapsed between the entry of the order of sale and the sale itself. Aside from the question of adequacy of price, which is discussed elsewhere, the only question left for discussion is, what advantage would have accrued to the infants had the sale been made in 1914 which would not accrue to them now? That is to say, what loss has been occasioned to the infants by the delay in application for confirmation.

It must be remembered that the price at which this property was sold exceeds by \$2,200.00 the price fixed by the Court of Chancery in 1913 and reaffirmed in 1914. The order of sale has never been directly attacked and the price fixed for sale of the property therein should be assumed to be a fair price even if the evidence taken in this proceeding did not show it to be such. By means of the so-called agreement of sale and lease, the practical effect of a sale made

at the date of their execution was accomplished except for the mere passage of title. The lease and agreement of sale were executed almost contemporaneously with the entry of the second order concerning the sale, which reaffirmed the price fixed for sale. Had a sale been made by the Master immediately at the price fixed in the agreement of sale on what ground could confirmation have been resisted?

Had this been the case, the present purchaser would have possession of the property. The present life tenants would be relieved of payment of taxes, insurance, and other carrying charges, and would be receiving an income certainly not greater than at the rate on which the rental value was fixed on the net proceeds of sale. The status of the infants today would be precisely the same as their status will be if this sale is confirmed; namely, they would be entitled to a remainder interest in the capital fund equal to the net purchase price.

No one has attempted to argue that in a court of equity the purchaser's improvements placed on the property for its improvement for his own purposes, and as part of the process of acquiring title, should be considered in determining the present value of the property. Any argument which determines the value of the property on the basis of increased rental value or appreciation in value of the land under the circumstances of this case, results in an unconscionable application of the purchaser's property to the infants' benefit. Whatever increased rental value exists in the premises today is the direct result of the purchaser's efforts.

So far as the delay itself is concerned, the purchasers' contention is that it is due to the delay of the petitioners' solicitor. He, on the other hand, contends that it was due to the purchasers' varying offers and inability to pay for the property. This one salient fact is undisputed; namely, that the orders of sale were never placed in the Master's hands until

January, 1916. This appears by the testimony of Mr. Pierson (Case, p. 92). Further, the report of the sale was not regularly filed for more than six weeks after it was actually signed by the Master (Testimony, p. 34). Mr. Pierson testifies to various suggestions made by Mr. Elfreth in modification of the terms of sale as set forth in the agreement, but admits on cross-examination that there was no intention to make any difference in the purchase price (Case, p. 93). These suggestions, when analyzed, appear to be nothing more or less than suggestions as to the method of payment of the purchase price, *i. e.*, efforts to arrange for a large portion of the purchase price to remain on purchase money mortgage. The purchasers' testimony shows also that they were given to understand by Mr. Pierson that they must have the full amount of cash ready to be paid to the Master when the sale was made by him, whereas, their plan required that they raise the purchase price by a mortgage on the property and pay it over when the deed was delivered. Mr. Pierson testifies to these facts (Case, p. 107), and there says that such a transaction was impossible, and that he so advised Mr. Elfreth. Except for the payment of a deposit, it is respectfully submitted that such a transaction is not only not impossible, but quite the universal practice in completing such sales.

The purchasers testify that they have never been able to obtain a form of deed in order that their conveyancers might pass upon it, nor any other progress toward consummating this sale, until about 1916. The testimony of W. Taylor Middleton, a real estate broker of Philadelphia, shows that there was available for the mortgage on this property the sum of \$60,000 since May, 1914, and the additional sum of \$10,000 since June 10, 1915 (Case, pp. 124 to 125).

Mr. Pierson further testifies that he never specifically made any demand on behalf of the interests that he represented, that the St. Regis Corporation

Case p.

comply with the agreement of sale, except so far as his letters urging the purchasers to hurry up with their proposition constituted such a demand (Case, p. 107). The purchasers' testimony further shows that they had no knowledge of the order of July 8, 1914, allowing all but \$10,000 of the purchase price to remain on the property on purchase money mortgage until December, 1915 (Case, p. 149); and Mr. Pierson himself testifies that he does not remember having informed them of the entry of this order (Case, p. 85). It appears, therefore, that at no time was demand ever made on the purchaser to comply with the agreement of sale and take conveyance, nor were any proceedings taken in this cause to place the petitioners in position to demand payment of the purchase price; for at no time were the proceedings carried to the point that the purchasers were either obligated or in position to take the deed and pay the purchase money.

Perhaps the most convincing proof that the delay was not due to the purchaser's inability to raise the funds with which to complete the purchase, is the fact that when the sale was confirmed and the Master's deed actually drawn, the purchaser appeared on the day fixed for settlement fully prepared to make payment and take conveyance, and was only prevented from so doing by the service on that same day of the notice of this appeal.

Two New Jersey cases construing the statute in question are, *In re Heaton*, 21 N. J. E., p. 221, quoted on appellants' brief, and *Apgar vs. Apgar*, 38 N. J. E., p. 549. While both of these cases deal with the considerations on which an order for sale should be granted, they probably deserve some discussion in this connection.

In *In re Heaton*, 21 N. J. E., p. 221, application was made for the sale of lands limited over by petition, and the matter referred to a Master, and upon his report, a motion was made for an order to

sell. The Chancellor refused the motion on the ground that no evidence of the value of the property had been produced before the Master, and that the Court could not order the lands sold in the absence of definite evidence as to its value. The Court discussed the reasons assigned for the sale, one of which was that the property had gone out of repair, and that it would be very expensive to put it in tenantable condition, and the other of which was that the interest from the proceeds of sale would be greater than the net income which was derived from the lands. There was no testimony as to the probable future value of the property, and no definite testimony as to its present value. The Court did say that some increase of income for the life tenants would not justify a sale, and that it was the duty of the life tenants to put the property in tenantable condition; but it did not appear that the increased income was needed for the minors' interests, or that it would be applied to their use, both of which facts appear in the present case. It did not appear that the probable future value of the land would be no greater than the increase in income; and especially it did not appear what the land was really worth. This case is submitted to be distinguishable from the case at bar on these grounds, and further on the ground that it came before the Court on a motion for order to sell, not after an order to sell had been made by this Court, and the purchaser, on the faith of that order, had entered upon the land and improved it, and the sale had been made in strict accordance with the Court's order.

In *Apgar vs. Apgar*, 38 N. J. E., 549, the situation was reversed, the life tenants there objecting to an order of sale on the ground that such a sale, while beneficial to the infants, would be detrimental to their interests. The Court of Errors, in passing upon this matter, held that it should be shown that the interests of both the life tenants and remaindermen

would be promoted by the sale, in order to justify the making of such an order. The Court continues thus:

"We consider its purpose to be that the interests of the owners of both particular and future estates are to be regarded and the advisability of sale to be decided as it would be by a prudent owner of the fee simple in possession. The present situation and prospective value of the lands are to form the chief grounds of decision. The act itself gives prominence to neither of these considerations above the other; but in the nature of things it would seem that if either is to have the greater weight, it should be the present situation; for that is capable of ascertainment, while the prospective value is necessarily the subject, more or less, of conjecture."

This case is distinguishable again by the fact that it was determined on application for the order of sale, and that it was distinctly shown that the proposed sale was not for the interest of one of the interested parties.

The suggestion is made on behalf of the infant remaindermen, that the sale is not now for their benefit, because an adequate income has been provided. As has already been shown, the adequate income was provided only as part of the general scheme for the sale of this property, a scheme which actually carries out the general equitable theory that from the date of agreement of sale, the purchaser is the owner of the property, and the seller, of the money; except that here, as the seller obtained possession of both the property and retained the money, an income was provided to the seller based on the amount of the purchase price. There is no doubt that this income would never have been provided except for the agreement to sell the property. It is shown also that this income resulted in an increase in income from the property of over \$2,000 per annum, the benefit of which

was secured by the infant remaindermen. It is respectfully submitted that in the absence of a showing of gross inadequacy of price, this income should not be taken to establish a rental value for the property in comparison with the sale price. It is not a rental value, but merely an interest payment based on 5% of the gross purchase price. It is actually a part of the purchase price, and its benefits were secured to the petitioners and the infant remaindermen solely and simply by reason of the fact that a sale was to be made at the price accepted by the Master.

POINT IV.

Nothing appears in the case to show a stifling of competitive bidding, an unwarranted interference with the judicial sale, or any speculation with the infants' interest.

The suggestion as made in Point I of the appellant's brief that the making of the 5-year lease prevented free competition, is submitted to be without proof in fact. The original order of sale was made in July, 1913. A second petition was filed in June, 1914, almost a year later (Case, p. 25). The petition states:

"That since the time of making that order your petitioners have endeavored in vain to obtain a purchaser who would pay purchase price mentioned in the order in cash, or who would pay so much of the purchase price in cash as would permit of a purchase money mortgage to an amount not greater than one-half the value of the property fixed in said order; that in the opinion of your petitioners a sale could be consummated if a provision were made that the property could be sold free of the mortgage incumbrance of \$5,000 mentioned in said order, and with a further provision that a small portion of the purchase price in cash be

accepted; the remainder of the purchase price to remain secured to be paid by a purchase money mortgage. That in the opinion of your petitioners the payment of \$10,000 in cash, with the remainder of the purchase price secured by a mortgage, would be a safe method of selling the said property" (Case, p. 25).

This petition is signed by Mr. Pierson himself, as solicitor for the petitioners, and bears their verification.

It is apparent, therefore, that there was no competitive bidding during the first year, notwithstanding that there was no lease on the property to The St. Regis Corporation. Not one word of evidence was produced by the appellants to show that any bid, other than that of The St. Regis Corporation, had ever been made since the filing of the original petition, or that any person either was willing or desired to purchase this property at any price whatsoever, except that company.

It must be remembered that the life tenants are entitled to the possession and the income from this property during their lives. To say that the making of a valid lease by a life tenant, covering the property in which he has a life estate, is in any sense unwarranted, or is anything more than the proper exercise of his rights of ownership, is submitted to be an absurdity. According to this argument, no property which was rented could ever be sold under this Act, and property subject to contingent remainders would be required to stand idle or their owners deprived of the relief afforded by this Act.

Was the making of the agreement of sale an unwarranted interference with the judicial sale? A Court of Chancery decreed a sale in July, 1913. The only advantage which could accrue to the life tenants through the sale would be an increase in income, and all they would receive would be income. The corpus would go to the remaindermen when their remainders vested in possession. The life tenants provided for

the income by the agreement of sale, and by the retention of title, assured to the remaindermen either the receipt of the capital sum fixed by the Court of Chancery, or the retention of the property itself. If the purchasers defaulted in the agreement, the property with the improvements remained the property of the estate. If they performed, the capital sum fixed by the Court of Chancery became the property of the estate. The two years' postponement of the taking of title and the payment of price could not affect the interest of the remaindermen. In so far as it affected the interest of the life-tenants, namely, in respect to income, adequate provision was made.

We therefore submit that on the proofs adduced, no facts have been shown to support the contention that the price is grossly inadequate. On the contrary, the price has been shown to be fully adequate, and the sale has been shown to be made in strict conformity with the order of Court directing it. The purchasers have been shown to have made extensive expenditures on the faith of the decree of Court, and to have supplied a greatly increased income for the last two years, which income has been used largely for the infant remaindermen's benefit. It is submitted that nothing in the entire series of transactions which have culminated in this application for confirmation have been shown to work any prejudice against the interests of the remaindermen, and no reason has been shown why sale should not be confirmed in accordance with the principle laid down by the adjudicated cases applicable to confirmation of sale made by the officers of the Court of Chancery, ^{under} ~~render~~ its orders.

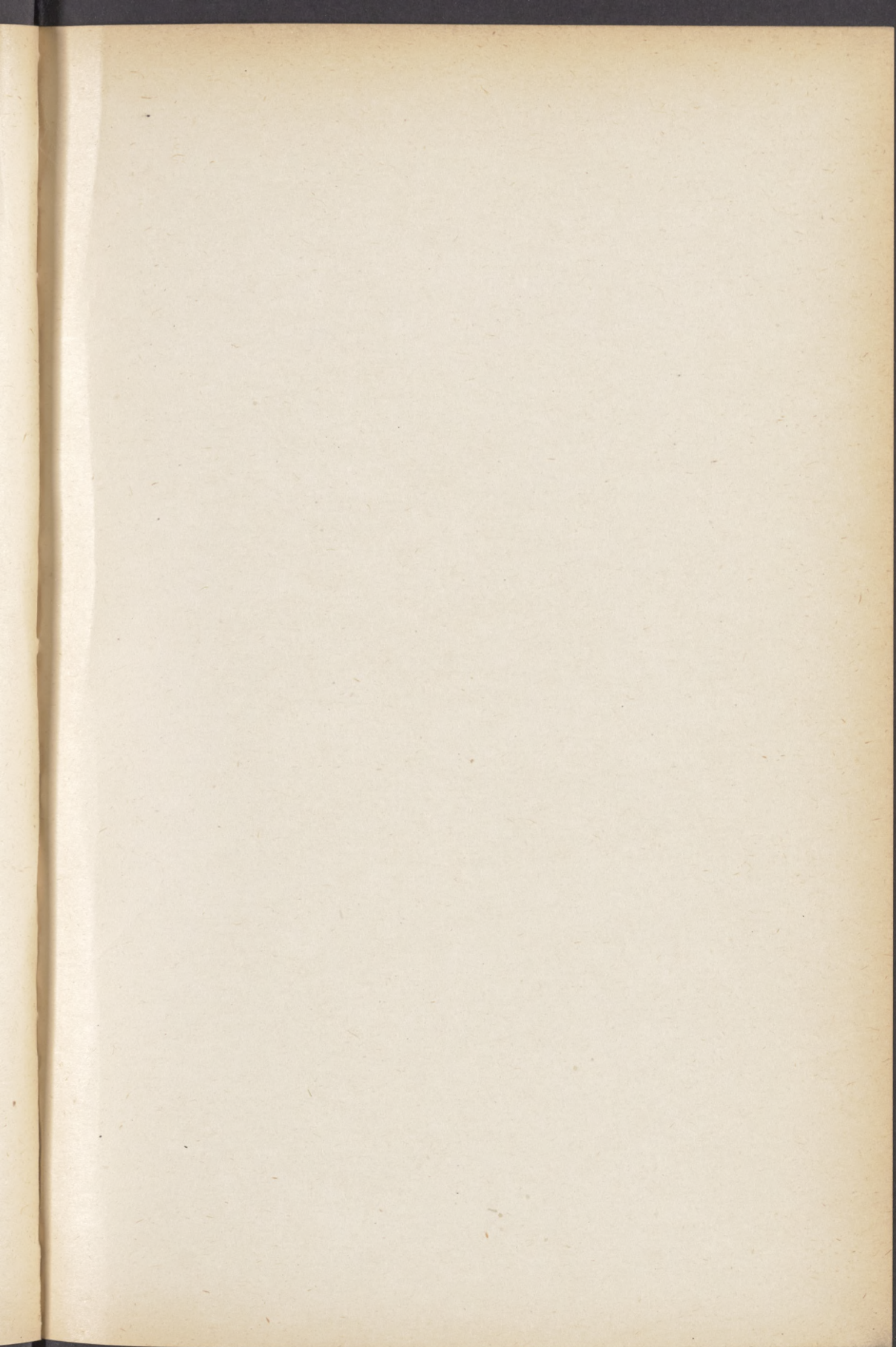
Respectfully submitted,

SCOTT SCAMMELL,

CHARLES DEF. BESORE,

Solicitors for the Purchaser,

W. Henry Elfreth, Respondent.



NEW JERSEY

Court of Errors and Appeals.

IN THE MATTER OF THE APPLI-
CATION OF REBECCA H. SHREVE
AND LUCY ELLEN SHREVE FOR
THE SALE OF LANDS LIMITED
OVER, ETC.

**Brief for Samuel K. Robbins, Guardian ad
litem &c., Appellant.**

STATEMENT.

By a petition filed July 1st, 1913, Rebecca H. Shreve and Lucy Ellen Shreve, successive life tenants of a property of fifty-one feet frontage and one hundred and forty-two feet depth, located on East State Street, in the business section of the city of Trenton, prayed the Court of Chancery for an order to sell under the statute providing for the sale of lands limited over to infants. The appellant is guardian *ad litem* of infants seized of a vested remainder in fee, appointed by an order filed July 5th, 1913. He entered a formal answer to the petition, but did not attend the hearing nor take any active part in the proceedings until the report of sale was before the Chancellor in April, 1916, when the Chancellor

appointed the solicitor of the petitioners solicitor for the guardian, Mr. Harold B. Wells being substituted at the same time as solicitor for the petitioners. The reason for praying a sale given in the petition was inadequate income (Record, p. 5, l. 23). When the petition was filed there was standing on the property a three-story brick building, built about forty years ago, and in the rear a one-story structure used for a printing establishment. The front building was used for stores, offices and apartments, there being two stores and one office fronting on State Street, on the ground floor, and offices and living apartments on the second and third floors. The building had in it a modern heating plant, but in other respects was not desirable for offices. The two stores were in good condition.

The master's report, advising sale, was filed July 26th, 1913. The basis for advising sale was "that the income derived from the said Shreve Building is not commensurate with its value and the net income of the premises will probably not increase to a greater extent than the increased taxes and expenses" (Record, p. 13, l. 23). The master recommended a sale at the price of \$61,200. Following the master's report, an order was entered July 29th, 1913, directing a sale at public vendue or at private sale in fee, subject to a mortgage of \$5,000, for a price not less than \$56,200, making the total purchase price \$61,200.

Negotiations for a sale pending when the petition was filed were abandoned. There was no other step taken toward a sale of the property until the spring of 1914. In February of 1914 one William J. Vernon obtained from the Shreve ladies an agreement in which they undertook to sell and he to buy the Shreve property for \$65,000 (Record, p. 48, l. 8; p. 51, l. 11). The Shreves had executed the agreement as owners in fee, not understanding the purport of the agreement (Record, p. 131, l. 5). Later in the spring of 1914 further negotiations with Mr. Vernon took place, Mr. Vernon being repre-

sented by W. Henry Elfreth, a lawyer of Philadelphia. The result of those negotiations was a lease for five years, dated June 11th, 1914, made by the Shreves to the St. Regis Corporation, a corporation of Delaware, formed by Messrs. Vernon and Elfreth, and an agreement of sale, dated July 11th, 1914, in which the Shreves agreed to do all in their power to procure a sale under the order of the court, which was referred to in the agreement, for a price of \$63,400, at any time within two years, the agreement being expressly conditioned upon the deposit of \$1,600 by the St. Regis Corporation to protect the Shreves from a claim for commission made by a real estate broker in Trenton who had procured for the Shreves an agreement of sale which the Shreves, owing to the interests of the infants and owing to certain leases, were unable to perform, and also conditioned upon the strict compliance by the lessee with all the terms of the five years' lease. The plan of giving the St. Regis Corporation possession by means of a lease and enabling it to purchase under an agreement was suggested by Mr. Elfreth, the period for purchasing being at first one year, and later extended, at his request, to two years. The lease and agreement were executed in July, 1914, and shortly thereafter the St. Regis Corporation went into possession and tore down the rear building on the Shreve property, tore out part of the front building and erected in the rear a moving-picture theatre, with an entrance through the front building. As soon as the theatre was ready for occupancy the St. Regis Corporation sublet it to a company called the Tenant Motion Picture Company, a corporation of Pennsylvania, the rent reserved being exactly the same as St. Regis Corporation was obligated to pay to the Shreves.

In February, 1916, the St. Regis Corporation made an offer to the master to whom the order for sale was directed. That offer was made pursuant to the terms of the agreement for sale mentioned above (Record, p. 34, l. 8). Attached to the offer are copies of the agree-

ment and the lease and affidavits of W. Henry Elfreth and William J. Vernon. The affidavit of Vernon states that "Something over \$35,000 was spent in making these alterations" (Record, p. 50, l. 13), referring to altering the property into a moving-picture theatre. The affirmation of Elfreth states that "The St. Regis Corporation has expended something over \$35,000 in improvements on this property" (Record, p. 53, l. 21). The master, in reporting the sale, referred to the agreement and to the lease, and referred also to the expenditure of something over \$35,000 by the St. Regis Corporation in permanent improvements to the property. The master reported that he was of the opinion that \$63,400, the price named in the offer, was the fair market value, exclusive of the improvements placed on the property by the St. Regis Corporation, and that a greater price could not at the time be secured therefor (Record, p. 33, l. 14).

In testimony taken upon an order to show cause why the sale should not be confirmed it appeared that the St. Regis Corporation had paid \$11,472.21 for improvements and was indebted to the extent of \$16,000 for improvements (Record, p. 118, l. 20); that the sum of \$1,600 was not deposited, according to the agreement, until January 17th, 1916 (Record, p. 118, l. 3); that the alterations resulted in the erection of a moving-picture theatre and in great detriment to the front building upon the Shreve property, access to the upper stories being cut off, one of the stores destroyed and the two remaining stores reduced in area (Record, p. 118, l. 37; p. 169, l. 27).

POINT I.

THE MAKING OF THE FIVE YEARS' LEASE BY THE LIFE TENANTS PREVENTED COMPETITIVE BIDDING, WHEREFORE CONFIRMATION OF THE SALE SHOULD HAVE BEEN REFUSED.

Any interference with free and open competition in bidding at a judicial sale is cause for refusal to confirm.

The life tenants put the St. Regis Corporation into possession under a valid lease, dated June 11th, 1914. While that lease continued in force it is not conceivable that anyone but the St. Regis Corporation would make an offer for the property at its true value.

POINT II.

THE MAKING OF THE AGREEMENT OF SALE OF JULY 11TH, 1914, FIXING A PRICE FOR THE PURCHASE AT ANY TIME WITHIN TWO YEARS WAS AN UNWARRANTED INTERFERENCE WITH A JUDICIAL SALE.

The contract bound the adults of the Shreve family to do all in their power to promote a sale to the St. Regis Corporation. Such an agreement would include discouraging other bidders. The motive of the adult owners is not material, if the natural result of their contract would be to interfere with competitive bidding or to keep down the price at which the infants' interest was disposed of.

Howell v. Mills, 53 N. Y. 322. A partition sale of lands, in which an infant had a reversionary interest, took place, the price being kept down by the parties, preventing competition. There was no corrupt intent. In fact, the purchaser acted entirely from the motives of friendship to the family, believing that the interests of the infant would be benefited. Nevertheless, the sale was held to be illegal. "Where the property rights of infants are concerned courts will exercise the most vigilant care in protecting their interest, and will hold guardians and all who are engaged in managing or disposing of their property to a rigid adherence to principles of good faith not only, but to a strict performance of every duty." "Courts of equity are the guardians of all infants within their jurisdiction, whose rights are under their special protection; hence a sale of real estate should be set aside where the interests of infants are in-

volved, if the court can say that to refuse to do so will result in substantial and irreparable loss to them. In other words, the policy of the law to give permanency to judicial sales should not be enforced contrary to the rights of infants or others under disability."

Clark v. Stanhope, 109 Ky. 521. A written contract was made between the sister and mother as guardian of an infant of one part, and a prospective purchaser of land owned by the infant and her sister, of the other part, for the sale of the land for \$2,500. A petition was filed for the sale of the land and a decree of sale at public auction was made. The sale took place and the prospective purchaser had to bid more than the contract price. He sued and recovered judgment for the difference. Reversed. "The contract sued on shows on its face that the parties were undertaking to make a trade for the sale and conveyance of the farm, in which the infant owned an undivided one-half interest, and that in order to carry out this contract a decree had to be obtained from the Circuit Court. In making a contract of this kind, persons are not only presumed to know the law, but must take notice of it. A guardian has no authority to sell his ward's land." * * * "The clear intent of all this is to protect the infant as to his real estate, and, in all cases where a sale is had, to guard against his interest being sacrificed by his guardian or others. Any contract which tends to smother bidding at the sale of an infant's real estate is clearly contrary to the public policy of the statute, and will not be enforced."

POINT III.

SPECULATION BY THE PURCHASER WITH THE INFANTS' LANDS SHOULD NOT BE COUNTENANCED BY CONFIRMATION OF THE SALE.

A money broker was produced as a witness by the purchaser. He testified that a loan of \$60,000 was available to Mr. Vernon from May, 1914, that is, two

months before the agreement attached to the offer was made (Record, p. 127, l. 23). Nevertheless, the purchaser chose to go into possession under a lease and to defer purchasing until six or eight months after the theatre had been completed. The purchaser lays the blame for delay in making the purchase upon the petitioners and their solicitor. The very agreement, under which the right to confirmation is claimed, contains an express condition precedent to its becoming binding upon the Shreves, namely, "In addition to such purchase price the party of the second part, upon the signing of this agreement, and before the same becomes binding, will deposit in the Broad Street National Bank of Trenton, N. J., in the names of W. Henry Elfreth and Ellis L. Pierson, trustees, and subject only to the joint check of the said W. Henry Elfreth and Ellis L. Pierson, trustees, the sum of \$1,600" (Record, p. 37, l. 13). Such condition was not complied with until January 17th, 1916, on the eve of making the offer of purchase (Record, p. 118, l. 3). The agreement provided that the keeping of covenants in the lease was a condition to the validity of the agreement of sale. One of the covenants in the lease was that taxes should be paid promptly. They were not paid until January 17th, 1916 (Record, p. 133, l. 18), that is, over one year after the 1914 taxes were due, and a month after the 1915 taxes were due. Without making these payments, either the payment of \$1,600 for the broker's commission or the sum necessary to pay the overdue taxes, Mr. Elfreth had, on January 8th, 1916, made an offer for purchase, upon which the master had prepared a report of sale. This offer was withdrawn by Mr. Elfreth, the \$1,600 for commission and the amount necessary for the taxes paid, and then the offer of the St. Regis Corporation was submitted to the master (Record, p. 148, l. 8). The covenant in the lease that plans and specifications were to be submitted to the Shreves was not complied with (Record, p. 133, l. 21). Mechanics' liens have been filed by four

contractors, contrary to a covenant in the lease (Record, p. 119, l. 11). The alterations were not made according to the covenants in the lease. The upper stories of the original building have no means of access, contrary to the provisions of the lease. The rent has been paid one month in arrears for almost the entire period of the lease. The corporation being thus in default in so many particulars could not justly put the blame for delay upon the Shreves. That the St. Regis Corporation was hopelessly insolvent is indicated by the facts that all of the money it spent was loaned to it upon bonds and warrants (Record, p. 118, l. 23; p. 159, l. 2, l. 37); that when the testimony was taken, over one year after the erection of the building, only \$11,000 out of \$27,000 had been paid for the construction of the theatre (Record, p. 118, l. 22); that a small judgment against the company has not been paid (Record, p. 170, l. 38; p. 171, l. 16). The conclusion is irresistible that the purchaser wished to run as little risk as possible until it was demonstrated whether or not the theatre venture would be successful. If unsuccessful, the Shreve property would be thrown back into the hands of the Shreves, with taxes in arrears, with the commission claim of \$1,600 of Worthington, the real estate broker, not provided for; with the rental value of the upper stories of the Shreve Building entirely destroyed, with the rear portion of the property occupied by a theatre building, useful for no other purpose; with litigation of lien claimants and other creditors to contend with. To sanction such dealing with the rights of infant wards of the court would put in jeopardy all infants' reversions.

POINT IV.

THE PURCHASER MAY BE REIMBURSED FOR EXPENDITURES BY PROFITS DURING THE LEASE FOR FIVE YEARS AND IS THEREFORE NOT TO BE HEARD TO BASE HIS RIGHT TO CONFIRMATION AS AGAINST THE INFANTS UPON THOSE EXPENDITURES.

Mr. Elfreth; the owner of practically all of the stock of the St. Regis Corporation, proposed that the lease be for five years, during which time his company would have an opportunity of reimbursing itself for improvements, in case the sale was not confirmed (Record, p. 84, l. 23). Mr. Elfreth denies giving such a reason, but offers no other explanation for making the lease to run for three years after the termination of the agreement (Record, p. 150, l. 20).

The reason given by the Chancellor for the decree of confirmation was that in a balancing of equities between the St. Regis Corporation and the infants, the decision of the court should incline toward the St. Regis Corporation, because of its expenditures upon the infants' land, in reliance upon the agreement made by the adult owners and upon the order for sale existing in the Court of Chancery. If the corporation can reimburse itself for those expenditures during the period of its lease, the weight of its equity would be lifted and the scales would incline toward the infants' rights.

When questioned, Mr. Elfreth refused to disclose whether or not the theatre was a profitable undertaking (Record, p. 122, l. 24). No proof was offered on behalf of the purchaser as to the amount out of pocket. No estimate of the profit that might be expected during the remainder of the term was vouchsafed.

The purchaser may say that the St. Regis Corporation after making its great expenditures has made a sublease of the property and that it is not aware of the amount of profits, if any, made through the theatre. It

is true that premises have been sublet by the St. Regis Corporation to the Tenant Motion Picture Company, a corporation of Pennsylvania, almost all of the stock of which is owned by Mr. Elfreth. That company has managed the theatre from the time it opened. The rent it pays is exactly equal to the rent reserved in the Shreve lease. The St. Regis Corporation has therefore placed itself in a position of being helpless in regard to getting back through profits of the theatre any of the money expended in the erection of the building (Record, p. 120, l. 7; p. 176, l. 19). The St. Regis Corporation having voluntarily surrendered the opportunity to reimburse itself for expenditures made should not be heard to set up those expenditures as an equitable reason for a confirmation of the sale to itself. If it had the opportunity to regain, during the term of the lease, the money which it expended, then it would not sustain any loss which would prompt a confirmation of the sale of lands of infants to the detriment of those infants.

POINT V.

THE INTEREST OF NEITHER THE LIFE TENANTS NOR THE INFANT REMAINDERMEN REQUIRES A SALE.

Since the order for sale was made in 1913, the land has increased in value about \$100 per front foot, or \$5,100, regardless of the buildings (Record, p. 112, l. 24). It is increasing at the rate of about \$2,000 each year (Record, p. 114, l. 38; p. 71, l. 24). There has been no testimony that the property was at any time depreciating. It is therefore decidedly against the interest of the remaindermen to sell. In 1913 the reason for asking an order for sale and the reason given by the master for advising an order for sale was inadequate income. Through the lease producing \$3,250 per year, besides taxes and insurance, the income is now adequate, and the reason which existed in 1913 has disappeared.

It is, therefore, not in the interest of the life tenants to sell. The statute under which the order was made provides no time limit to the validity of the order for sale. The very absence of such a time limit is persuasive of an intention on the part of the lawmaker to repose in the confirming court the duty of considering at the time of confirmation the advisability of a sale. If at the time of confirmation the circumstances have so changed that the court would not then make an original order for sale, should it, under those changed circumstances, confirm a sale?

In the case of *Grayson v. Buchanan*, 88 Va. 247, lands of an infant were sold under the statute to the highest bidder. The court says: "When the suit was instituted, Ella Bonham was without the means of support and without employment. Now, as the records show, she has passed an examination and obtained a certificate from the Superintendent of Schools, and seems in a fair way to make a decent support by teaching. Under these circumstances, we can see no reason why she should not be permitted to retain instead of selling her land. What at first appeared to be a necessity no longer appears to be so."

Rorer on Judicial Sales, page 206, paragraph 489, "Likewise sales made at a great and unreasonable length of time after making the order or decree, and sales made after the lapse of such time as is by statute allowed for the order to remain in force are void."

Mason v. Ham, 36 Me. 573. By statute an administrator obtained license to sell lands to pay debts. The statute provided that no such license should be in force for a longer term than one year. The administrator gave his obligation to convey to a purchaser at a proper price, but the deed was not delivered within a year. Held that the deed must pass within the year, as no property passed until the deed was given, and, therefore, no sale was completed or took place within the year.

Wellman v. Lawrence, 15 Mass. 326. An adminis-

trator made sale twelve years after license to sell had been given him. The court says: "We should not then have licensed this administrator at the time he made the sale; and there is no ground on which the sale can be justified which would not have rendered it equally fitting to have granted a license at the time." There is no statutory limitation mentioned.

Freeman on Void Judicial Sales, paragraph 30. "In some instances licenses to sell have been held to have lost their vitality through lapse of time, although the statute had not directly prescribed any such limit to their power."

In *Carr v. Carr*, 88 Va. 735, at 740, the following language was used concerning sale by commissioners under a decree to sell decedent's land. "Confirmation is the judicial sanction of the Court. Until then the bargain is incomplete. Until confirmed by the Court the sale confers no rights; until then it is a sale only in a popular and not in a judicial or legal sense. The Chancellor has a broad discretion in the approval or disapproval of such sales. The accepted bidder acquires, by the acceptance of his bid, no independent right, as is the case of a purchaser at a sale under execution, to have his purchase completed, but is merely a preferred proposer until confirmation by the Court of the sale, as agreed to by its ministerial agent." * * * "In cases of sales before a Master, the purchaser is not considered as entitled to the benefit of his contract until the Master's report of the purchaser's bidding is absolutely confirmed."

Titman v. Riker, 16 Stew. 122. A guardian was appointed by the court for two infants and directed to sell their interest in land. He sold their interest to the defendant, Riker, made a deed and delivered it to Riker, who recorded it, but the guardian never reported the sale to the Court. It was never confirmed, nor did the court in any manner empower the guardian to deliver a deed. The complainant purchased from the heirs

after they reached their majority. The Court says: "The sale was a judicial sale. It was, in the eye of the law, made by the court. The statute expressly provides that 'The Chancellor may direct a sale or other disposition of such lands or term to be made by the guardian or guardians in such way and manner and with such restrictions as shall be deemed expedient,' and further provides that when made in good faith and confirmed, as hereinafter mentioned, it shall be valid and effectual. The next section provides that all such sales shall be reported on oath to the Chancellor, 'to be approved by him before a conveyance shall be made.' " It was decided that the defendant could not claim the land conveyed to him by the guardian.

In re Heaton, 6 C. E. Gr. 221. Chancellor Zabriskie, upon an application for the sale of lands limited over to infants, held that the only question is, will the property bring as much now as it will at the death of the life tenant?

POINT VI.

CONFIRMATION SHOULD HAVE BEEN DENIED BECAUSE THERE WAS NO PROOF BEFORE THE COURT THAT THE SALE WAS MADE AT THE HIGHEST AND BEST PRICE THE PROPERTY WOULD BRING AT THE TIME OF SALE.

Section 94 of the Chancery Act (1 Comp. Stat. 447) provides that whenever the sheriff or other officer shall, by virtue of any decree or order of the Court, sell any lands or interest herein, he shall report the sale to the Court making the decree or order of sale, and the Court shall, if it approves the sale, confirm the sale as valid and effectual in law, and direct the sheriff or other officer to execute conveyance to the purchaser, providing no such sale shall be confirmed until the Court is satisfied, by evidence, that the lands or interest therein have been sold at the highest and best price the same

would then bring, and such evidence may be in the form of affidavits.

There was no evidence before the Court that the Shreve lands were bringing the highest and best price they would bring at the time of sale. The evidence attached to the report of sale is rather to the contrary. Attached to that report are copies of the lease and the agreement of sale, both executed subsequently to the order directing the master to sell, and both calculated to prevent others than the St. Regis Corporation from bidding. All of the real estate experts who testified upon the order to show cause agreed that the increase in value of the land alone had been about \$5,100.

Is there any doubt but that in free and competitive bidding a higher price would then have been procured? Can we say that the statute requiring evidence of the highest and best price to be produced before the court was complied with?

Respectfully submitted,

ELLIS L. PIERSON,

Solicitor for and of Counsel with Appellant.

