

INDEX

	PAGE
Notice of Appeal	1
Petition of Appeal	2
Answer to Petition of Appeal	4
Report	5
Objection to Confirmation of Report of Sale of Mortgaged Premises	7
Notice	8
Affidavit of Sarah G. Vogel-Needell	9
Order	11
Petition	13
Affidavit of Hyman Horwitz	17
Affidavit of David Cohn	21
Affidavit of Hyman Horwitz	22
Order to Show Cause	23
Affidavit of Anne Bockstein	25
Oral Conclusion	26
Order	32

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Notice of Appeal.

(Filed April 25, 1930.)

73/545

IN CHANCERY OF NEW JERSEY

Between

NEW JERSEY NATIONAL BANK &
TRUST COMPANY OF NEWARK, a
National Banking Institution,
Complainant,

and

SAVEMORE REALTY Co., a
corporation, et als.,
Defendants.

On Bill, &c.

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The defendant Savemore Realty Co., a corporation of the State of New Jersey, hereby appeals from the interlocutory decrees or orders entered herein on the 7th day of April and on the 15th day of April, 1930, respectively, made by the Chancellor on the advice of Vice Chancellor John J. Fallon, and from the whole and every part of each of said decrees or orders, to the Court of Errors and Appeals in the Last Resort of all Causes.

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Dated, April 23rd, 1930.

LICHTENSTEIN, SCHWARTZ & FRIEDENBERG,
Solicitors for and Of Counsel with the
defendant Savemore Realty Co.

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

HARRY SCHWARTZ,
Of Counsel with defendant Savemore
Realty Co.

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Petition of Appeal.

(Filed May 11, 1930.)

NEW JERSEY COURT OF ERRORS AND
APPEALS.

10 Between

NEW JERSEY NATIONAL BANK &
TRUST COMPANY OF NEWARK, a
National Banking Institution,
Complainant-Respondent,

and

20 SAVEMORE REALTY Co., a
corporation,
Defendant-Appellant.On Appeal
from the
Court of
Chancery.TO THE HONORABLE, THE COURT OF ERRORS AND
APPEALS, IN THE LAST RESORT IN ALL CAUSES.The petition of Savemore Realty Co., a corpora-
tion of the State of New Jersey, the defendant-
appellant in the above entitled cause, respectfully
shows that:

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1. Petitioner finds itself aggrieved by the inter-
locutory orders made in the Court of Chancery by
his Honor Edwin Robert Walker, Chancellor of the
State of New Jersey, on the advice of Honorable
John J. Fallon, Vice Chancellor, bearing date April
7th and April 15th, 1930, respectively, in a certain
cause in the said Court of Chancery wherein the
said New Jersey National Bank & Trust Company
of Newark was complainant, and Savemore Realty
40 Co. and others were defendants, in these respects,

Petition of Appeal.

to wit: The said interlocutory orders dismissed the objections filed by Savemore Realty Co., defendant-appellant, to the confirmation of the Sheriff's Sale of the property mentioned and described in the bill of complaint to the Unity Corporation for the sum of \$500.00, which sum was grossly inadequate and disproportionate to the actual value of said property, and confirmed said sale. 10

2. Petitioner appeals from the whole of each of said interlocutory orders dismissing the objections filed by Savemore Realty Co., defendant-appellant, to the confirmation of said Sheriff's Sale, on the ground that said interlocutory orders are erroneous, in that said interlocutory orders dismissed the objections filed by Savemore Realty Co., defendant-appellant to the confirmation of said Sheriff's Sale, whereas, the said interlocutory orders should have ordered that the said Sheriff's Sale should not be confirmed because of gross inadequacy of price, and should have ordered a resale of said property by said Sheriff, so that a higher price could be realized at such resale. 20

Petitioner, therefore, prays that said interlocutory orders may be wholly reversed, set aside and for nothing holden, and that the petitioner may have such other and further relief in the premises as to this court shall seem proper. 30

LICHTENSTEIN, SCHWARTZ & FRIEDENBERG,
Solicitors for and of Counsel with Defendant-
Appellant, Savemore Realty Co.

Answer to Petition of Appeal.

(Filed June 26, 1930.)

NEW JERSEY COURT OF ERRORS AND
APPEALS.

10 Between

NEW JERSEY NATIONAL BANK &
TRUST COMPANY OF NEWARK, a
National Banking Institution,
Complainant-Respondent,

and

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SAVEMORE REALTY Co., a
corporation,
Defendant-Appellant.On Appeal
from the
Court of
Chancery.

The answer of New Jersey National Bank & Trust Company of Newark, a National Banking Institution, the above named complainant-respondent, to the petition of appeal of Savemore Realty Co., a corporation, the defendant-appellant.

30 This complainant-respondent, not admitting the truth of all or any of the matters in the said petition of appeal contained, for answer thereto nevertheless admits that the orders were, on the 7th and 15th day of April, 1930, made and entered in the Court of Chancery of New Jersey, in the above entitled cause, for the purposes in said petition mentioned and as therein set forth; but as to the substance and form of said orders, this complainant-respondent begs leave to refer thereto when the same shall be produced.

40 This complainant-respondent is advised and believes that the said orders are agreeable to equity;

Report.

and he prays that the same may be affirmed with costs to be taxed in favor of this complainant-respondent.

BRAELOW & TEPPER,
Sol'rs for and of Counsel with
Complaint-respondent.

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Report.

(Filed January 6, 1930.)

IN CHANCERY OF NEW JERSEY.

Between

NEW JERSEY NATIONAL BANK &
TRUST COMPANY OF NEWARK, a
National Banking Institution,
Trustee-Complainant,

and

SAVEMORE REALTY Co., a
corporation, et als.,
Defendants.

Fi, fa, for sale
of mortgaged
premises.

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To his Honor, EDWIN R. WALKER, Chancellor of the
State of New Jersey:

I, William V. O'Driscoll, Sheriff of the County
of Hudson, do hereby respectfully report that I did
on the 2nd day of January, nineteen hundred and
thirty, sell at Public Vendue, at Court House,
Jersey City, (having first advertised the same) the
lands and premises described in the writ of Execu-

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Report.

tion issued to me in the above-stated cause, to Unity Corporation, a corporation of New Jersey, for the sum of Five hundred (\$500.00) Dollars, it being the highest bidder therefor.

Respectfully submitted this 2nd day of January, nineteen hundred and thirty.

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WILLIAM V. O'DRISCOLL,
Sheriff.

By THOMAS J. PRIOR,
Under Sheriff.

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

20 Thomas J. Prior, Under Sheriff of the County of Hudson, State of New Jersey, duly sworn according to law, on his oath says, that the mortgaged premises mentioned and referred to in the foregoing report, were duly sold for the highest and best price the same would bring in cash at the time of sale.

THOMAS J. PRIOR,
Under Sheriff.

30 Sworn and subscribed before me, this
2nd day of January, A. D. 1930.

FRANK WALKER,
Commissioner of Deeds of New Jersey.

A true copy.

FRED GARRETSON,
Clerk.

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**Objection to Confirmation of Report of Sale of
Mortgaged Premises.**

(Filed January 6, 1930.)

73/545

IN CHANCERY OF NEW JERSEY.

Between	10
NEW JERSEY NATIONAL BANK & TRUST COMPANY OF NEWARK, a National Banking Institution, Trustee-Complainant,	} On Bill, &c.
and	
SAVEMORE REALTY Co., a corporation, et als., Defendants.	20

The defendant Savemore Realty Co., a corporation, hereby objects to the confirmation of the report of sale of the mortgaged premises made in this cause by William V. O'Driscoll, the Sheriff of the County of Hudson, on the ground that the price obtained at said sale is insufficient.

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LICHTENSTEIN, SCHWARTZ & FRIEDENBERG,
Solicitors of the Defendant
Savemore Realty Co.

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Notice.

(Filed April 7, 1930.)

IN CHANCERY OF NEW JERSEY.

73/545

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Between

NEW JERSEY NATIONAL BANK &
TRUST COMPANY OF NEWARK, a
National Banking Institution,
Trustee-Complainant,

and

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SAVEMORE REALTY Co., a
corporation, et als.,
Defendants.

On Bill, etc.

To: Lichtenstein, Schwartz & Friedenberg, Esqs.,
Solicitors of the Defendant, Savemore Realty
Co., No. 51 Newark Street, Hoboken, New
Jersey:

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Sirs:

PLEASE TAKE NOTICE, that we shall apply
to his Honor, Edwin Robert Walker, Chancellor of
the State of New Jersey, or one of the Vice Chan-
cellors sitting in his place and stead, on Monday,
April 7th, 1930, in the Chancery Chambers, No. 1
Exchange Place, Jersey City, New Jersey, at ten
o'clock in the forenoon or as soon thereafter as
counsel may be heard, for an order dismissing the
objections filed by you to the confirmation of re-
port of sale of the mortgaged premises made in this

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Affidavit of Sarah G. Vogel-Needell.

cause by William V. O'Driscoll, Sheriff of the County of Hudson.

BRAELOW & TEPPER,
Solicitors for and of
Counsel with Complainant.

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Affidavit.

(Filed April 15, 1930.)

IN CHANCERY OF NEW JERSEY.

73/545

Between

NEW JERSEY NATIONAL BANK &
TRUST COMPANY OF NEWARK, a
National Banking Institution,
Trustee-Complainant,

and

SAVEMORE REALTY Co., a
corporation, et als.,
Defendants.

On Bill, etc.

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State of New Jersey, } ss.:
County of Essex, }

Sarah G. Vogel-Needell, of full age being duly sworn according to law, upon her oath deposes and says:

1. I am associated with the law firm of Braelow & Tepper, Solicitors for the complainant herein.

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Affidavit of Sarah G. Vogel-Needell.

2. I personally handled the foreclosure proceedings in the above entitled cause.

3. That I received notice on or before January 7th of the filing of objections to the confirmation of the sale in the above entitled cause by the defendant, Savemore Realty Co.

4. Since then I have been in constant communication with the Solicitors for the defendant requesting them to proceed or we would, but have been put off from time to time and nothing has been done to date.

SARAH G. VOGEL-NEEDELL.

Sworn and subscribed to before me this
7th day of April, 1930.

LOUISE WOOD,
A Notary Public of New Jersey.

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Order.

(Filed April 7, 1930.)

IN CHANCERY OF NEW JERSEY.

73/545

Between

NEW JERSEY NATIONAL BANK &
TRUST COMPANY OF NEWARK, a
National Banking Institution,
Trustee-Complainant,

and

SAVEMORE REALTY Co., a
corporation, et als.,

Defendants.

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On Bill, etc.

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This matter being opened to the court by Sarah G. Vogel-Needell, of Braelow & Tepper, Solicitors of the complainant herein, in the presence of Lichtenstein, Schwartz & Friedenber, Solicitors for the defendant, Savemore Realty Co., and the court having read the arguments of Counsel, and upon reading the report on file made by William V. O'Driscoll, Sheriff of the County of Hudson, bearing date of January second, 1930, and the affidavit thereto attached, whereby it appears that on the 2nd day of January, 1930, he sold at public vendue, at the Court House, Jersey City, New Jersey (having first duly advertised the same), the lands and premises described in the writ of Execution issued to him in the above stated cause, to Unity Corporation, a corporation, for the sum of Five hundred (\$500) Dollars, it being the highest

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bidder therefor, and that the said lands and premises were sold at the highest and best price the sale would bring in cash, and no cause appearing or being shown to the contrary; it is, on this 7th day of April, 1930,

10 ORDERED, that the objections to the confirmation of report of sale of mortgaged premises made in this cause by William V. O'Driscoll, Sheriff of the County of Hudson, filed by the defendants on the ground that the price obtained at said sale is insufficient, be and the same are hereby dismissed; and it is further

ORDERED, that the said sale be and the same is hereby confirmed as valid and effectual in law. And it is further

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ORDERED, that the said Sheriff do execute a good and sufficient conveyance in the law to the said purchaser, or its assigns for the said mortgaged premises so sold. And it is further

ORDERED, that the complaint be and it hereby is allowed a counsel fee of \$25.

30 Respectfully advised,

EDWIN ROBERT WALKER,
C.

JOHN J. FALLON,
V. C.

Petition.

(Filed April 11, 1930.)

73/545.

IN CHANCERY OF NEW JERSEY.

Between

NEW JERSEY NATIONAL BANK &
TRUST COMPANY OF NEWARK,
a national banking institution,

Complainant,

and

SAVEMORE REALTY Co., a
corporation, et als.,

Defendants.

On Bill, &c.

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

The petition of Savemore Realty Co., a corporation of the State of New Jersey, respectfully shows that:

1. On the 31st day of January, 1928, and for a long time prior thereto, the defendant Savemore Realty Co. was the owner of the lands and premises described in the bill of complaint in the above-entitled cause.

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2. On said date, the defendant Savemore Realty Co. and one Hyman Horwitz, individually, made, executed and delivered their bond to the Lincoln Mortgage & Title Guaranty Co., a corporation, in the penal sum of \$81,000.00, to secure the payment of which the said defendant Savemore Realty Co., on said date, made, executed and delivered to the

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said Lincoln Mortgage & Title Guaranty Co., a mortgage in the sum of \$40,500.00 on the lands and premises described in said bill of complaint, which mortgage was recorded on February 14th, 1928, in Book 1493 of Mortgages for Hudson County, on page 272. The said mortgage was by mesne assignments transferred to the complaint herein.

3. After the making, execution and delivery of said bond and mortgage by the defendant Savemore Realty Co. to the Lincoln Mortgage & Title Guaranty Co., and on or about the 20th day of July, 1928, the defendant Savemore Realty Co. sold and conveyed the lands and premises described in said mortgage to Julius Vinik, subject to the aforesaid mortgage of \$40,500.00.

4. Thereafter, and on or about the 19th day of September, 1928, the said Julius Vinik and Miriam Vinik, his wife, conveyed the aforesaid lands and premises to Solomon Jacobowitz, one of the defendants in this suit.

5. On or about the 1st day of November, 1928, the said Solomon Jacobowitz and Jennie Jacobowitz, his wife, made executed and delivered a bond and mortgage to Isidor Lefkowitz in the sum of \$4,800.00, which mortgage was recorded on November 30th, 1928, in Book 1528 of Mortgages for Hudson County, on page 601. The said mortgage was by mesne assignments transferred to Dominick B. Elia and John Birnie, who were made parties defendant in this suit.

6. Sometime prior to the 15th day of July, 1929, said complainant instituted proceedings in the Court of Chancery of the State of New Jersey to foreclose the aforesaid mortgage of \$40,500.00. The

said defendant Savemore Realty Co., among others, was made a party in said foreclosure proceedings.

7. Thereafter, such further proceedings were had, that a final decree was entered, ordering the aforesaid lands and premises to be sold to satisfy the decree of the complainant for \$41,923.95, with interest and costs, and the decree of the defendants Dominick B. Elia and John Birnie of \$4,666.25, with interest and costs. 10

8. Subsequent thereto, a writ of fieri facias was issued in said suit directing the Sheriff to sell the aforesaid lands and premises to satisfy the aforesaid decrees.

9. On or about the 2nd day of January, 1930, the Sheriff of the County of Hudson offered to sell at public vendue, at the Court House, Jersey City, New Jersey, at 2:00 P. M., the aforesaid lands and premises to satisfy the decrees alleged in paragraph 7 of this petition. The property was bought at said sale by the Unity Corporation, a corporation of the State of New Jersey, for the sum of \$500.00. 20

10. Petitioner was not represented at said sale although arrangements had been made with its President, Hyman Horwitz, to attend same. The said Hyman Horwitz was prevented from attending said sale promptly by reason of the fact that he was obliged to wait between 15 and 20 minutes for a trolley car at the Washington Street Station in Hoboken to convey him to the Court House and that, by reason thereof, he did not arrive at said Court House until 2:05 P. M. When the said Hyman Horwitz arrived at the Court House he waited until 4:00 P. M. for the sale to take place. 30 40

The said lands and premises, not being offered for sale while he was present, he made inquiry of a clerk of the deputy sheriff and was informed that the sale had already taken place, it being one of the first sales to take place that day. Petitioner was therefore unable to bid on said lands and
10 premises at said sale.

11. Since the sale took place, petitioner caused the said lands and premises to be appraised by a reputable real estate broker, and was informed that the said property is worth between \$40,000.00 and \$42,000.00. Upon learning that the aforesaid lands and premises were sold for the sum of \$500.00, petitioner immediately caused its attorneys, Lichtenstein, Schwartz & Friedenber, to file objections to the confirmation of said sale within the time
20 required by law. On Monday, April 7th, 1930, the objections to the confirmation were argued in the Court of Chancery, and the court made an order on said date dismissing the objections filed and ordering that the sale be confirmed.

12. Petitioner alleges that the purchase price of \$500.00 for the aforesaid lands and premises is grossly inadequate and is entirely disproportionate to the actual value of said property.
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13. Petitioner further says that unless an order is made requiring the aforesaid lands and premises to be resold, it will be liable to said complainant for a large deficiency which it would not otherwise have suffered had its representative been present when said sale took place and it will also work a great hardship on said petitioner.

Your petitioner therefore prays that an order be
40 made directly the said complainant, as well as

Affidavit of Hyman Horwitz.

Unity Corporation the purchaser of said property, to show cause why the order entered in this suit on Monday, April 7th, 1930, should not be re-opened, vacated and for nothing holden, and why the said lands and premises should not be resold, and why they, and each of them, should not be enjoined and restrained from selling, conveying or in anywise encumbering the aforesaid lands and premises until the further order of this court. 10

And petitioner will ever pray, &c.

LICHTENSTEIN, SCHWARTZ & FRIEDENBERG,
Solicitors for Petitioner.

State of New Jersey, }
County of Hudson, } ss.: 20

Hyman Horwitz, of full age, being duly sworn, according to law, upon his oath deposes and says:

1. I am the President of the Savemore Realty Co., a corporation of the State of New Jersey, the petitioner in the foregoing petition named and one of the defendants in this action, and as such officer am duly authorized to make this affidavit in its behalf. 30

2. On the 31st day of January, 1928, and for a long time prior thereto, the defendant Savemore Realty Co. was the owner of the lands and premises described in the bill of complaint in the above-entitled cause.

3. On said date, the defendant Savemore Realty Co. and I, individually, made, executed and de 40

livered our bond to the Lincoln Mortgage & Title Guaranty Co., a corporation, in the penal sum of \$81,000.00, to secure the payment of which the said defendant Savemore Realty Co., on said date, made, executed and delivered to the said Lincoln Mortgage & Title Guaranty Co., a mortgage in the
10 sum of \$40,500.00 on the lands and premises described in said bill of complaint, which mortgage was recorded on February 14th, 1928, in Book 1493 of Mortgages for Hudson County, on page 272. The said mortgage was by mesne assignments transferred to the complainant herein.

4. After the making, execution and delivery of said bond and mortgage by the defendant Savemore Realty Co. to the Lincoln Mortgage & Title Guaranty Co. and on or about the 20th day of July, 1928, the defendant Savemore Realty Co. sold and conveyed the lands and premises described in said mortgage to Julius Vinik, subject to the aforesaid mortgage of \$40,500.00.
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5. Thereafter, and on or about the 19th day of September, 1928, the said Julius Vinik and Miriam Vinik, his wife, conveyed the aforesaid lands and premises to Solomon Jacobowitz, one of the defendants in this suit.
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6. On or about the 1st day of November, 1928, the said Solomon Jacobowitz and Jennie Jacobowitz, his wife, made, executed and delivered a bond and mortgage to Isidor Lefkowitz in the sum of \$4,800.00, which mortgage was recorded on November 30th, 1928, in Book 1528 of Mortgages for Hudson County, on Page 601. The said mortgage was by mesne assignments transferred to Dominick B. Elia and John Birnie, who was made parties defendant in this suit.
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7. Sometime prior to the 15th day of July, 1929, said complainant instituted proceedings in the Court of Chancery of the State of New Jersey to foreclose the aforesaid mortgage of \$40,500.00. The said defendant Savemore Realty Co., among others, was made a party in said foreclosure proceedings.

8. Thereafter, such further proceedings were had, that a final decree was entered, ordering the aforesaid lands and premises to be sold to satisfy the decree of the complainant for \$41,823.95, with interest and costs, and the decree of the defendants Dominick B. Elia and John Birnie of \$4,666.25, with interest and costs.

9. Subsequent thereto, a writ of fieri facias was issued in said suit directing the Sheriff to sell the aforesaid lands and premises to satisfy the aforesaid decrees.

10. On or about the 2nd day of January, 1930, the Sheriff of the County of Hudson offered to sell at public vendue, at the Court House, Jersey City, New Jersey, at 2:00 P. M., the aforesaid lands and premises to satisfy the decrees alleged in paragraph 8 of this affidavit. The property was bought at said sale by the Unity Corporation, a corporation of the State of New Jersey, for the sum of \$500.00.

11. Petitioner was not presented at said sale although arrangements had been made with me, its President to attend same. I was prevented from attending said sale promptly by reason of the fact that I was obliged to wait between 15 and 20 minutes for a trolley car at the Washington Street station in Hoboken to convey me to the Court House, and that, by reason thereof, I did not arrive at said Court House until 2:05 P. M. When I arrived at the Court House I waited until 4:00 P. M. for the sale to take place. The said lands

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Affidavit of Hyman Horwitz.

and premises, not being offered for sale while I was present, I made inquiry of a clerk of the deputy sheriff and was informed that the sale had already taken place, it being one of the first sales to take place that day. Petitioner was therefore unable to bid on said lands and premises at said sale.

10 12. Since the sale took place, petitioner caused the said lands and premises to be appraised by a reputable real estate broker, and was informed that the said property is worth between \$40,000.00 and \$42,000.00. Upon learning that the aforesaid lands and premises were sold for the sum of \$500.00, petitioner immediately caused its attorneys, Lichtenstein, Schwartz & Friedenber
20 13. Petitioner alleges that the purchase price of \$500.00 for the aforesaid lands and premises is grossly inadequate and is entirely disproportionate to the actual value of said property.

30 14. Petitioner further says that unless an order is made requiring the aforesaid lands and premises to be resold, it will be liable to said complainant for a large deficiency which it would not otherwise have suffered had its representative been present when said sale took place and it will also work a great hardship on said petitioner.

HYMAN HORWITZ.

Sworn to and subscribed before me
this 11th day of April, 1930.

40 MATTIE W. GIBBS,
Notary Public of New Jersey.

Affidavit of David Cohn.

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

David Cohn, of full age, being duly sworn according to law, upon his oath deposes and says:

1. I am a real estate salesman licensed in the State of New Jersey, and am associated with Joseph J. Garibaldi, a real estate broker, having his office at No. 79 River Street, Hoboken, New Jersey. I have been a real estate salesman during the past fifteen years. During said period, I have made sales of real estate throughout Hudson County. I have also made appraisals of all kinds of property in different parts of Hudson County. 10

2. At the request of Hyman Horwitz, I have appraised the property known as Nos. 724-726 30th Street, Union City, New Jersey. The property is the same parcel described in the bill of complaint in this cause. The property is located on the north side of 30th Street, between Summit and Bergenline Avenues. Said property has a frontage of 50 feet on 30th Street and a depth of 100 feet. There is erected on the land two 4-story brick buildings. The building known as No. 724 30th Street contains seven 3-room apartments and baths. The building known as No. 726 30th Street contains one 5-room apartment, three 2-room apartments and nine 3-room apartments with baths. There is one heating system for both buildings. Both houses contain all modern improvements, such as steam heat, electricity and hot water supply. The aggregate rental per month is \$597.00, and the aggregate yearly rental is \$7,164.00. It is my opinion that the present market value of said property is \$42,000.00. 20 30

DAVID COHN.

Sworn to and subscribed before me
 this 11th day of April, 1930. 40

LOUIS D. STERN,
 Notary Public of New Jersey.

Order to Show Cause.

(Filed April 11, 1930.)

73/545

IN CHANCERY OF NEW JERSEY.

Between

NEW JERSEY NATIONAL BANK &
TRUST COMPANY OF NEWARK, a
national banking institution,
Complainant,

and

SAVEMORE REALTY Co., a
corporation, et als.,
Defendants.

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On Bill, &c.

On Pet. &c.

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A petition, duly verified, having been presented herein by the defendant Savemore Realty Co. praying that the order made in this cause on the 7th day of April, 1930, may be opened, vacated and set aside, to the end that a re-hearing may be had in this cause for the purpose of ordering a resale of the property described in the bill of complaint filed in the above entitled cause,

IT IS, on this 11th day of April, 1930, ORDERED, that the complainant, New Jersey National Bank & Trust Company of Newark, and the Unity Corporation, the purchaser of said property at the Sheriff's sale, show cause before the Chancellor, on the 15th day of April, 1930, at the hour of ten o'clock in the forenoon, or as soon thereafter as counsel can be heard, at the Chancery Chambers No. 1 Exchange Place in the City of Jersey City, why the order made in this cause on the 7th day of

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(11)

Order to Show Cause.

April, 1930, should not be opened, vacated and set aside, to the end that a re-hearing may be had in this cause for the purpose of obtaining an order to resell the said lands and premises.

10 AND IT IS FURTHER ORDERED, that in the meantime and until the further order of this court the said complainant and said Unity Corporation, the purchaser of said property, their counsel, attorneys and agents, and each and every one of them, be restrained and enjoined from selling, conveying or in anywise encumbering the said lands and premises.

20 AND IT IS FURTHER ORDERED, that no further proceedings upon said order be had pending the further order of this court, and that true, but uncertified copies of this order and of the petition and affidavits, be served on the said complainant and said Unity Corporation, the purchaser, on the day of the date hereof.

EDWIN ROBERT WALKER,
C.

Respectfully advised,

30 JNO. J. FALLON,
V. C.

Affidavit.

(Filed April 17, 1930.)

73/545.

IN CHANCERY OF NEW JERSEY.

Between NEW JERSEY NATIONAL BANK & TRUST COMPANY OF NEWARK, a National Banking Institu- tion, <div style="text-align: center;">Complainant,</div> <div style="text-align: center;">and</div> SAVEMORE REALTY Co., a corporation, et als., <div style="text-align: center;">Defendants.</div>	}	10	On Bill, etc.	20
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State of New Jersey, } ss. :
 County of Essex,

Anne Bockstein, of full age, being duly sworn according to law, upon her oath deposes and says:

1. That she is an attorney at law of the State of New Jersey, associated with the law firm of Braelow & Tepper, Solicitors for the complainant. 30

2. That she attended the sale held in the above entitled matter on the 2nd day of January, 1930.

3. The Sheriff of Hudson County had offered the premises for sale and a bid for \$500 was made by the Unity Corporation. One Hyman Horowitz came in and requested the Sheriff to re-open the 40

Oral Conclusions.

sale. This the Sheriff refused to do. Mr. Horowitz came in to attend the Sheriff's sale about 2:15 and was informed that the sale had taken place immediately previous to his arrival.

ANNE BOCKSTEIN.

10 Sworn and subscribed to before me,
this 15th day of April, 1930.

LOUISE WOOD,
a Notary Public
of New Jersey.

Oral Conclusions.

(Filed April 21, 1930.)

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73/545.

IN CHANCERY OF NEW JERSEY.

Between

30 NEW JERSEY NATIONAL BANK &
TRUST COMPANY OF NEWARK,
a National Banking Institution,

Complainant,

and

SAVEMORE REALTY Co., a
corporation, et als.,

Defendants.

On Bill etc.

On petition of defendant Savemore Realty Co. to reopen and vacate order dated April 7, 1930, dismissing objection to confirmation of sheriff's sale, and confirming sale.

Not to be printed.

40 Oral argument before Hon. John J. Fallon, Vice-Chancellor, at Chancery Chambers, Jersey City,

Oral Conclusions.

April 15, 1930, on petition of Savemore Realty Co. to reopen and vacate order dated April 7, 1930 dismissing objections to the confirmation of sheriff's sale held January 2, 1930, and confirming said sale.

APPEARANCES :

Messrs. BRAELOW & TEPPER, Solicitors for Com- 10
plainant (appearing by Mrs. Sarah G. Vogel-
Needell).

Messrs. LICHTENSTEIN, SCHWARTZ & FRIEDENBERG,
Solicitors for Petitioner (appearing by Mr.
Harry Schwartz).

(After oral argument of counsel for Petitioner.)

The Court: This matter is now before the court 20
on an application made in behalf of the Savemore
Realty Co., a defendant in a mortgage foreclosure
proceeding, to reopen and vacate an order made
April 7, 1930, dismissing an objection filed by said
applicant to the confirmation of a sheriff's sale held
January 2, 1930, and confirming said sale. The
petition of the applicant, Savemore Realty Co.,
shows that on January 31, 1928 the petitioner,
Savemore Realty Co. (and one Hyman Horwitz,
individually) executed and delivered to the Lincoln 30
Mortgage & Title Guaranty Co. a bond to secure the
payment of a mortgage accompanying said bond in
the sum of \$40,500, which mortgage by mesne as-
signments, was assigned to New Jersey National
Bank & Trust Company of Newark, the complain-
ant in the mortgage foreclosure proceeding to sat-
isfy, a decree whereon the aforesaid sheriff's sale
was made. It appears also that on July 20, 1928
the Savemore Realty Co. conveyed the lands and
premises described in said mortgage to one Julius
Vinik, subject to said mortgage of \$40,500, and said 40

Oral Conclusions.

- Vinik subsequently conveyed said lands and premises to other parties. The complainant obtained a decree for upwards of \$40,000. At the sheriff's sale the lands and premises were sold to Unity Corporation for the sum of \$500.00. It is urged that said purchaser is a subsidiary of the complainant.
- 10 No attempt has been made to establish such to be the fact, but for the purpose of the matter *sub judice* I will assume such to be the fact. It is now represented to the court in behalf of the petitioner that the petitioner was not represented at said sale although arrangements had been made with its president, Hyman Horwitz, to attend same; that Horwitz was prevented from attending said sale at the time and place scheduled therefor because he was obliged to wait between fifteen and twenty
- 20 minutes for a trolley car to convey him to the Court House in Jersey City where the sheriff's sale was advertised to be held, and that in consequence thereof, by the time he reached the sheriff's sales-room the property advertised for sale had already been exposed for sale and sold by the sheriff to the Unity Corporation. It is now represented to the court that the \$500.00 bid for which the property was knocked down by the sheriff is grossly inadequate and is entirely disproportionate to the actual
- 30 value of the property, so much so, as to shock the conscience of the court. It was admitted by petitioner's counsel in his argument to the court in the matter *sub judice* that mere inadequacy of price at a judicial sale is insufficient to warrant the court in depriving the bidder of his bargain, but he urges the property ought to have brought a greater sum. The petition recites that since the sale took place the petitioner caused said lands and premises to be
- 40 appraised, and was informed by the appraiser that the property was worth between \$40,000 and

Oral Conclusions.

\$42,000. An affidavit of Hyman Horwitz, president of Savemore Realty Co., filed at this hearing, indicates that if a resale of the property were ordered said affiant, and the Savemore Realty Co., would be willing to bid for the property at least the sum of \$25,000. It is manifest to me that the principal purpose of the petitioner's application is to effect in behalf of the petitioner, and perhaps the affiant, Hyman Horwitz, who joined with the petitioner in the execution of the bond accompanying the mortgage foreclosed, a minimizing of the amount for which said parties may be held liable in a suit for deficiency arising from the mortgage foreclosure proceeding. I regard the petitioner's negligence in not having some one attend at the sheriff's sales-room in time to bid upon the property when exposed for sale, to be inexcusable. The mere delay of a trolley car—the means resorted to by Mr. Horwitz, president of the Savemore Realty Co., for transit to the sheriff's sales-room, is not a sufficient reason to warrant the court to determine that the petitioner exercised proper diligence towards safeguarding its interests. If an application of this kind was acted upon favorably to the petitioner herein the courts would be overrun from day to day, and from week to week, with like applications, after judicial sales, when laggards or those not manifesting diligence to protect their interests in the subject-matter of such sales, after ascertaining that by reason of their inaction or lack of diligence the sale did not bring as much as they, upon reflection, considered it may have brought. If judicial sales, properly advertised, are to be set aside simply because, upon reflection, some other person is willing to bid more, unless the price is so grossly inadequate as to amount to a *fraud upon creditors*, the attendance and bidding at judicial sales would be

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discouraged. The purchaser at the sheriff's sale, Unity Corporation, ought not to lose the advantage of its bid simply because the defendant, Savemore Realty Co., or its president Hyman Horwitz, awakened to a realization after the sale and after they caused an appraisal of the property to be made, that they or either of them would give more for the property. In the instant case I have asked counsel representing the petitioner whether his client in the event of a resale being ordered would bid or cause to be bid upon the property a sum sufficient to satisfy in full the amount of complainant's decree. He replied that he could not assure the court that any such result may be attained. It is a matter of common knowledge that at sheriff's sales, as well as at judicial sales generally, persons who bring about the sale, in the absence of independent bidders, bid as little as possible for the property, mainly for the purpose of minimizing the amount of fees payable to the judicial officer conducting the sale. I am not aware of any reason why the complainant in the instant case should be obliged to bid upon the property. It may have realized that the obligors on the bond accompanying the mortgage were financially responsible, and they would be content to look to them to make up such deficiency as arose from the mortgage foreclosure sale, rather than to buy in the property. If, on the other hand, the Unity Corporation was a subsidiary of the complainant, I am not aware of any reason why the complainant should have its subsidiary bid a greater sum than necessary to acquire the property. The greater amount bid—the greater amount of fees would be payable to the officer conducting the sale. It is common knowledge that at the sheriff's sales-rooms in Essex and Hudson Counties property is sold weekly at mortgage foreclosure

sales, and at judgment sales, for a much less sum than the amount of the decrees and judgments sought to be satisfied. If an application of the kind now under consideration were sustained judicial officers would frequently merely go through the *formality* of making sales, without a reasonable prospect of the sale being confirmed or consummated. If the petitioner had exercised a fair degree of diligence on the day of the sale he would have made sure to be in attendance at the sheriff's sales-room in ample time before the hour scheduled for the sale of the property. A court of equity affords redress only to those who manifest diligence, not to those who slumber upon their rights. No offer was made to the court either upon the hearing last week on the objection of the petitioner to the confirmation of the sheriff's sale, or today, at this present hearing, that if a resale were ordered the complainant's decree would be satisfied in full. Nor was any assurance offered to the court that if a resale was ordered any definite sum would be bid for the property. I will advise an order denying the petitioner's application. If an appeal is to be had I will write a formal opinion in this matter.

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Order.

(Filed April 15, 1930.)

IN CHANCERY OF NEW JERSEY.

73/545

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Between

NEW JERSEY NATIONAL BANK &
TRUST COMPANY OF NEWARK, a
National Banking Institution,
Complainant,

and

SAVEMORE REALTY Co., a
corporation, et als.,

Defendants.

On Bill, etc.

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This matter being opened to the court by Lichtenstein, Schwartz & Friedenberg, Solicitors for petitioner, by Harry Schwartz, in the presence of Sarah G. Vogel-Needell, of Braelow & Tepper, Solicitors of the Complainant, and the court having heard the arguments of counsel and having read and filed the affidavits submitted and being satisfied that the order made in this cause on the 7th day of April, 1930, should remain in full force and effect, it is on

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ORDERED, that the order to show cause issued out of this court on the 11th day of April, 1930, directed to the complainant to show cause why the order made in this cause on the 7th day of April, 1930, should not be opened and vacated and set aside, be and the same is hereby dismissed, and it is further

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ORDERED, that the order entered in this cause on the 7th day of April, 1930, dismissing the objec-

Order.

tions filed to the confirmation of the Sheriff's sale held on the 2nd day of January, 1930, and confirming said sale, be and the same is hereby ratified and confirmed and it is further ordered that the Solicitors for the complainant be and they are hereby allowed an additional counsel fee of \$25.00 to be paid by the defendant, Savemore Realty Co. **10**

Respectfully advised,

EDWIN ROBERT WALKER,
C.

JOHN J. FALLON,
V. C.

A true copy.

BRAELOW & TEPPER **20**
4/15/30

SARAH G. VOGEL-NEDELL

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[6050]

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10 The first part of the report is a general statement of the facts of the case, and a statement of the law applicable to the facts. It is further stated that the facts are in the complaint, and that they are fully shown in the evidence. It is further stated that the facts are in the complaint, and that they are fully shown in the evidence.

11 The second part of the report is a statement of the law applicable to the facts. It is further stated that the facts are in the complaint, and that they are fully shown in the evidence. It is further stated that the facts are in the complaint, and that they are fully shown in the evidence.

12 The third part of the report is a statement of the law applicable to the facts. It is further stated that the facts are in the complaint, and that they are fully shown in the evidence. It is further stated that the facts are in the complaint, and that they are fully shown in the evidence.

13 The fourth part of the report is a statement of the law applicable to the facts. It is further stated that the facts are in the complaint, and that they are fully shown in the evidence. It is further stated that the facts are in the complaint, and that they are fully shown in the evidence.

14 The fifth part of the report is a statement of the law applicable to the facts. It is further stated that the facts are in the complaint, and that they are fully shown in the evidence. It is further stated that the facts are in the complaint, and that they are fully shown in the evidence.

New Jersey Court of Errors and Appeals

Between

NEW JERSEY NATIONAL BANK &
TRUST COMPANY OF NEWARK, a
National Banking Institution,
Complainant-Respondent,

and

SAVEMORE REALTY Co., a corpora-
tion, *et als.,*
Defendant-Appellant.

On Appeal from
the Court of
Chancery.

Sat Below:

Hon. EDWIN ROBERT WALKER, Chancellor.

Hon. JOHN J. FALLON, Vice-Chancellor.

BRIEF OF COMPLAINANT-RESPONDENT AND PURCHASER.

Statement of Facts.

This matter is before the Court on an application made on behalf of the Savemore Realty Co., the defendant-appellant, which Company, together with one Hyman Horowitz, individually, made, executed, and delivered their bond to the respondent's assignor, in the sum of \$40,500, payment of which bond was secured by the execution of a first mortgage in the sum of \$40,500, on lands which were sold by the Sheriff of Hudson County under a writ of *feri facias* issued pursuant to a final de-

cree in the foreclosure of said mortgage, the petitioner having objected, in the Court below, to a confirmation of such Sheriff's sale.

In the foreclosure of its mortgage, the respondent obtained a final decree for over \$41,000. On January 2nd, 1930, the Sheriff of Hudson County sold (State of Case, p. 5) the lands to Unity Corporation, which, it is contended, is a subsidiary of respondent, for the sum of \$500. It is contended that the defendant-appellant was not represented at said Sheriff's sale, although arrangements had been made with its president, Hyman Horowitz, to attend the same; and that Horowitz was prevented from attending the said sale at the time and place advertised therefor, because he was obliged to wait between fifteen and twenty minutes for a trolley car to convey him to the Court House, where the Sheriff's sale was advertised to be held; that in consequence thereof, by the time he reached the Sheriff's salesroom, the property advertised for sale had already been exposed for sale and sold by the Sheriff to Unity Corporation. It is now urged that the \$500 bid, for which the property was knocked down by the Sheriff, is inadequate and entirely disproportionate to the value of the property, and for that reason, the sale should be set aside. The defendant-appellant, subsequent to the date of the Sheriff's sale, had the lands and premises appraised, and has been informed by the appraiser that the property was worth from \$40,000 and \$42,000 (State of Case, p. 21).

At the hearing, before the Vice-Chancellor in the Court below, the counsel representing the defendant-appellant was asked whether his client, in the event of resale being ordered, would bid, or cause to be bid, on the property, a sum sufficient to satisfy in full, the amount of the complainant's decree. He replied that he could not assure the Court that

any such result may be obtained (State of Case, p. 30, lines 11-17). The Court below refused to order a resale of the property and confirmed the sale to the Unity Corporation for the sum of \$500. It is from this order, advised by the Vice-Chancellor, that the defendant appeals.

POINT I.

Mere inadequacy of price, standing alone, is not sufficient ground to justify a court to order a resale.

This doctrine is enunciated and has been followed since earliest times in this State.

In *Bank of New Brunswick v. Hassert*, 1 N. J. Eq. 1, this rule is cited:

“Mere inadequacy of price is not sufficient to avoid a contract, or set aside a sale made by the Sheriff, when no fraud or irregularity appears.”

It is reiterated in the case of *Crane v. Conklin*, 1 N. J. Eq. 346, which adds:

“that inadequacy of price is not of itself evidence of fraud.”

In the case of *Seaman v. Riggins*, 2 N. J. Eq. 214, Chancellor PENNINGTON set aside a sale because a mistake had been made by the complainant's solicitor in advising the agent of a bidder as to the place where the sale would be held, but the Chancellor, in that case, reiterated the rule that the courts of this State will never open a sale

“upon the single ground that more can be got for the property.”

In the case of *Campbell v. Gardner*, 11 N. J. Eq. 423, Chancellor WILLIAMSON stated the rule to be:

“This Court has never interfered with a sale for mere inadequacy of price, but has uniformly declined doing so.”

Since the appellant relies upon the case of *Campbell v. Gardner*, *supra*, it will be well to ascertain the exact facts in that case and the reasons for the order of the Chancellor. In the case, the property was purchased at a low price by the mortgagee. The mortgagor was an aged woman, and the only party to the suit, and it was proved that she was misled as to the nature of the process served upon her. The Court further said:

“There can be no doubt but that the subpoena was served, and that the defendant had all the notice that was required by law. The service at her dwelling house with a member of the family is all that the statute requires, and it is not disputed that such service was made * * *. I feel bound to take the statement made by the Sheriff as true; and yet, taking it as true, I cannot think that the defendant understood it as a notice to appear to a suit in Court. She alleges, in her petition, and proves, that, after this, she actually furnished the money to pay the interest, and made arrangements to pay off the mortgage. Her conduct is so entirely irreconcilable with the fact, that she understood the contents of the subpoena, that it is impossible to escape the conclusion, that she was ignorant of its purport and object, except upon the assumption that she contrived a plan for an opportunity like this to avoid any proceedings that might be had against her. This supposition is not to be reconciled with her sanity, for she offers to pay off the mortgage, with all the expense that has been incurred, and has gained nothing, and could gain nothing by simulating ignorance, which has involved her in the present difficulty.”

The Chancellor evidently was straining himself to relax the rules in favor of the aged petitioner, for he goes on to say:

“The subpoena was served according to the statute; but although the defendant had legal notice, through some mishap, she was prevented having actual notice of the contents of the process. * * * *The case is not a strong one*, but there are some considerations, to which I have not alluded, *which incline me to regard the case with indulgence*. The defendant is a woman advanced in life. She was the sole defendant in the suit, and, as the evidence shows, had no one upon whom she could rely for aid and advice with any confidence. This is a matter deserving some consideration, for it may be stated, that it was culpable negligence in her not to attend to the notice that was served upon her, and that, while the Court may properly aid a party who has been innocently misled, it will extend no indulgence to one to whom culpable negligence has been attributed.”

The Court then ordered a resale upon the terms that the petitioner, the owner of the equity of redemption, pay all the money due upon the decree and the costs.

In the case of *Marlatt v. Warwick*, 18 N. J. Eq. 108, Chancellor ZABRISKIE reviews the cases and adds:

“Another question raised is, whether great inadequacy of price is sufficient in equity to set aside the sale, or to authorize the Court to deem the purchaser trustee for the surplus above the judgment debts. The uniform current of the authorities settles that mere inadequacy of price, where parties stand on an equal footing, and there are no confidential relations between them, is not of itself sufficient to set aside a sale, unless the inadequacy is so gross as to be proof of fraud, or to shock the judgment and the conscience (citing

cases). But the judges in these cases were careful to say *that mere inadequacy is not sufficient.*"

The Chancellor went on to say:

"The inadequacy of the consideration is great and gross, but I am not willing to hold that it, of itself, proves fraud."

In the case of *Smith v. Duncan*, 16 N. J. Eq. 240, Chancellor HENRY W. GREEN found that the person who sought to set the sale aside relied upon a third party to attend the sale on his behalf, and that the person so relied upon was absent from the State at the time of the sale. The Chancellor went on to say that the evidence presented a case of inexcusable negligence and inattention to his interest, and that it was not the province of a court of equity to relieve against such gross laches, and re-affirmed the rule, that gross inadequacy of price in the absence of fraud or mistake or illegality or surprise, is not sufficient to set aside a Sheriff's sale and conveyance.

The rule was again reiterated, that

"inadequacy of price itself is not sufficient ground to set aside a conveyance, nor is it, *per se*, proof of fraud,"

in the language of Chancellor ZABRISKIE in the case of *Klopping v. Stellmacher*, 21 N. J. Eq. 328.

The appellant, in its brief, has placed great reliance upon the case of *Klopping v. Stellmacher*, *supra*. In that case, the complainants, who asked to have the Sheriff's deed set aside, were "ignorant, stupid, perverse, and poor." The sale was had under a judgment which was founded on a transcript of another judgment obtained for about \$44.00, upon which the complainants had paid \$36.00. This amount was paid under an understanding that they should be permitted to pay it

by installments of \$6.00 each; and the complainants seemed to think that it was impossible, after one judgment for this debt, and so large a part of it being paid and an arrangement made about the payment of the residue, that another suit could be brought. The complainants also claimed that they had not been served with any summons in the original suit, but the Constable testified, that the complainants tore up both copies of the summons when they were served and said that they did not want any summons. They were both foreign-speaking people and understood the English language badly, and their own language was more or less imperfectly spoken by those who gave them information. They, evidently, thought it impossible, that courts of justice would sell a lot worth \$1,500.00 for a debt which had been paid within \$8.00, and the payment for the balance arranged with the Court. Persons less ignorant might have arrived at that conclusion. Chancellor ZABRISKIE comments upon the ignorance of the judgment creditors, and the not unreasonable belief that one judgment was all that would be taken to collect a single debt, and that refusal to give relief would have stripped them of everything they had. Because of these equities, the Court was empowered to afford relief from the application of the strict rule of the common law. This latter analysis of the *Klopping* case is supported by an opinion by Vice-Chancellor BENTLEY in *West Ridgelawn Cemetery v. Jacobs* (not officially reported), 148 Atl. 771.

The rule is again stated in the case of *Cline v. Prall*, 27 N. J. Eq. 415, in the language of Chancellor RUNYON, to be that:

“Offers to pay more for property than it brought at a public sale, are in themselves, no ground for setting aside a sale.”

Chancellor RUNYON held, in the case of *White v. Zust*, 28 N. J. Eq. 107, that:

“In the case under consideration, the property appears to be fairly sold, and though the price at which it was sold is below its value, that consideration, it is hardly necessary to say, is not of itself, under the circumstances, sufficient to induce the Court to set aside the sale.”

In the case of *Delaware, Lackawanna and Western Railroad Co. v. Scranton*, 34 N. J. Eq. 429:

“The object of the fourth section of the act of 1880 (P. L. of 1880 p. 255), is merely to prevent the sacrifice of property at foreclosure sales, so far as it may be done by requiring proof, to the satisfaction of the court, that at the sale the property brought the best price then obtainable for it at a foreclosure sale for cash. The legislature did not intend by it to authorize the court to protect the property from sacrifice by setting aside sales until an adequate price should be obtained for it.”

That mere inadequacy of price is no ground for setting aside a sale made regularly and without fraud, where no accident or mistake has intervened to prevent fair competition; and that the policy of our law respecting official sales does not admit the notion that such sales must be opened because a greater sum can be obtained for the property, were decided by the outstanding case of *Morrisse v. Inglis*, 46 N. J. Eq. 306.

Mere inadequacy in the price bid, at a fairly and regularly conducted judicial sale, will not justify refusal to confirm the sale. So held Chancellor MCGILL, in *Bethlehem Iron Co. v. Philadelphia and Seashore Ry. Co.*, 49 N. J. Eq. 356.

Vice-Chancellor GREEN, in *Leary's case*, 50 N. J. Eq. 383, says:

“It has long been the settled doctrine and practice of the Courts of this State, that judicial sales, made without irregularity and fraud, and not affected by accident or mistake, *will not be set aside for mere inadequacy of price.*”

Citing *Morrisse v. Inglis*, 46 N. J. Eq. 306, he continues:

“It is of the greatest importance to encourage bidding by giving to every bidder the benefit of bids made in good faith and without collusion or misconduct, and, at least, when the price offered is not unconscionably below the value of the property. Nothing would more evidently tend to discourage and prevent bidding than a judicial determination that such a bidder may be deprived of the advantage of his accepted bid whenever any person is willing to give a larger price. The interest of owners in particular cases must give way to the maintenance of a practice which, in general, is of the highest degree beneficial.”

In the case of *Rogers v. Rogers Locomotive Co.*, 62 N. J. Eq. 111, Vice-Chancellor EMERY, in his opinion, stated:

“The only basis of any claim to deprive them of the benefit of their contract, even if its approval were not the sole question before the court, must therefore be placed solely on the fact that subsequent to their contract, and before its confirmation, a higher bid than theirs was made for the property. On this question as to the effect a higher bid will or should have upon the confirmation by the court of a contract for sale, made at either public or private sale, and which must be confirmed, the rule in this state is, as I understand it, settled beyond dispute. As to public sales, the rule that a sale fairly made will not be disapproved merely because of an increased bid has long been applied. In *Mor-*

risse v. Inglis, 1 Dick. Ch. Rep. 306 (Errors and Appeals 1889), over ten per cent. advance was offered; in *Bethlehem Iron Co. v. Philadelphia and Seashore Railroad Co.*, 4 Dick. Ch. Rep. 356 (Chancellor MCGILL, 1892), twenty one per cent advance; and in *Bliss v. New York Life Insurance Co.*, 6 Dick. Ch. Rep. 630 (Errors and Appeals) \$1,000 in advance was offered. In each case the sale was confirmed notwithstanding the increase bid following the principle laid down in the first case, *Morrisse v. Inglis*, that the settled policy of our law has been to encourage bidding and purchases at public sales, and that purchasers making *bona fide* bids are to be protected in the advantages of a fair purchase (at pp. 308, 309). I do not understand that in the later decision, *Rowan v. Congdon*, 8 Dick. Ch. Rep. 385 (1895), relied on by the petitioner's counsel, the court of errors at all qualified or overruled the rule of these previous cases. No such qualification was declared, and *Rowan v. Congdon* was in part based on proof of a misapprehension existing at the time of the sale, by reason of which a purchaser, who was willing to give one hundred and fifty per cent. advance at that time, was not then procured.

"It is also the law of this Court that for the same reason and upon the same principles, the rule is to be applied to private sales made by guardians and others under authority of the court of chancery. *Leary's Case*, 5 Dick. Ch. Rep. 383. The general settled rule, therefore, is that where the sale is made for a fair price and in good faith, and there is no irregularity, fraud, mistake or legal surprise, with which the purchaser is or ought to be chargeable, the subsequent offer by another bidder of a higher price is not of itself sufficient reason for refusing confirmation of a sale or of reopening the confirmation. Nearly all public and private sales by officers of the court now require confirmation, and to allow such sales to be opened by the mere increase of the bid at the time fixed for confirmation, would practi-

cally result in the subversion of the entire system of sale by officers, either public or private, and would make their first contract of sale merely the starting point for bids on the property, instead of a *bona fide*, genuine sale."

In the case of *Ryan v. Wilson*, 64 N. J. Eq. 797, this Court stated:

"The rule in this state concerning the stability of judicial sales is undoubtedly a very rigid one. The only grounds upon which the inchoate right of a successful bidder can be frustrated is the presence of fraud or irregularity in the sale. *Mere inadequacy of a bid, if the sale is regular, will not warrant the court in setting the sale aside and ordering a resale.* This rule does not rest upon the right of a purchaser, because when he bids he understands that it is subject to the approval of the Court, but it rests upon the grounds of public policy. It is adopted to encourage the attendance of bidders at judicial sales."

Vice-Chancellor HOWELL, in the case of *Knickerbocker Trust Co. v. Carteret Steel Co.*, 81 N. J. Eq. 130, again states the rule to be,

"That it has long been the settled doctrine and practice of the Courts of this State that judicial sales, made without irregularity or fraud, and not affected by accident or mistake, will not be set aside for mere inadequacy of price, and that official sales in this State will not be opened on the mere representation that more money may be obtained for the property," citing

Morrise v. Inglis, 46 N. J. Eq. 306.

In the case of *Adams v. Lambertville Heat, Light and Power Co.*, 84 N. J. Eq. 96, Vice-Chancellor BACKES again repeated the rule to be,

"That where a sale is made for a fair price and in good faith and there is no irregular-

ity, fraud, mistake, or legal surprise, with which the purchaser is or ought to be chargeable, the subsequent offer of another bidder of a higher price is not of itself sufficient reason for refusing confirmation."

In *Hurley v. Pottash*, 93 N. J. Eq. 167, Justice BERGEN, speaking for this Court, said:

"In *Morrisse v. Inglis*, 46 N. J. Eq. 306, this Court laid down the rule that 'judicial sales made without irregularity or fraud and not affected by accident or mistake, will not be set aside for mere inadequacy of price. * * * Nothing would more evidently tend to discourage and prevent bidding than a judicial determination that such a bidder may be deprived of the advantage of his accepted bid, whenever any person is willing to give a larger price.' To the same effect is *Hoffman v. Godfrey*, 79 N. J. Eq. 617."

In *Guarantee Trust Company v. Fitzgerald Hotel and Development Corp.*, 97 N. J. Eq. 277, Chief Justice GUMMERE, speaking for this Court repeats:

"That it has long been the settled doctrine and practice of this State, that judicial sales made without irregularity or fraud, and which had not been affected by accident or mistake, will not be set aside for mere inadequacy of price, and the reason is thus stated by Mr. Justice MAGIE in delivering the opinion of this Court in *Morrisse v. Inglis*, 46 N. J. Eq. 306-309; 'This well-known practice is in accord with the policy of our law respecting such sales, which are required to be made, after advertisement sufficient to give publicity, by public outcry to the highest bidder. It is of the greatest importance to encourage bidding by giving to every bidder the benefit of bids made in good faith and without collusion or misconduct, and, at least, when the price offered is not unconscionably below the value of the property. Nothing would more evidently

tend to discourage and prevent bidding than a judicial determination that such a bidder may be deprived of the advantage of his accepted bid, whenever any person is willing to give a larger price. The interest of owners in particular cases must give way to the maintenance of a practice, which, in general, is in the highest degree beneficial.”

POINT II.

It is urged that the purchaser at the sheriff's sale is a subsidiary of the complainant-respondent; assuming that to be so, then the bid of \$500 was made to protect the complainant's lien of \$41,000.

The appellant urges, throughout his brief, that the purchaser at the sale was a subsidiary of the respondent. Conceding that to be true, it throws an entirely different light upon the question of inadequacy of price. If it is true that \$500 is an inadequate price for property alleged to be worth over \$40,000, then certainly, it is equally true that a bid of \$500 by the holder of a decree of \$41,000 to protect its lien, cannot be inadequate, either logically or legally, for then all that the respondent can be charged with is an attempt to minimize its loss by acquiring property, the value of which, on the appellant's own proof, is commensurate with the amount of its decree.

The following case, which the appellant cites in its brief, in support of its point that gross inadequacy of price will so shock the conscience of the Court that it will order a resale, presents exactly similar fact-situations to the case at bar.

In the case of *Dunlop v. Chenoweth*, 90 N. J. Eq. 85, the facts proven before Vice-Chancellor BACKES were that the complainant purchased property for

\$2,000. It was disclosed that he was the owner of two decrees in a foreclosure of a first and second mortgage, amounting to more than \$15,000. The property was there alleged to be worth anywhere from \$20,000 to \$25,000. On the day of the sale, an adjournment was requested and refused and the property was struck off to the owner of the decrees on his bid of \$2,000, which was the only one made. The ground of objection was

“That the property was sold for a grossly inadequate price and leaves a large deficiency hereafter to be paid by the defendant.”

The objector stated that had he been able to be present at the sale, he would have bid \$16,000, and that he was prepared to bid that sum at a resale. Vice-Chancellor BACKES then held,

“It is not necessary to determine whether under the practice the court may refuse to confirm a sale where the bid is so grossly inadequate as to shock the conscience. I have no doubt that it may, and would, in a proper case, but that situation was not before me. The sale was not of a \$20,000 property for \$2,000. The bid was made to protect the purchaser’s liens of \$16,000 plus, and the difference between that sum and the estimated value of the property is a prominent and, most times, and in this case a controlling, factor on an appeal to the conscience on the ground of gross inadequacy of price.”

In other words, the bid in the case at bar cannot be set up as a sample of a grossly inadequate bid, since it merely increased the costs of allowing the complainant, by its decree of upwards of \$41,000, to obtain a deed to the property by means of a regularly advertised sale, made without any fraud, irregularity or mistake, and pursuant to a writ of *feri facias* directed to issue on the fore-

closure of the mortgage made by appellant to respondent's assignor.

And in a recent case, *Atlantic Safe Deposit & Trust Co. v. Thommessen*, decided on May 29, 1930, 8 Misc. Reports 403, the complainant held a final decree in a foreclosure suit for more than the sum of \$17,000. By virtue of the final decree, the sale was made by the Sheriff of Atlantic County to the complainant for the sum of \$100, it being the highest bidder therefor. The objectors presented affidavits to show that the property was worth not less than \$63,000, and "will bring at a forced sale, under the hammer, at least \$63,000." Vice-Chancellor INGERSOLL held that the sale was not of a \$63,000 property for \$100, but that the purchase was made to protect complainant's lien of approximately \$17,500.

In the case at bar, assuming that the respondent purchased the property in the name of its alleged subsidiary for \$500, we may say with equal force and legal effect, that the sale was not of a \$40,000 property for \$500, but that the purchase was solely for the protection of the complainant's lien of \$40,000. It is manifest that this Court must protect purchasers at judicial sales, which are made without irregularity or fraud, and even more so when the purchaser be the complainant or the holder of the decree, for, one can readily see that there is no question of sacrifice.

The amount of the respondent's decree (State of Case, p. 15, line 10) in the the foreclosure, and the appellant's own figure (State of Case, p. 21) of the value of the property, conclusively refute any question that the property was sold for a grossly inadequate price.

POINT III.

Judicial sales, in this State, will not be opened on the mere representation that more money may be obtained for the property.

The practice of the English Court of Chancery in opening sales where an offer for a greater amount for the property was made, was early declared not to have been adopted in this State. See *Seaman v. Riggins*, 2 N. J. Eq. 214.

There is a uniform current of decisions settling that an official sale will not be opened on the mere representation that more money may be obtained for the property. See *Campbell v. Gardner*, 11 N. J. Eq. 423; *Conover v. Walling*, 15 N. J. Eq. 173; *Cline v. Prall*, 27 N. J. Eq. 415; *Morrisse v. Inglis*, 46 N. J. Eq. 306; *Knickerbocker Trust Co. v. Carteret Steel Co.*, 81 N. J. Eq. 130.

POINT IV.

The practice of the Court of Chancery of this State, of reopening a sale at the behest of a mortgagor, prior to "an act concerning proceedings on bonds and mortgages given for the same indebtedness and the foreclosure and sale of mortgaged premises thereunder (P. L. 1880, p. 255)," was more liberal than after the passage of that statute.

The statute permitting the opening of a foreclosure sale and redemption by the mortgagor, even after entry of judgment on the bond for a deficiency, was passed in 1880, amended in 1881 and may be found in 3 *Comp. St.*, 3422, Sec. 49:

“That if after the foreclosure and sale of any mortgaged premises the person who is entitled to the debt shall recover a judgment in a suit on said bond for any balance of debt, such recovery shall open the foreclosure and sale of said premises, and the person against whom the judgment has been recovered may redeem the property by paying the full amount of money for which the decree was rendered, with interest to be computed from the date of said decree and all cost of proceedings on the bond; provided, that a suit for redemption is brought within six months after the entry of such judgment for the balance of the debt. (P. L. 1880, p. 256, as amended P. L. 1881, p. 185).”

The act was further amended in 1915, by *L. 1915, c. 178*, page 339, and may be found in its entirety in *1 Cum. Sup. to Comp. St.*, page 1972, Sec. 134-49:

“That if after the foreclosure and sale of any mortgaged premises the person who is entitled to the debt shall recover a judgment in a suit on said bond for any balance of debt, such recovery shall open the foreclosure and sale of said premises, and the person against whom the judgment has been recovered may redeem the property by paying the full amount of money for which the decree was granted, with interest to be computed from the date of said decree and all costs of proceedings on the bonds; and all reasonable expenses which the purchaser may have incurred in the meantime for taxes, assessments, other prior liens, necessary repairs upon said premises and interest on same, after deducting from the amount thereof such income as said holder may have derived from the possession of said premises either as rent or otherwise; provided, that a suit for redemption is brought within six months after the entry of such judgment for the balance of the debt. (L. 1880, p. 256, as amended L. 1881, p. 185 [C. S., p. 3422], L. 1915, c. 178, p. 339.)”

Prior to the enactment of the original statute in 1880, the courts were willing to reopen judicial sales on the representation that more money would be offered for the property, where the mortgagor offered to redeem the property, because ordinary equities, not favoring forfeitures, permitted that redemption, which, was, thereafter, granted by legislative enactment, *supra*. The cases permitting the owner of the equities of redemption to reopen the sale and redeem his property, before the passage of the statute, *supra*, are:

Campbell v. Gardner, 11 N. J. Eq. 423,
cited at length under *Point I* herein;
Kloopping v. Stellmacher, 21 N. J. Eq. 328,
cited at length herein under *Point I*.

In the case of *Hurley v. Pottash*, 93 N. J. Eq. 167, Justice BERGEN, in speaking for this Court, said, at the bottom of page 170:

“It is also urged that the housing company, the present holder of the decree, has threatened to present a claim to the trustee in bankruptcy for the deficiency between the amount bid and the complainant’s decree. This is not pertinent to the present controversy, but if it should be presented it would have to be made within six months after the sale under our statute requiring the suit to be brought within that period for a deficiency when the same debt is secured by bond and mortgage. *P. L. 1881*, p. 184. If such a claim should be presented within the required time a debatable question would then arise whether, under *Smith v. Crater*, 43 N. J. Eq. 636, it would not be the bringing of a suit on the bond, and whether if the claim should be allowed in bankruptcy it would not be an adjudication amounting to a judgment, the rendering of which would allow the mortgagor, or his representative, the trustee in bankruptcy, to come in within six months and redeem the property,

which would, of course, accomplish all that the objectors to the confirmation would be entitled to."

In the case of *Pennsylvania Co. for Insurance of Lives v. Marcus*, 89 N. J. Law 633, Justice BERGEN again said:

"As the bond and mortgage in the present case were given long after the act of 1881, the holder is subject to all the provisions of that act, that is, he must first foreclose his mortgage, and if he enters a judgment on the bond for any deficiency, the foreclosure sale will be opened and the obligor permitted to redeem."

It was held, in the case of *Delaware, Lackawanna and Western Railroad Co. v. Scranton*, 34 N. J. Eq. 429:

"The object of the fourth section of the act of 1880 (P. L. of 1880, p. 255), is merely to prevent the sacrifice of property at foreclosure sales, so far as it may be done by requiring proof, to the satisfaction of the court, that at the sale the property brought the best price then obtainable for it at a foreclosure sale for cash. The legislature did not intend by it to authorize the court to protect the property from sacrifice by setting aside sales until an adequate price should be obtained for it."

A research and study of those cases which deal with reopening sales, before and after the statute of 1880, with its amendments, *supra*, providing for the redemption of mortgaged premises after entry of judgment on the bond for a deficiency, readily discloses the attitude of our courts, in that they are now even more reluctant to reopen sales at the behest of the mortgagors.

It is apparent, in the case at bar, that the appellant merely seeks to reduce the amount for which it may be liable on the bond in a suit for a deficiency. If its motive in the present appeal is to

redeem the property, by means of a resale, which it hopes that this Court will order, its most expedient and legal remedy is to seek a redemption of the mortgaged property as permitted by legislative enactment, *supra*.

POINT V.

Gross inadequacy of price, without other attendant circumstances, will not warrant an inference of fraud, or unconscionable conduct, or illegality, in a judicial sale, unless rights of creditors, and others not parties to the proceedings, are affected.

The appellant, the objector to the confirmation of the judicial sale, has not alleged or charged that the sale was in any manner fraudulent, or that any party to the proceedings under which it was held, was guilty of unconscionable conduct, or acted so as to mislead the appellant; or that the sale was in any respect illegal or contrary to the statute; nor does the appellant charge that the price for which the premises were sold, was not the best price then obtainable, at the time the Sheriff sold the property. The record does not disclose a scintilla of evidence of fraud, or illegality, or unconscionable conduct.

Yet the objector seeks to avail itself of the application of a wide, general rule, occasionally reiterated, that gross inadequacy of price of itself, will warrant a presumption of fraud so that a judicial sale may, in the discretion of the Court, be set aside, and that accordingly, in the case at bar, fraud should be found to exist as a matter of law, solely on the basis of gross inadequacy of price alleged to exist.

The application of this wide and general rule, in the absence of any evidence of fraud, or illegality or unconscionable conduct, must be restricted to fact-situations where there are affected the rights of creditors of insolvent corporations, the receivers of which seek to dispose of the corporate assets, by judicial sales, toward the proceeds of which sales the creditors, and other similarly situated, must look for the satisfaction of their claims.

In the case of *Fleming v. Fleming Hotel Co.*, 70 N. J. Eq. 509, Vice-Chancellor BERGEN said:

“If judicial sales, properly advertised, with nearly all parties in interest, stockholders as well as creditors, present, are to be set aside simply because, upon reflection, some other person is willing to bid more, *unless the price is so grossly inadequate as to amount to a fraud upon creditors*, the attendance and bidding at judicial sales will be discouraged.”

See also *Oral conclusions in the Court below*, State of Case, page 29, line 39.

Such creditors and also numerous holders of bonds, which are secured by mortgages under corporate assets, are seldom able to bid and purchase the assets to protect and safeguard their interest, and consequently, repose confidence in the belief that the Court will carefully scrutinize the mode and procedure of the sales, and the proceeds realized therefrom.

Bethlehem Iron Co. v. Philadelphia Seashore Co., 49 N. J. Eq. 356;

Rowan v. Congdon, 53 N. J. Eq. 385;

Rogers v. Rogers Locomotive Co., 62 N. J. Eq. 111;

Ryan v. Wilson, 64 N. J. Eq. 797;

Porch v. Agnew Co., 66 N. J. Eq. 232;

Fleming v. Fleming Hotel Co., *supra*;

Knickerbocker Trust Co. v. Carteret Steel Co., 81 N. J. Eq. 130;
Adams v. Lambertville Heat, Light and Power Co., 84 N. J. Eq. 96;
In Re N. J. Refrigerating Co., 96 N. J. Eq. 431.

They are as wards of the Court, and gross inadequacy of price invokes the protecting hand of the guardian to save them harmless, or nearly so, from a fraud which may be presumed.

Other instances where the rule may be applicable, are in sales of infant's lands, sales of lunatic's lands and occasionally partition sales. *Leary's Case*, 53 N. J. Eq. 393; *Conover v. Walling*, 15 N. J. Eq. 173; *Montclair B & L v. Farmer*, 67 Atl. 852; *Hoffman v. Godfrey*, 79 N. J. Eq. 617.

Since the appellant is not a creditor of an insolvent corporation, nor an infant, nor a lunatic, nor a co-tenant whose rights the courts are zealous to protect, but is a defendant in a foreclosure suit, and since it does not seek satisfaction of a particular claim or debt from the proceeds of a sale, the confirmation of which it opposes on the ground of alleged gross inadequacy of price, from which it is suggested, fraud should be inferred by this Court to exist as a matter of law, the rule is inapplicable.

POINT VI.

The Vice-Chancellor's order confirming the sale was proper, in that a Court of Equity affords redress only to those who manifest diligence and not to those who slumber upon their rights.

This Court is called upon to order a resale in the case at bar, because the appellant claims that its

representative was obliged to wait between fifteen and twenty minutes for a trolley car. That, by reason of such delay, its representative was prevented from arriving at the place of sale in time. Had the appellant been zealous on the date of the Sheriff's sale in attempting to protect its rights, it could have, by a fair and reasonable degree of diligence, made certain that its representative would be on time. This negligence is so culpable and inexcusable that it cannot invoke the aid of a court of equity.

Newark v. Cook, 99 N. J. Eq. 527;

Bridgewater v. Ocean City Assn., 85 N. J. Eq. 379;

Murray v. D'Orisi, 98 N. J. Eq. 548;

Voorhees v. Murphy, 26 N. J. Eq. 434.

The appellant cannot say, that its negligence is mistake; its actions prove that its carelessness cannot be regarded in equity as mistake.

POINT VII.

In the event that this Court orders a resale, it should do so upon such terms as will satisfy the respondent's decree.

In *Campbell v. Gardner*, 11 N. J. Eq. 423, at page 431, Chancellor WILLIAMSON ordered a resale upon the following conditions:

"That within twenty days after the date of the order, the defendant pay to the complainant the amount of the decree and interest, together with all expenses of the sale by the Sheriff, and all other incidental expenses incurred and paid by complainant, and upon such payment, let the complainant execute to the defendant a quit-claim deed for the mort-

gaged premises, and also an assignment of the decree, all of which is to be done at the defendant's expense."

In *Markitt v. Warwick*, 18 N. J. Eq. 108, Chancellor ZABRISKIE allowed redemption upon the full payment of the amount of the decree, with interest and costs.

In *Chamberlain v. Larned*, 32 N. J. Eq. 295, Chief Justice BEASLEY, speaking for this Court, allowed the reopening of a sale upon the terms that bond be given, guaranteeing that on resale, the property should produce the whole of the claim due and to grow due to the person holding the decree, with interest and costs.

In the case of *Mutual Benefit Life Insurance Co. v. Gould*, 34 N. J. Eq. 417, Chancellor RUNYON allowed a resale on the condition that the petitioner enter into a bond with sufficient security, to bid at least \$6,000 on the resale, which was more than sufficient to satisfy the amount of the decree, with interest and costs due to the complainant, and that the petitioner was compelled to do so within five days from the time of the filing of the order on the decision.

In *Rowan v. Congdon*, 53 N. J. Eq. 385, this Court, speaking through Justice GARRISON, ordered a resale of premises which were sacrificed owing to a misapprehension, on terms, that the confirmation of the sale by the Chancellor be confirmed, unless

"within thirty days of the remission of this record to the Court of Chancery, a prospective purchaser enter into bond with security satisfactory to the Chancellor, that in the event of a resale, the sum of \$25,000 will be bid for the mortgaged premises, in which a resale of the premises shall be directed by the Chancellor,"

the sum of \$25,000 in that case being more than sufficient to pay the balance due on complainant's decree, with interest and costs.

CONCLUSIONS.

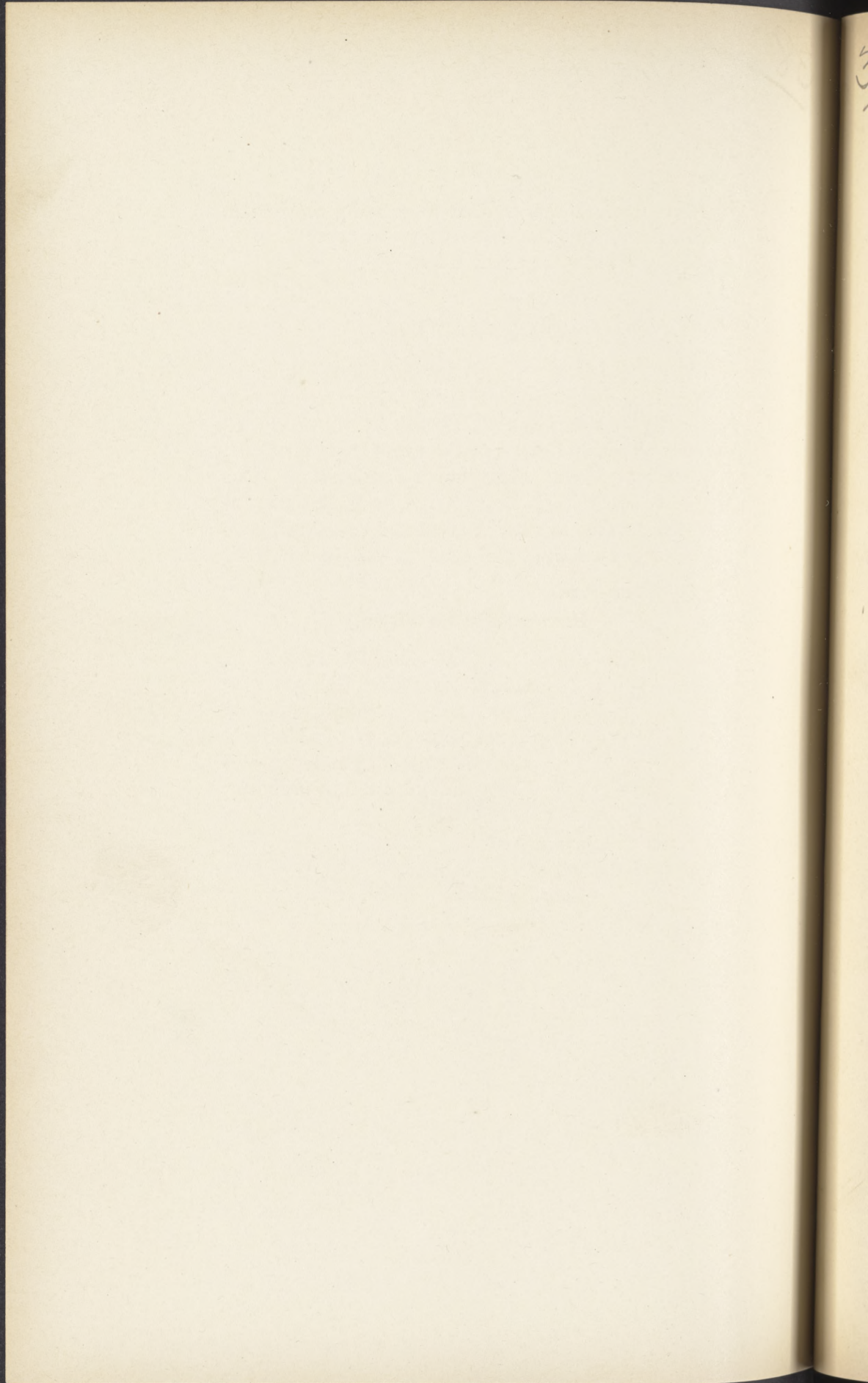
For the reasons urged in the foregoing argument, the orders advised in the Court below confirming the Sheriff's Sale, should be affirmed with counsel fees and costs; in the event that this Court orders a resale, then such resale should be ordered upon such terms as will satisfy the complainant's decree with interest and costs, and with proper counsel fees and costs in this Court.

(N.B. Italics mine.)

Respectfully submitted,

JEROME C. EISENBERG,
Solicitor for and of Counsel with
New Jersey National Bank and
Trust Company of Newark,
Complainant-Respondent, and
Unity Corporation, Purchaser.

Jerome C. Eisenberg and
Philip M. Lazar,
on the Brief.



New Jersey Court of Errors and Appeals

Between

NEW JERSEY NATIONAL BANK &
TRUST COMPANY OF NEWARK, a
National Banking Institution,
Complainant-Respondent,

and

SAVEMORE REALTY Co., a
Corporation,
Defendant-Appellant.

On Appeal
from the
Court of
Chancery.

Sat Below
FALLON, V. C.

BRIEF OF DEFENDANT-APPELLANT.

Statement.

This is an appeal from two orders made by Vice Chancellor Fallon confirming the Sheriff's sale of certain real estate known as Nos. 724-726 30th Street, Union City, New Jersey, to Unity Corporation, a subsidiary of complainant-respondent, for the sum of \$500.00, the said property being valued at between \$40,000.00 and \$42,000.00.

Facts.

On January 31st, 1928, the Savemore Realty Co., the defendant-appellant, and one Hyman Horwitz, individually, executed and delivered to the Lincoln Mortgage & Title Guarantee Co. a bond to secure

the payment of a first mortgage accompanying said bond, in the sum of \$40,500.00, which mortgage, by mesne assignments, was transferred to the New Jersey National Bank and Trust Company of Newark, the complainant-respondent.

The appellant conveyed the lands and premises described in said mortgage to one Julius Vinick on July 20th, 1928, subject to the said first mortgage of \$40,500.00, and said Julius Vinick subsequently conveyed the said lands and premises to other parties.

The respondent foreclosed said first mortgage and obtained a final decree for \$41,923.95. The Sheriff of Hudson County sold the lands and premises described in said mortgage on January 2nd, 1930, to Unity Corporation, a subsidiary of respondent, for the sum of \$500.00. The appellant was not represented at said Sheriff's sale, although arrangements had been made with its President, Hyman Horwitz, to attend the same. The said Hyman Horwitz was prevented from attending said sale at the time and place scheduled therefor because he was obliged to wait between fifteen and twenty minutes for a trolley car to convey him to the Court House, in Jersey City, where the Sheriff's sale was advertised to be held, and that in consequence thereof, by the time he reached the Sheriff's sales room, which was about 2:10 P. M., the property advertised for sale had already been exposed for sale and sold by the Sheriff to the said Unity Corporation. Mr. Horwitz, upon arriving, requested the Sheriff to resell, but this he refused to do. This statement is corroborated by an affidavit of Anne Bockstein, an attorney at law of New Jersey, associated with the law firm of Braelow & Tepper, solicitors of respondent (p. 25, par. 3, State of Case).

The appellant, on January 6th, 1930, a few days after the sale had taken place, filed objections to

the confirmation of said sale upon the ground that the sum of \$500.00 was grossly inadequate and entirely disproportionate to the actual value of the property, to wit, \$40,000.00—\$42,000.00. The court refused to order a resale of the property and confirmed the sale to the Unity Corporation for the sum of \$500.00.

POINT I.

A property valued at from \$40,000.00 to \$42,000.00 sold for \$500.00 without mortgage encumbrance at a foreclosure sale is such gross inadequacy of price as will justify the Court of Chancery in ordering a resale.

The rule is enunciated in *Boyd v. Hudson City Academical Society*, 24 N. J. E. 349. Inadequacy of price alone unless it be so gross as to lead to the presumption of fraud, is not a sufficient reason for setting aside a Sheriff's sale, the conclusion being drawn that such a sale may be set aside on the ground of inadequacy of price on the presentation of evidence that the property was sacrificed and that a higher price could be got for it upon a resale.

To same effect are :

Rowan v. Congdon, 53 N. J. E. 385 ;
*Bethlehem Iron Co. v. Philadelphia and
 Sea Shore Ry. Co.*, 49 N. J. E. 356 ;
*Adams v. Lambertville Heat, Light &
 Power Company*, 84 N. J. E. 96 ; affirmed
 in 84 N. J. E. 499.

In *Throckmorton v. O'Reilley*, 55 Atl. 56, the court says a judgment-creditor for less than \$800.00 had purchased an equity of redemption worth \$8,500.00 for the paltry sum of \$750.00. Now, in

the absence of gross laches on the part of the complainant, which does not here appear, the inadequacy of the consideration is so great as to shock the conscience and to give the complainant, as against the purchaser, a clear standing in a court of equity to be relieved, on equitable terms, from the sale.

In the present case, the defendant Savemore Realty Co. owned property worth from \$40,000.00 to \$42,000.00 which was sold without mortgage encumbrance for \$500.00 at a sheriff's sale to foreclose a mortgage of \$40,500.00, which sale, by reason of accident, the complainant was prevented from attending. That the defendant should lose its property worth \$40,000.00 to \$42,000.00 for the sum of \$500.00 and that the defendant should acquire an equity worth to it \$40,000.00 to \$42,000.00 for which they paid only \$500.00 accomplishes great injustice and oppression, and should move the court to order a resale especially because of the expressed willingness of the defendant embodied in an affidavit to that effect to bid \$25,000.00 at a resale.

Although the object of the fourth section of the Act of 1880 (P. L. of 1880, p. 255) in requiring judicial action on every such sale was not that, through the setting aside of sales, mortgaged property might be saved from sale until an adequate price should have been obtained, but that those interested should have an opportunity to object to the sale. Chancellor Runyon declares emphatically that if it should appear that the property had not brought the highest price it would bring at a Sheriff's sale, the sale might be set aside.

D. L. and W. R. R. Co. v. Scranton, 34 N. J. Eq. 433.

In *Polhemus v. Princilla*, 61 Atl. 263, there is a discussion of the Acts of 1891, page 24, sec. 1, con-

cerning judicial sales of land and it was held that the evidence showed the property was not sold for a fair price and a resale was ordered.

Case after case reiterates the rule that mere inadequacy of price is not alone a sufficient reason for refusing confirmation of a judicial sale, but when the bids reported are so low in their relation to the market price that great injustice will be done by confirming the sale, equity invariably orders a resale.

Porch v. Agnew Company, 66 N. J. E. 232.

In the case of *Hoffman v. Godfrey*, 79 N. J. E. 618, the general rule is stated that in the absence of fraud, irregularity, accident or mistake, judicial sales will not be set aside for inadequacy of price unless the inadequacy is so gross as to justify an inference of fraud. And then, the court holds that the difference between \$115,000 and \$78,000 at which sum the property was sold, is not so inadequate as to warrant an inference of fraud or unconscionable conduct in conducting the sale, nor sufficient to upset the policy of encouraging bidding at judicial sales.

The intimation is, however, that in such a case as that before the court where the percentage difference is overwhelmingly greater, such gross inadequacy exists as would shock the conscience of the court and justify refusing confirmation of the sale and ordering a resale.

In *Krieger v. Scheuer*, 86 Atl. 534, where the inadequacy was measured by the difference between \$206,000, including a prior mortgage, as the purchase price, and from \$225,000 to \$260,000 as the estimated value, it was held that the judicial sale would not be set aside.

But again this percentage does not approach the gross inadequacy which characterizes the pres-

ent case, namely, the difference between \$500 and \$40,000 to \$42,000, and which cannot conceivably be said to conform to the "fair price" required to be obtained in such sales.

Such inadequacy as exists in the instant case is so gross as to justify an inference of fraud and amounts to a fraud on the parties in interest, in accordance with the decision reached in *Knickerbocker Trust Co. v. Carteret Steel Co.*, 81 N. J. E. 132, 133.

Perhaps the strongest and most definite elaboration of the true principle is contained in *Dunlop v. Chenoweth*, 90 N. J. E. 87, where in reference to the immediate facts, Vice Chancellor Backes says:

"It was not necessary to determine whether, under the practice, the court may refuse to confirm a sale where the bid is so grossly inadequate as to shock the conscience. I have no doubt that it may and would in a proper case, but that situation is not before me. The sale was not of a \$20,000 property for \$2,000."

And the present case is one where the inadequacy is far greater than that supposed by the honorable Vice Chancellor.

A case very often cited is that of *Murray v. D'Orsi*, 98 N. J. E. 548, conforming to the general rule but intimating, as do the cases already cited, that mere inadequacy without fraud or mistake is insufficient to set aside a sale, gross inadequacy without more constitutes a valid ground for so doing because it, per se, raises an inference of fraud and unconscionable conduct.

Without multiplying unnecessarily the cases already cited, we submit the language of Vice Chancellor Ingersoll in the last reported case on the

subject, *Atlantic Safe Deposit and Trust Co. v. Thommessen*, et al., 150 Atl. 579, decided May 29, 1930. The Vice Chancellor writes:

“It is not necessary to determine whether under the practice the court may refuse to confirm a sale where the bid is so grossly inadequate as to shock the conscience. I have no doubt that it would in a proper case, but that situation is not before me. This sale was not of a \$63,000 property for \$100.”

That sale was made to protect the purchaser's lien of approximately \$17,500 subject to the prior encumbrances thereon of approximately \$44,000, making a total of over \$61,000. The difference between that sum and the estimated value of the property, \$63,000, was held insufficient to appeal to the conscience of the court on the ground of gross inadequacy.

If gross inadequacy does not exist in the case at bar, where will the court draw the line?

The following citation from *Kocher and Trier, New Jersey Chancery Practice and Precedents*, Vol. 1, Sec. 752, formulates the rule as established in New Jersey by the foregoing authorities and leaves no doubt as to the motives which impel equity to override the doctrine of “mere inadequacy of consideration”:

“The sale will be set aside, even if there has been no fraud, where there is gross inadequacy of price, and the party, by reason of mistake or misapprehension, did not attend the sale or protect his interest, and the sacrifice was caused by such mistake or misapprehension, or where such surprise is created by the conduct of the purchaser or of the officer conduct

ing the sale. The court will not, however, interfere on account of mere inadequacy of price unless the price is so grossly inadequate that from such inadequacy the court can infer fraud, or where great injustice will be done by confirming the sale."

POINT II.

A property valued at from \$40,000.00 to \$42,000.00 sold for \$500.00 without mortgage encumbrance at a foreclosure sale is such gross inadequacy as will justify equity in ordering a resale, especially when the party whose interest is injuriously affected by the sale has been prevented, by accident or mistake, from attending it.

This doctrine has been established in New Jersey from the earliest times.

In *Howell v. Hester*, 4 N. J. E. 266, a sale of mortgaged premises on execution, issued in proceedings to foreclose the mortgage, was set aside because a subsequent encumbrancer was prevented by accident from being present at the sale and the premises were sold for an inadequate price.

Also see *Campbell v. Gardner*, 11 N. J. E. 423, to the same effect, and *Marlatt v. Warwick and Smith*, 18 N. J. E. 108.

Chancellor Zabriskie states the law most clearly in *Kloopping v. Stellmacher*, 21 N. J. E. 330, holding that mere inadequacy of price is not sufficient to set aside a Sheriff's deed, nor is it, per se, proof of fraud. But even if there has been no fraud, if the inadequacy is gross and the party whose property has been sold by reason of mistake or misapprehension did not attend the same, and the sacri-

fice was caused by such mistake or misapprehension, the sale will be set aside, citing *Seaman v. Riggins*, 1 Greens, Ch. 214, and *Howell v. Hester*, 3 Greens, Ch. 266.

In *Workingmen's Unit Bldg., etc. Ass'n v. McGillick* (Ch. Ct.) 28 Atl. 468, the attorney for defendants, who had a three-fourths interest in lands sold on foreclosure, attended at the time and place of sale 12 times, but the sale was adjourned each time in the interest of the complainant. He intended to attend on the day the land was sold, and bid on the property, and so informed complainant's attorney the evening before; but, being busy at the time, the hour of sale passed without his noting it until about 10 minutes after the sale, when such attorney informed him it had been made. He endeavored to have the land reoffered, but failed. Twenty minutes after the hour fixed for the sale, the sheriff sold the land to a party interested in the property, on a single bid for about half its value. It was held that the sale should be set aside.

The same doctrine is applied in the case of *Mutual Benefit Life Insurance Co. v. Gould*, 34 N. J. E. 417, where the property seemed not to have produced the "highest and best price it would bring in cash at the time of the sale."

Chancellor Runyon, in the case of *Wetzler v. Shannan*, 24 N. J. E. 60, held that there can be no question of the power of the court to set aside sheriff's sales under the process of this court where there is gross inadequacy of price, and the party whose interest is injuriously affected by the sale has been prevented by mistake or misapprehension from attending it, sustaining the rule with a number of citations.

In the case at bar, Hyman Horwitz, president of the defendant corporation, was prevented by an

untimely mishap from being present when the property was struck off to a subsidiary of the mortgagee, and although he arrived only five minutes after the sale was closed, the Sheriff refused to reopen the bidding even though the former was prepared to bid an advance of \$24,500.00 over the \$500.00 for which the property was sold, namely, \$25,000. This accident, coupled with the gross inadequacy of price, we respectfully submit, more than fulfills the requirements upon the satisfaction of which confirmation of such a judicial sale will be denied.

In *Morrisse v. Inglis*, 46 N. J. E. 306, a leading case on the question in New Jersey, it is held that where an accident or mistake of fact has prevented a paid sale in the manner required by law, it may sometime justify interference with the sale. Approved in *Montclair Building & Loan Association v. Farmer*, 67 Atl. 852, at page 853.

And in conclusion, we can urge no more cogent argument than the universality of the rule which enables one whose interest is adversely affected by gross inadequacy of consideration at a judicial sale to appeal to the conscience of equity to reopen the sale, especially in the presence of circumstances rendering the confirmation of the sale oppressive.

19 R. C. L., page 614, sec. 431 :

“A sale under a power contained in a mortgage or trust deed is always presumed to be regular and valid, and mere inadequacy in the price bid does not in itself invalidate or affect the sale, otherwise properly conducted, unless it is so great as to shock the conscience of the court, especially in the absence of a showing that a large price could be obtained on a resale. If, however, the sum reported is so gross-

ly inadequate as to indicate fraud or a want of reasonable judgment and discretion in the trustee by which the property is sacrificed, the sale may, on timely application, be vacated and a resale ordered, and a court will be particularly inclined to set the sale aside when in addition to inadequacy of price other circumstances exist rendering it inequitable for the sale to stand."

POINT III.

Where the mortgagee is the purchaser at a judicial sale, equity regards the application for a resale with more indulgence than where a stranger is the purchaser.

This doctrine is well settled in New Jersey. Where the mortgagee is the purchaser, and the party seeking to open the sale offers to pay all the money due to him, and there has been a real mistake by the owner of the equity, owing to which the property has been sacrificed, the court should regard the application for a resale with more indulgence than when a stranger is the purchaser. *Campbell v. Gardner*, 11 N. J. Eq. (3 Stock.) 423, 69 Am. Dec. 598.

We quote the language of Vice Chancellor Bergen in *Strong v. Smith*, 68 N. J. E. at page 653:

"The control of the court over the use of its processes ought to be liberally exercised to prevent a wrong; in this case the sale is not to an indifferent party but to a prior encumbrancer who can suffer no injury if protected in the payment of his debt and the controlling of judicial sales to bring about equitable results has long been the practice of this court."

This doctrine is founded on the maxim so dear to equity that "Equity will not suffer a wrong to be without a remedy." And in the present case where the complainant is protected in the payment of his mortgage debt by the mortgage bond, the court ought to be slow to confirm a sale which will work so great a wrong.

Citing *Campbell v. Gardner*, *supra*, Vice Chancellor Bentley writes, in *Rosenblatt v. Premier Dyeing Co., Inc.*, 139 Atl. 390:

"I am further inclined to set aside the sale because of the greater willingness of this court to do so where the mortgagee purchases at his own sale."

Measured by the fruits of this sale in the case at bar, the property of the cestui que trust was sacrificed by the acceptance of the mortgagee's bid and confirmation of the sale will work great hardship and injustice.

The foregoing authorities are strong in favor of refusing such confirmation where the mortgagee is the purchaser.

POINT IV.

Although there is a policy in favor of encouraging bidding at judicial sales, gross inadequacy per se and without more is sufficient grounds for equity to disregard such policy and order a resale.

In *Morrise v. Inglis*, 46 N. J. Eq. 306, the court adopted the rule that "judicial sales made without irregularity or fraud and not affected by accident or mistake, will not be set aside for mere inadequacy of price", going on to say that "nothing

would more evidently tend to discourage and prevent bidding than a judicial determination that such a bidder may be deprived of his accepted bid whenever any person is willing to give a larger price."

It is significant that the court confines its qualification concerning policy to "mere inadequacy."

Nor have we been able to find any authority suggesting, however remotely, that to accomplish its purpose of stimulating bidding at such sales, equity would so far abandon its fundamental maxims as to countenance inadequacy of consideration so gross as to shock the conscience of the court and work severe hardship.

In confirming the sale in the above case, moreover, it is notable that the policy was invoked in favor of a stranger and not the mortgagee holding the decree and bidding in and purchasing at the foreclosure sale. Where the mortgagee buys in at the foreclosure sale, the court is more prone to open the sale. See Point III, *supra*.

These facts and their holding coincide with the situation and decision in *Hoffman v. Godfrey*, 79 N. J. Eq. 617, where the court lays down the rule in effect that where the difference between the selling price and the subsequent offer or obtainable price is not so inadequate as to warrant an inference of fraud or unconscionable conduct in conducting a sale, the policy in favor of encouraging bidders at a judicial sale prevails, but where gross inadequacy of price does exist, even the rights of a stranger purchasing at a judicial sale will not be allowed to intervene.

It is not contended that even a bona fide advance bid or offer in the event of a resale is sufficient reason for overriding this policy underlying the rule that "mere inadequacy" of price is not suffi-

cient ground for refusing to confirm a sale. But we do respectfully submit that the proportion which such advance bid or offer bears to the price at which the property was sold is evidence of the gross inadequacy which will induce the court in particular cases to disregard the policy. See *Boyd v. Hudson City Academical Society*, 24 N. J. E. 349. Such gross inadequacy exists in the case at bar and is demonstrated by the fact that the defendant was prevented, by accident, from bidding at least \$25,000.00 at the sale, which brought only \$500.00, and is willing to bid at least that sum in the event that the court sees fit to order a resale.

We cite but one more fairly recent case to support conclusions for which we argue and to indicate the direction in which equity leans in affording relief.

Chief Justice Gummere, in *Guarantee Trust Co. v. Fitzgerald, etc., Corp.*, 97 N. J. E. 279, quoting from language of Justice Magee in *Morrisee v. Inglis*, 46 N. J. E. 306, 309, declares:

“It is of the greatest importance to encourage bidding by giving to every bidder the benefit of bids made in good faith and without collusion or misconduct *at least when the price offered is not unconscionably below the value of the property.*”

And in the foregoing case, also, the purchaser was a stranger and not the mortgagee bidding at his own foreclosure sale.

POINT V.

Even if the complainant's conduct in the case at bar should be deemed negligent, such conduct is not of such gross character as to operate as a bar to relief.

In *Pomeroy's Eq. Jur.*, 3rd Ed., Sec. 856, in effect, it is said that a party's own negligence will not always occasion refusal of relief.

"It would be more accurate to say that where the mistake is wholly caused by the want of that care and diligence in the transaction which should be used by every person of reasonable prudence, and the absence of which would be a violation of legal duty, a court of equity will not interpose its relief; but even with this more guarded mode of statement, each instance of negligence must depend to a great extent upon its own circumstances * * * Even a clearly established negligence may not of itself be a sufficient ground for refusing relief if it appears that the other party has not been prejudiced thereby."

For example, it was held in *Ring v. New Auditorium Pier Co.*, 77 N. J. Eq. 422, that the fact that a bond holder, who was entitled to be made a party defendant to a suit to foreclose mortgages on corporate property, and yet was not made a party to the proceedings, did not institute suit for relief for many months after the foreclosure sale, will not bar his right to relief where no one has in the meantime changed his position and no rights of others have been affected by his delay.

In the case at bar, the property was purchased by a subsidiary of the mortgagee and has not been further alienated. A stay of deficiency proceedings by the mortgagee on the mortgage bond has been awarded to the defendant herein which has taken every possible step to secure the relief to which we respectfully contend it is entitled. Thus there has been no material change of position, nor have the rights of any third party intervened. Conditions are ripe for relief.

And it is submitted, furthermore, that even though some mere negligence *may* be imputed to the complainant, gross inadequacy of consideration negatives its effect as a bar to relief and is sufficiently strong to overcome even the policy of encouraging bidding at judicial sales, since it amounts to a fraud on the parties in interest as established in Point I, *supra*.

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