

COURT OF ERRORS AND APPEALS.

Between
Mary I. Bullock, Anthony Bullock and
George Sykes, Executors of William W.
Bullock, deceased, Complainants,
and
Robert Woodward and Lydia B., his wife,
and others, Defendants.

} On Bill, &c.

PETITION.

To His Honor Theodore Runyon, Esquire, Chancellor of the
State of New Jersey:

The petition of Robert Woodward, a defendant in above cause, and the owner of the equity of redemption in the lands described in the complainants' mortgage, and hereinafter more particularly set forth, respectfully showeth: That on the thirty-first day of March last past, Samuel T. Hendrickson, the sheriff of Monmouth county, did, by virtue of a writ of *feri facias*, issued out of the Court of Chancery of this state, to 10 him directed, expose for sale at public vendue, at the house of Richard Fleming, in Freehold, in said county of Monmouth, a certain farm and premises of this petitioner, situate in the township of Upper Freehold, in said county of Monmouth, designated in the said writ and in the printed advertisements

of sale published by said sheriff as lot No. 2, all that certain lot of land and premises which was devised to the said Robert Woodward by last will and testament of Robert Woodward, senior, bounded on the north by lands of Gilbert S. Lawrie and Edward B. Woodward, on the east by lands of Edward B. Woodward and Robert Woodward, on the south by lands of William C. Emley and the lot No. 1 above described, and on the west by the Province line between the counties of Burlington and Monmouth, on the road leading from Arneytown to New Egypt, containing one hundred and sixty acres, be the same more or less.

That the said sheriff at the time of exposing said land for sale stated, and publicly announced through his deputy who cried said sale, that the said farm was sold by virtue of an execution in favor of said complainants, and was to be sold subject to all prior encumbrances.

That your petitioner and very many of the bidders present, if not all of them, supposed and believed that the said farm was offered for sale subject to a certain encumbrance held by Edward Black, executor of the last will and testament of John Black, deceased, which encumbrance was prior to the encumbrance of the said complainants, and upon which there was then due the sum of five thousand dollars, or about that sum. That your petitioner and several of the persons interested and bidders then present, made calculations upon the amount of the bids upon the basis of the sale being made subject to the said prior encumbrance of said Black, but your petitioner has since said sale been informed by said sheriff and believes that the encumbrances of said Black was by said writ ordered to be made out of the mortgaged premises.

That when the bidding reached the sum of eleven hundred dollars, said Bullock and said sheriff had some conversation; whereupon said Bullock bid the sum of four thousand dollars, that then several bids followed, and the said sheriff after receiving a bid from said Anthony Bullock of five thousand one hundred dollars, struck off said farm to him as the highest bidder therefor, and that your petitioner is informed and believes that said Anthony Bullock then signed the written conditions of sale, which conditions provided among other things that a deed for the said farm would be delivered by

said sheriff to him on the twenty-seventh day of April, instant, at the office of said sheriff in Freehold.

And your petitioner shows that the said farm is a valuable one and worth at least thirty thousand dollars; that the dwelling house is of brick and is large and spacious, being about fifty feet front by thirty-three deep, besides the kitchen extension, and fitted up with modern conveniences, and is worth at least twelve thousand dollars; that the out-buildings are large and commodious and in fair order of preservation and are suitable for a large farm, and are well worth four thousand dollars, and that the land is good and well fenced; the paling fences with locust posts and cedar and hard pine railings, and is worth at least one hundred dollars an acre. 10

And your petitioner further shows that the said farm is subject to the following legacies contained in the will of his father, Robert Woodward, deceased :

Item. I give and bequeath unto my daughter, Emily Woodward, the sum of ten thousand dollars, to be paid in the following manner, that is to say, the interest of five thousand of the said sum to be paid to her yearly and every year, during the natural life of her mother; but in case my said daughter marries, I order one thousand dollars of the principal to be paid to her, and the interest of four thousand only annually during the natural life of her mother, but upon the decease of her mother I order that the interest of ten thousand dollars, or so much of the principal as remains unpaid, be paid to her yearly and every year, during her natural life. And in case of her death, she leaving lawful issue, after the death of her mother, I do order said ten thousand dollars, or so much of it as remains unpaid, to be paid to her heir or heirs in equal proportions, share and share alike; but in case of the death of my said daughter, leaving no lawful issue, I order then that said legacy, or so much of it as remains unpaid, to revert back to my estate, and my residuary legatees be forever exempt from paying the same. 20 30

Item. I give and bequeath unto my granddaughter, Mary B. Woodward, daughter of my son, Joseph Woodward, deceased, the sum of four thousand dollars, to be paid to her in the following manner, that is to say, when she arrives at the age of eighteen years, she shall receive the interest yearly 40

and every year, during her natural life, on said legacy, but in case of her decease, leaving lawful issue, I order the said four thousand dollars to be paid to her heirs in equal proportions, share and share alike; but in case of her death, leaving no lawful issue, I order then that the said legacy revert back to my estate, and my residuary legatees be forever exempt from paying the same.

That said testator then by the same will devised to Edward B. Woodward, a certain farm known as the Lippincott farm, 10 adjoining the said farm devised to your petitioner, and containing about two hundred acres of land, and did then order and direct your petitioner and said Edward B. Woodward to pay, and did expressly charge and bind the said farms and real estate so as aforesaid devised to them respectively, with the payment of the above mentioned legacies.

That said testator left no other real estate except some out-lands of little value, not exceeding two thousand dollars; and that the personal property of said testator did not exceed his debts; and made your petitioner and said Edward B. Wood- 20 ward his only residuary legatees.

Your petitioner further shows that it has never been settled by agreement or otherwise, nor by the decree or judgment of any court, how much each devisee of lands under said will should contribute towards the payment of above named legacies, nor what proposition of the liens of the same are charge-able against the said farm of your petitioner. That no part of the principal of said legacies or either of them has been paid, and that all arrears of interest has been paid except two 30 year's interest on five thousand dollars thereof. That the said legatee, Emily Woodward, is and always has been a single woman, and unmarried, and is now of the age of fifty-three years and upwards.

That the said Mary B. Woodward is a minor, of the age of sixteen and upwards, and is not married.

And your petitioner respectfully insists that the said farm of your petitioner was sold at a great sacrifice, and that by the said mis-statements and mistake of the officer selling the same, and by reason of the misunderstanding caused thereby, 40 the highest bid was at least five thousand dollars short of the

price understood by your petitioner and the bidders present as being paid for the premises so sold.

That the amount of encumbrance chargeable and apporportionable upon and against your petitioner's said farm prior to the said mortgage encumbrance ought not to be left to uncertainty and doubt, but should be fixed and settled by the decree of this court.

Your petitioner respectfully prays that the said sale made by the sheriff of Monmouth county, on the thirty-first day of March last, be set aside and declared null and void, and the 10 said sheriff restrained from executing or delivering to said complainant any deed for the said farm hereinbefore described as Lot No. 2, and that your petitioner may have such other and further relief as the nature and equity of the case may require.

And your petitioner will ever pray, &c.

W. H. VREDENBURGH,

Solicitor and of counsel with petitioner.

State of New Jersey, county of Monmouth, *ss.*

Robert Woodward, the within named petitioner, declaring 20 himself to be conscientiously scrupulous of taking an oath, and being duly affirmed, affirms and says—that the matters and things above set forth, as far as they relate to his own acts, are true, and as far as they relate to the acts of others, he believes them to be true.

ROBERT WOODWARD.

Subscribed and affirmed before me, this 11th day of April,
A. D. 1874.

E. W. ARROWSMITH, *M. C.*

Depositions ex parte Complainants.

[Filed May 4, 1874.]

10 Examination of witnesses, &c., in a cause depending in the Court of Chancery, of the State of New Jersey, wherein Mary I. Bullock, Anthony Bullock, and George Sykes, executors of the late will and testament of William W. Bullock, deceased, are complainants, and Robert Woodward and Lydia B., his wife, and others are defendants, on petition of the said Robert Woodward, to set aside the sheriff's sale, &c., taken at the office of Philip S. Scovel, in the city of Bordentown, county of Burlington, and state aforesaid, on Monday, the twentieth day of April, in the year of our Lord one thousand eight hundred and seventy-four, before me, one of the masters and examiners of the said court, in the presence of G. S. Cannon, Esq., solicitor and of counsel for the said complainants, and Mahlon Hutchinson, Esq., as counsel for the petitioner, upon due notice given and service thereof acknowledged.

20 *Mrs. Mary I. Bullock*, of the city of New York, in the state of New York, a witness produced upon the part of the complainants, being duly sworn, saith—

I am now and have been for the last three weeks past on a visit to my son, Anthony Bullock, at Recklesstown; I am one of the executors under the will of my husband, William W. Bullock, deceased; I know Robert Woodward, the petitioner in this case; since I have been to my son's, Robert Woodward, the petitioner, has been out to see my son; it was on the tenth day of April, inst.; his brother Edward 30 came there with him; it was in the morning, between eight and nine o'clock; I was present at the conversation that took place there between my son Anthony and Robert Woodward; my daughter, Caroline B. Powers, was also present, and Edward Woodward; Robert Woodward, in that conversation, asked Anthony if he would give him a deed for the farm he now lives on, that is Robert lives on; Anthony re-

plied, could I give you a deed and would you consider it a good title; Robert said, well I would be willing to take it; Anthony said, then you acknowledge the sale; Robert said, I do not say so; Anthony also said, I understand you are opposing the sale; Robert said, that is false, I am not, and if you don't give me a deed I will break the sale; Anthony asked, how will you do that? Robert said, his friends had voluntarily offered to come forward and take their affidavits to swear to anything; what, Anthony said, swear to anything; Robert said, swear to anything to break the sale; Robert told Anthony he thought he, Anthony, was bidding for him at the sale, and that he told his friends so at the sale; Anthony said to that, "O, how do you think I was bidding for you when you would not speak to me or come near me;" and Robert said he was not going to run after Anthony; Anthony said, I thought you had got Gilbert Lawrie to bid for you and Barney Reybold; to this Robert said he did not want three or four bidding for him—he thought one was sufficient; Robert said he had objected to his sister holding a deed of trust, as she was only a woman, anyhow; he did not want three hundred dollars hanging on his head.

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Witness being cross-examined by Mr. Hutchinson, saith—

This whole conversation was at my son's house, where I was staying, at Recklesstown; I heard the whole of the conversation; I thought I could discover the object of the conversation; the object was to get a deed, and I suppose the sale would then be all right and fixed all right; no terms were offered by Robert at that time in case a deed was made, or any security whatever; Robert, in case he got a deed that day, was to hold the property, I suppose he thought it would be all good; he was not to pay a cent for the deed; he did not offer anything or any security; there was nothing said about it; he did in that conversation ask for a deed, and insisted upon it; there was nothing said about Robert paying anything for a deed; there was no effort made then between him and Robert to settle; he said he would break the sale if he did not give him a deed; that was the sum and substance of the conversation. (The whole of the evidence of this witness is objected

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to on the part of the petitioner, because it appears it was an effort on his part to compromise the difficulties between him and the said Anthony Bullock in relation to the sheriff's sale of farm No. 2.)

MARY I. BULLOCK.

Sworn and subscribed before me, April 20, 1874.

PHILIP S. SCOVEL, *M. C.*

Mrs. Caroline B. Powers, of the city and state of New York, a witness produced upon the part of the complainant,
 10 being duly sworn, saith—I reside at the Grand Central Hotel, in New York city; my husband is one of the proprietors of that hotel; I have been visiting my brother, Anthony Bullock, at Recklesstown, New Jersey, since the 8th of April, instant; I am still there; I remember that on Friday morning, the tenth of April last, that Robert Woodward came to my brother's house with his brother Edward; they came in the house; they were there about an hour, or a little over, probably; I was present with my mother at the conversation that took place there between my brother and
 20 Robert Woodward; Robert asked Anthony if he would not give him a deed for the homestead, or the farm he lived on; Anthony said then, would he be satisfied with the title or deed he would give; he then said he would take it; Anthony said, then, Robert, you acknowledge the sale, and he said, I did not say so; then Anthony said, I understand you are trying to oppose or break the sale, and he said, that is false—I am not opposing it; Robert said, if you do not give me the deed I will break the sale; Anthony asked him how he would break the sale, and he said his friends had offered their affidavits, or would voluntarily swear to anything; and Anthony
 30 said, what—swear to anything, and he said, anything to break the sale; that he thought Anthony was bidding for him at the sale, and he told his friends so then; Anthony seemed a little surprised, and told him that was strange, when he did not come to him to speak to him during the sale, or after; he said he was not going to run after him; Anthony said, I thought you was going to get Mr. Lawrie or Mr. Raybold to bid for you, and he said he did not want three or four to bid;

Robert asked Anthony if he would be satisfied with his claim—I presume he meant his mortgage and witness—and Anthony said yes, with his claim, expenses and trouble; Robert said, in this conversation, that he did not wish his sister to hold a deed of trust, as she was nothing but a lady, and he did not wish to have three hundred dollars hanging on him; Anthony then mentioned another encumbrance against him, and Robert said he had forgotten that; I think it was Emley's encumbrance; I am the daughter of Wm. W. Bullock, deceased.

Witness being cross-examined, saith—

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[No cross-examination was made.]

Counsel for defendants objects to the whole of the testimony of this witness for the same reason that he objected to Mrs. Mary J. Bullock's testimony.

CAROLINE B. POWERS.

Sworn and subscribed before me, April 20th, 1874.

PHILIP S. SCOVEL, *M. C.*

David V. Conover, Esq., of the town of Freehold, in the county of Monmouth, a witness produced on the part of the complainants, being duly sworn, saith—

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I am the deputy sheriff of the county of Monmouth, duly qualified, and also a licensed attorney of this state; I did expose for sale, after having duly advertised the same, the farm of Robert Woodward, at the suit of the complainants, in my county; this sale was advertised by handbills and in newspapers, &c., according to law, and the time for sale was the 31st day of March last; it was by virtue of an execution issued out of the Court of Chancery of New Jersey; I have that execution here with me. [Witness produces execution marked *Exhibit No. 1*, being an execution issued out of the Court of Chancery of New Jersey, at the suit of the executors of Wm. W. Bullock, deceased, complainants, and Robert Woodward and wife and others, defendants, tested January 27th, 1874, being produced, witness says]— This is the execution under which I advertised and sold the premises therein described; Mr. Edward B. Woodward, two or three weeks before the sale, came to Freehold and I got the paper with an advertisement

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in, as he requested, and gave it to him, as I had no slips printed in the office; he did not ask for the execution; he did not make any inquiry as to how I was directed to sell the property; Robert Woodward nor any one for him, did not come to me and inquire before the day of sale how I was to sell the property under this execution; Mr. Anthony Bullock came there the morning of the sale; the sale was advertised to take place at Richard Fleming's hotel; Mr. Bullock examined the execution; sale was to take place between the hours
10 of twelve and five o'clock. [*Exhibit No. 2*, being a printed advertisement of said sale, being shown to witness, he saith]— This is a copy of the advertisement which I printed in the paper and put up in different places; from the time I advertised the property up to the day of sale I had this execution in my office; I would have shown it to any person who would have called there to see or examine it; at the time of sale I made proclamation of the sale; I stated it was seized as the property of Robert Woodward and wife and others, and taken in execution at suit of Mary I. Bullock, Anthony Bullock and
20 George Sykes, executors of William W. Bullock, deceased; I then went on and read the description of the property and the conditions of the sale; I then stated the execution ordered the farms to be sold separately, and I then put up the small farm in an open and public manner, as ordered in the execution and went on cried the sale, and it was finally struck off to Anthony Bullock at \$1,700; I then set up the second tract or farm for sale as ordered in the execution; I went on and cried the sale for some time; there were
30 some bids; I announced I would wait five minutes for the gentlemen present to make up their minds, and I then went on again and cried the sale, and it was finally struck off to Anthony Bullock for \$5,100; this sale was conducted in the same way and in a fair and public manner as all our sales are conducted; Mr. Bullock then went over to the office, paid the twenty per cent. and signed the conditions of sale; I have the conditions of sale here. [*Exhibit No. 3*, being conditions of said sale, and produced by the witness, he says]— These are the conditions; I did not require security to be given by Mr. Bullock for the balance of the purchase money, as he was one
40 of the complainants and a responsible man; there was no

collusion nor secret understanding between Mr. Bullock and myself, either before or at the sale, that he should be the purchaser of the farms, or that they should be cried off to him; I gave every person at that sale a full opportunity of bidding for the premises; they could have examined the execution if they were so disposed; Mr. Bullock was not the only bidder for the last farm; there were several bidders for the farm No. 2; Ex-sheriff Samuel Conover was one of the bidders; he resides at Freehold; a gentleman they called Dr. Bean also bid; William W. Conover also, of Red Bank, was a bidder; I don't recollect any one else; Mr. Bullock was the highest bidder and it was knocked off to him; my impression is there was more than one bidder for the small farm; I don't recollect them. 10

Mr. Bullock was also the highest bidder for that; at the time I gave the premises up for sale—I mean farm No. 2—some inquiries were made about encumbrances against this farm, and legacies under a will of some person—whether there was not an encumbrance of that kind; I replied I knew nothing about any legacies or will, and I had nothing to do with it; that I was selling Robert Woodward's right in this property under the execution; I did not state then and there that I was selling this property subject to the encumbrance that Edward Black, executor of John Black, deceased, held thereon; no inquiry was made of me, I think, as to this encumbrance of Black's; no other person, that I know of, explained at that sale how the property was sold, or subject to what; I think the farm No. 2 was bid up to \$1400 and hung there, and then Sheriff Hendrickson, who is the sheriff of the county, told some parties that money would go to pay the decree of Black, as set forth in the execution; the reason why I am positive I did not state this farm was sold subject to Black's mortgage is, that I was directed in the execution to make the money for Black, under the decree; after this statement was made by Sheriff Hendrickson the bidding was resumed; the property went up, after several bids, up to \$5100; then Mr. Bullock was at my office at the morning of the sale—he examined and read the execution—I suppose for the purpose of understanding the nature and character of the sale; I should think there were seventy-five persons present at that sale, 40 20 30

among them were Robert and Edward B. Woodward; I think I heard the Woodward's stating something about the legacies before the sale; don't know whether Bullock did or not.

Witness, being cross-examined, saith—

I first saw Anthony Bullock on the morning of the sale, when he came into the office alone, half past eleven o'clock; I had no interview with him in regard to the sale; he might have asked some questions; I sold the first tract first; it contained ninety-two acres and some hundredths, I saw by the
10 execution; Anthony Bullock bought it; I think there were other bidders, but I don't recollect; I think perhaps five or ten minutes' interval occurred between the sale of the two properties; there were no more inquiries than usual, made in reference to encumbrances, than in other sales; my impression is that Mr. Edward Woodward was the first man that asked or made inquiries as to some legacies or will; I think Mr. Bullock made the first bid on farm No. 2; I don't recollect what he started it at; the sale stopped at \$1400; I don't
20 recollect whose bid it was, whether Dr. Bean's or Bullock's, but my impression is it was Dr. Bean's; we then took a recess of five minutes so that they might confer and make up their minds; during this minutes Mr. Bullock and myself had no conversation about the sale; I was standing behind the counter, talking with Mr. Wm. W. Conover; I held the execution in my hands during the whole sale; this Mr. Wm. W. Conover lives at Red Bank; Wm. H. Conover formerly lived at Marlborough, and now lives at Freehold; he is a farmer; after we renewed the sale, Anthony Bullock made the first bid, at \$4000; I think—I don't know whether it was Wm.
30 W. Conover or Samuel Conover that made the next bid—it was one or the other; I don't recollect amount of the next bid; they were hundred dollar bids or two hundred, and don't recollect; Mr. Wm. W. Conover made the last bid before Bullock's on the farm No. 2; I suppose the bid was \$5000, but I don't recollect; I can't say why Sheriff Hendrickson made the remark that \$1400 went on the Black mortgage; I had charge of the sale; Sheriff Hendrickson was there; I suppose some one asked him at the sale; I told them I did not know anything about those liens—all the sheriff could sell

was the right of a party in the property; the sheriff of the county has more to do with the sale than I have when he is present, as I then only cry the sale; when he is present I always consult him before striking off the property, and did so in this instance, and asked him about striking it off; the sheriff told me to strike it off, as the bidding had stopped; I told those present, "gentlemen, fair warning, if there is no advance I will strike it off," and did so.

D. V. CONOVER.

Sworn and subscribed before me, April 20th, 1874. 10

PHILIP S. SCOVEL, *M. C.*

William W. Conover, of Red Bank, in the county of Monmouth, and State of New Jersey, a witness produced upon the part of the complainants, being duly sworn, saith—

I live at Red Bank, in Monmouth county; I buy land, notes and mortgages, and am engaged in buying real estate and selling the same; I was at Freehold on the 31st day of March last, at the sale of Robert Woodward's farms by the sheriff; I was a bidder at that sale for farm No. 2, of one hundred and sixty acre tract; my highest bid for the same was \$5,050; Mr. Bullock bid higher after that; \$5,100, and it was cried off to him at that bid; there must have been from seventy-five to one hundred people there; the bar-room was full; the deputy sheriff, David V. Conover, and Samuel T. Hendrickson, the sheriff, were both present; I heard the conditions of the sale read; I understood the one hundred and sixty acres was sold subject to a legacy of about \$7,000; I obtained this information that it was so sold from Sheriff Hendrickson; I bid for the property with that understanding, and I declined advancing my bid beyond \$5,050; Sheriff Hendrickson said at the sale the property was not sold subject to any mortgage held by Edward Black; the sheriff stated this openly; I have attended sheriff's sales frequently in this county of Monmouth; I never saw a fairer sale conducted than this was; I had no particular knowledge of this farm, except they told me it was a good one, and I thought it was in a good neighborhood; I bid, I think, about eleven times; I run from \$4,000 to \$5,050; I was bidding for myself and on

my own account, and for no one else; I am not related to the deputy sheriff in any way that I know of.

Witness being cross-examined, saith—

I was there during the whole of the sheriff's sale; I did not bid at the property before the interval of five minutes given by the sheriff for the gentlemen to make up their minds; after the sale was resumed Mr. Bullock made the first bid, and then I bid up to \$5,050; it was while thus bidding at the sale that Sheriff Hendrickson spoke about Black's mortgage; I saw the statement that the sheriff had when they were making it out in the office; the statement and conditions; it was after the adjournment of five minutes that the sheriff said the property was not sold subject to the Black mortgage, as some one said it was sold subject to the Black mortgage; he said it was not; after this the sale was continued; I stopped bidding because I thought I was giving pretty near what it was worth, and for no other reason; I had no conversation with Anthony Bullock, and never spoke to him until to-day; he had no conversation with me, nor did he speak to me in any way; he did not ask me to stop bidding, nor have I spoken to him until to-day; at the time I saw this statement and the execution in the sheriff's office, there were others there; Mr. Bullock was there; Sheriff Conover or some one told me it was Mr. Bullock; they went in the back room and called the sheriff in there; I had never seen this property; I relied upon its value from other parties' statements; no more talk or inquiries than at other sales of property; there is always somebody that don't understand these sales; I have stated to you all I know about this sale.

30 Re-examined-in-chief.

This statement that was shown to me by the sheriff in his office was in writing; it was in the handwriting of Deputy Sheriff Conover's handwriting; [*Exhibit No. 4* being shown witness, being a statement of the amount of liens on said property according to the execution, he says]—this is the statement that was there shown to me; I believe it is in the deputy sheriff's handwriting.

Being re-cross-examined, saith—

I have never seen that statement until to-day, since I saw it in the sheriff's office.

Being re-examined saith—

It has always been customary with the present sheriff of Monmouth county, with all his sales to make out a statement of the encumbrances on claims like this.

WILLIAM W. CONOVER.

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Sworn and subscribed before me, April 20th, 1874.

PHILIP S. SCOVEL, *M. C.*

Anthony Bullock, of Recklesstown, New Jersey, a witness produced upon the part of the complainants, being duly sworn, saith—

I am one of the complainants in this case in chancery, and one of the executors of my father, Wm. W. Bullock, deceased; I attended the sale on the 31st day of March last, of Robert Woodward's property, at Freehold, New Jersey; several days before the sale took place I went to see Mr. Garrit S. Cannon about the liens and encumbrances on Robert Woodward's property, and he gave me a statement of the same; of the liens and encumbrances; I also called to see Mr. Cannon on the morning of the sale, and also got an explanation from him of the former statement, and soon as I arrived at Freehold, on the day of sale, I went into the sheriff's office to see the execution, and I examined it that I might know how to bid during the sale; I explained the matter to the sheriff, and he told me I was right; it was Sheriff Hendrickson; the deputy was also present; and I told him and asked him if I was not right; what I bid on the small property, that is lot No. 1, would be over and above the Cox mortgage, and he said (he had the execution in his hands at the time) that there was no Cox mortgage mentioned; I told him no, that Cox was not a party to the suit, and then I just merely said the property would be sold subject to the Cox mortgage; as to lot No. 2, he, the sheriff, said he did not know anything about the will; I looked over and examined the statement and condition

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which the sheriff had there, and I attended the sheriff's sale at Fleming's Hotel, in company with Dr. Bean; those conditions which I saw were read at the sale by the deputy sheriff, Mr. Conover; lot No. 1 was first put up for sale; the execution was read and explained by the deputy sheriff; I bid and purchased lot No. 1; other persons bid for it; Dr. Bean was, to the best of my information, the principal opponent in bidding against me; I was the highest bidder, and it was struck off to me for seventeen hundred dollars; in a few minutes lot

10 No. 2 was set up for sale, and they asked the sheriff (some person, I think Samuel Conover,) what were the liens against the property, and the deputy sheriff threw up his hand and said that is none of my business; I understood him to say he was selling Robert Woodward's right in it, and that he had nothing to do with the will; the bidding then commenced and I was the first bidder, and several bids were given to the sum of fourteen hundred dollars; when Mr. Conover, deputy sheriff, gave the bidders, or those who wished to bid, five minutes to consult, and at the end of that time set the

20 property up again for sale, and I bid four thousand dollars, the property was run up to fifty-one hundred dollars, and that being my bid, it was struck off to me; I did not at that sale hear the sheriff or deputy sheriff say they were selling tract No. 2, subject to the Black mortgage; I made no statement, nor did I hear any one else make any statement or mention the Black mortgage, except what Sheriff Hendrickson stated; he said the fourteen hundred dollars went to pay Black on the execution; after he made this statement, the bidding was renewed and went up to fifty-one hundred dollars; Mr. Conover

30 then said in a moment or two, come over and sign the conditions, and I went over with him and signed the conditions, and signed a note for the twenty per cent. of the purchase money; the sale was made and conducted openly and fairly, and I did all I could to make it bring the most, as I did not want to buy the property; I tried to make my claim; after the sale Robert Woodward came to see me at my house, in this county, on the tenth of April, between eight and nine o'clock in the morning; it was Friday; his brother Edward was with him; my mother and sister, from New York, were

40 there and present during all the conversation, except a very

short time when I went with them out to the carriage as they went away; the conversation turned principally upon his wanting a deed from me for lot No. 2; he asked me to give him a deed for property No. 2, which is the homestead farm where he resided; I asked him how I could give him a deed if he did not consider the sale legal; he said he did not say it was not; he did not acknowledge that; I asked him if a deed from me would be a good and sufficient title for the property; he said he would take it; I said, why, Robert, you are acknowledging the sale; he said, well, I don't say so; he said if I did not give him the deed he would break the sale; I asked him how he would do that; he said his friends, mentioning three names, John Meirs, Oliver Emley, and I can't say whether the other was Gilbert Lawrie or Dr. Bean, it was one or the other; they would come forward voluntarily and offered to give their affidavits to swear to anything; I said, what, Robert, swear to anything; and he said, anything to break the sale; said he, I thought you were bidding for me, anyway; said he told them so at the sale; and I said, Robert, why did you think I was bidding for you—you would not have anything to do with me on the day of the sale—I took a seat by you and asked you to take something to drink, and you refused; said he, I was not going to run after you; then I spoke to him about a deed I wanted to give to his sister, Emily I think, it was a deed of trust; I referred to a conversation we had before the sale; he said he was not going to let his sister have a deed of trust—that she was nothing but a woman, and he was not going to bother with it; I asked him if he was not opposing the sale, and he said he was not; I told him I had heard he was, and he told me he was not; at this conversation he did not say anything about wanting to compromise the matter; there was no compromise about it; I did not then know that he was going to make any objection to the sale, except through hearsay, and from what he said I did not think he was going to; nothing at this occasion was said by him or me with a view to compromise; there was nothing between us to compromise if he did not oppose the sale; I went with him out to the carriage; there was nothing then said about the matter; my conversation was then principally with Mr. Edward Woodward about joining teams and going to the

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cranberry bogs; I had not made any agreement with Robert Woodward, previous to the sale, to make any bid on the property for him, or to buy it for him; we had had some conversation in regard thereto, but it was in regard to the deed of trust; I made this proposition to him, that I would pay a certain price, and a reasonable price for his homestead farm No. 2, and give his sister Emily the the deed of trust for it, she to sign the bond and mortgage to me, as she having an interest in the farm, would give me better security; he seemed to take
10 offence at it in making the deed to her and not him, and said she should not have the deed of trust; that he would not have the property out of his own name; that he only owed three hundred dollars in the world, except a claim held by Dr. Geo. Goodell and wife; that his brother Edward was good for that, and that he could soon wipe the three hundred dollars out, that being all he owed, and that he would keep his property in his own name.

I says, Robert, you don't owe William C. Emley about \$1,600, and he said I had forgotten that; I told him he could
20 not deceive me, that I would not give him a deed without good security, and he says I have got my brother Edward's note for two thousand dollars, how will that suit you? I told him not at all without good endorsers, and I mentioned the names of George Wilds and Nathaniel Rue, and he said he would think about that; this was all that occurred; he came to my house before this conversation, at my suggestion; I then spoke about giving his sister, Emily, a deed of trust; I told him I would attend the sale, and would bid the property up
30 to a reasonable price, but not a fancy price, and if I got it, would give his sister a deed of trust; he sat there awhile studying and said sometimes people slip up on one another; I became a little offended at that, and told him so when I was doing people a kindness; I then asked him who he could trust, and he said George Wilds and Nathaniel Rue; I told him to go and get them then, and he said he did not intend to make me offended; I told him I didn't like the manner in which he spoke, and he said he would go and see them; he said he would not trust me with it, as I would slip up on him; he never came with these gentlemen to see me; this was all that
40 occurred between him and me in reference to my buying the

farm; I never had any agreement or understanding with him to bid for him at the sale; when he came there on Friday, the 10th of April, after the sale, he made no proposition to reimburse me, but demanded the deed without saying how he would pay me; this homestead farm No. 2, has decreased in value for the last three years, in two ways—first, as the general depreciation in the value of land; and secondly, general neglect of the property to keep it in repair; the farm is broken, hilly land, and subject to washings and gullyings; the mansion-house is in a good state of repair; it is built of brick and is two stories high, and I judge is about 44 to 46 feet front, by 30 or 32 feet deep, independent of the kitchen; the kitchen is also of brick, and I think is two stories high; the out buildings are in a dilapidated condition, except, perhaps the wagon house and ice house, they are frame buildings; the general fencing of the farm is very much out of repair; I can't say as to the condition of the soil; I did not at this sale realize the whole amount of the claim that was due to me as one of the executors of my father; the deficiency was about forty-four or forty-five hundred dollars at the sale of the two farms.

Witness being cross-examined, saith—

I was fully posted as to my rights before the sale of the property was made; I did not to my knowledge tell any one before or at the sale I was going to buy the property for Robert, only as to the deed of trust, and I did not positively say I was going to buy it, that is if I could make arrangements; I don't think I made any mention to that effect to any one; I did not hear him speak of it that day before the sale; I did not hear any of the persons present at the sale speak of it; I did not expect Robert on the day of the sale to see me in particular or say anything particular about it; John Meirs had asked me, I think, if Robert had said anything to me about it—I told him no; I saw William W. Conover bidding for the property; I did not know him then or his name, and have never spoken to him before, until to-day when he was sworn here as a witness; I did not go to Mr. Conover—Wm. H.—on the day of sale, and say, if you will stop bidding against me I will buy it and share the profits with you when I sell it again; I did not say it to any one else on that day.

After thirty-five minutes adjournment and before the sale commenced again I had no conversation with Sheriff Hendrickson, or any one else about it; I don't recollect of any one asking me during the progress of the sale how the property was to be sold; I moved off to the far end of the bar-room during the sale; Dr. Bean made one bid, he acknowledged at least he did; there was a party in league opposed to me at the end of the bar, at the door when the sale commenced; I left them and went to the other end in front of the bar, as I

10 was afraid that there might be some dispute as to whose bid it was, so to make the thing positive I went off by myself, so I would know my bids and who were bidding; those persons opposed to me were Dr. Bean, Oliver Emley and Samuel Conover, ex-sheriff, at Freehold; I never saw Samuel Conover before that day, to my knowledge, and never spoke to him until a week after the sale; I have made a conditional contract of sale for this property since I bought, with James M. Bean; the contract is in writing, and is held by George Sykes, who drew it; it was left by both parties in his hands; it was

20 about twelve o'clock the next night after I purchased farm No. 2 that this contract was signed and executed; I have not received any deed for this property yet; the deed is to be delivered on the 27th of this month of April, 1874; Robert Woodward lives on the farm and has it in his possession; if I had not contracted with Dr. Bean for the sale of the property, I would not have given Woodward the deed for the property when he called on the 10th of April, last, when he came to my house; Woodward did not offer any terms for the deed nor say how he would secure it, or anything of the kind; Dr.

30 James Bean came to me before the farm was sold at sheriff's sale, to see what liens there were on the property, so he might know how to bid; I gave him the liens as they were on the decree or execution, and instructed him verbally how to bid; this was the day before the sale.

I gave him the liens as Mr. Cannon gave them to me, and I also told him the amount of the Cox mortgage, and I put them all down as he requested me, and summed them all up as he directed me; I cautioned him verbally that on this small farm what he bid for the said farm would be on top of

the Cox mortgage, which was about \$5,000 principal, with about three year's interest; I charged him that on the large farm, No. 2, of one hundred and sixty acres, that he would bid on top of the legacies or liens in the will, and he asked me what was the value of those legacies—what they amounted to; I told him as near as I could it was \$7,450; he says to me—do you know how much back interest there is due to Emley on these legacies; I told him as near as I could that Emley told me there was \$100 for last year due, and which added to this year, made \$450, and that Robert Woodward said the 10 same thing; he asked me if I would take an affidavit of this as to the \$450, and I told him I would; Oliver Emley did not speak to me anything about this,

Being re-examined-in-chief, saith—

I found the statement that Mr. Cannon gave me corresponded with the statement on the execution in the sheriff's hands; I took particular pains to find out the liens and encumbrances upon this property, and to which it was sold subject; the principal and interest; I went to Robert Woodward and Emily Woodward to find out, and at your request, and 20 put it down as they told me; I gave this information freely to any one that asked me; I did not conceal it; while the property was selling I stepped back into the crowd and told them (the bid being then \$4,600) that it was then crying really at \$12,100 with the legacies; I had a paper in my hand and kept the amount of the bidding; I told them I thought it was worth a little more money; there was then some more bidding, and it was finally struck off to me for \$5,100; when I made the bid of \$5,100, I added \$7,500 to it, and \$40 for sheriff's fees, and \$170 for expenses, and found it came to 30 about \$12,750, and I made up my mind to bid no more for it.

ANTHONY BULLOCK.

Sworn and subscribed before me, April 20th, 1874.

PHILIP S. SCOVEL, *M. C.*

Emanuel Hodson, of New Hanover township, Burlington county, New Jersey, a witness produced on the part of the complainants, being duly sworn, saith—

I am an auctioneer, and in the habit of selling real estate in the county of Burlington; I know the homestead farm where Robert Woodward now lives; it is a pretty hilly and broken land; I don't know what condition it is in now; I suppose from what I see of it, it is in no better condition than it ought to be; real estate has depreciated in the last few years and gone back quite a good bit; I should think if that farm brought \$85 dollars per acre at sheriff's sale, it would be a big price at this time, the way things are.

10 Witness being cross-examined, saith—

I had a sale of a farm in that neighborhood only a few months ago; I did not sell it; I put it up; it was Daniel Waln's; it did not sell; it did not bring any price; I had no bid; I have tried farms that did bring a big price, and now they would not bring over two-thirds what they did formerly; I tried Tilton Woodward's farm a few years ago, and it was bid up to \$122.50, and I now think from what they tell me it can be bought for \$85 per acre; I know nothing about it except what the owners tell me; Tilton Woodward is, I suppose, the owner of the farm; Tilton Woodward has a certain portion of this farm during his lifetime; he was the man, of course, who told me; Tilton told me he did not suppose I could get it up to \$85 per acre; I think Tilton Woodward's farm is equally as good as Robert Woodward's farm; I don't think David C. Hall's is quite as good; my business is a wheelwright by occupation.

EMANUEL HODSON.

Sworn and subscribed before me, April 20th, 1874.

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PHILIP S. SCOVEL, *M. C.*

John Carter, of Chesterfield township, Burlington county, a witness produced upon the part of the complainants, being duly sworn, saith—

I have been a farmer all the days of my life; I know the farm that Woodward lives on, and have known it for fifty years; I have never lived on it, but have worked on it for my son, when he lived on it; my son lived on it four years, I think; it is heavy land; I should say, at sheriff's sale, these

times, that seventy-five dollars per acre would be a fair price for it in selling for cash.

Witness being cross-examined, saith—

Some part of the farm produces pretty good crops; it has not had much help lately; it has been nearly a year since I was on it—some time last summer; the improvements are are nothing to brag of; the house is a very good one; I don't know what it cost; it is a large house—brick; Robert's father had it built.

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JOHN X CARTER.

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Sworn and subscribed before me, April 20th, A. D. 1874.

PHILIP S. SCOVIL, *M. C.*

Higbee Pullen, of Upper Freehold township, Monmouth county, New Jersey, a witness produced upon the part of the complainants, being duly sworn, saith—

I know the farm upon which Robert Woodward now lives; I have lived there for eight years, as tenant of Mr. Woodward; it was seven years ago, this spring, since I left; I am about three miles now from it; it is pretty hilly land, a part of it; most of the farm is tillable land—not much woodland, perhaps ten or a dozen acres; I paid \$1200 per year rent for both farms, when I lived there during the first three years, and the taxes; I found that a big rent in those times; I got it for five years after that for \$1000 and the taxes—that is, I got both farms; I have been on the farm a good deal; the farm is worked down some; it is not as good a farm as it was when I lived there; when I heard of this sale going to take place, I said eighty dollars per acre was as much as it would bring at sheriff's sale, and that was my judgment.

Witness being cross-examined, saith—

I have not been at the farm since I cut my harvest, seven years ago this coming harvest—only in passing the road; I raised pretty good crops when I was there, and saved a little money.

HIGBEE PULLEN.

Sworn and subscribed before me, April 20th, A. D. 1874.

PHILIP S. SCOVEL, *M. C.*

Joseph Carter, a witness produced upon the part of the complainants, from New Hanover township, Burlington county, being duly sworn, saith—

I know the farm of Robert Woodward; I lived on both places for four years; I left there three years ago this spring; the land is very rough, hilly and marshy land; the farm, I think, has gone down since I left there; I should think eighty
10 dollars per acre a rousing price for it in these times, at sheriff's sale, sold for cash.

Witness being cross-examined, saith—

I worked the farm on half shares when I was there; I can't tell exactly now what my share amounted to.

JOSEPH CARTER.

Sworn and subscribed before me, April 20th, A. D. 1874.

PHILIP S. SCOVEL, *M. C.*

Israel J. Woodward, of Upper Freehold township, Monmouth county, New Jersey, a witness produced upon the part
20 of the complainants, alleging himself conscientiously scrupulous of taking an oath, and being duly affirmed, saith—

I know the farm on which Robert Woodward now lives; I should suppose one-third of it nice, level land, and one-third of it hilly land; the garden part is hilly and somewhat broken, and the northern part is quite hilly and broken; I can't say that I have thought it had depreciated in value; I speak as to the land, not as to the price; in value, as all other land, it has depreciated in the last few years; I have been a farmer; I live within about one mile and a half of this farm, and have
30 known it this fifty years; I should think at a forced sale, for cash, it would not bring over seventy-five dollars.

Witness being cross-examined, saith—

I gave one hundred and fifty-four dollars per acre where I live, and will now take one hundred dollars per acre; the mansion house on this farm of Robert Woodward's is large

and good; I have heard it estimated that it would cost some six or seven thousand dollars to build it; it is well built and in good condition; the fencing around the house is good; cedar railing; I can't say about that, but I think there are locust posts; the out-buildings are pretty fair and suitable for such a place; I think any quantity of marl could be dug on the place, and it is considered first rate quality, and as good as I know of.

ISRAEL J. WOODWARD.

Sworn and subscribed before me, April 20th, 1874.

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PHILIP S. SCOVEL, *M. C.*

Depositions of Defendants.

[Filed May 19, 1874.]

Examination of witnesses, &c., in a cause depending in the Court of Chancery of the state of New Jersey, wherein Mary I. Bullock, Anthony Bullock, and George Sykes, executors of William W. Bullock, deceased, are complainants, and Robert Woodward and wife, and others, are defendants; taken at the office of the subscriber, at Freehold, New Jersey, on Friday, the twenty-fourth day of April, 1874, before 20 Chillian Robbins, one of the masters and examiners of said court, in the presence of Charles Haight, solicitor and of counsel for said complainants, and William H. Vredenburg, solicitor and of counsel for said defendants, upon due notice properly acknowledged.

C. ROBBINS,

Examiner in Chancery.

April 24th, 1874.

Oliver H. P. Emley, a witness produced on the part of the defendants being duly sworn, deposeseth and saith—

I reside in Burlington county, near Jacobstown; I have re- 30

sided there nearly sixty years ; I own some real and personal property there ; am quite a considerable owner of real and personal property there ; I am a master in chancery, now ; I have been judge of the Burlington county Court of Common Pleas—was, for five years, judge ; I know tract No. 2 of the farm of Robert Woodward, which his father left him ; I know Anthony Bullock and Robert Woodward, the parties to this suit, very well ; I attended the sheriff's sale when this property was sold ; I came here on the cars from Cookstown, and spent the day
 10 here in Freehold, where the sale was held ; I was present at the selling part of both tracts ; curiosity led me to go to the hotel where the sale was held ; I came down on other business ; I was present when tract No. 2 was put up for sale ; I stood within four feet of the bar ; he stood behind it—the deputy sheriff, who cried the sale ; I stood within ten feet of him, I suppose ; he said, I now offer for sale the homestead farm, or tract No. 2 ; I sell it by virtue of an execution in favor of Mary I. Bullock, Anthony Bullock, and George Sykes, executors of William W. Bullock, deceased, subject to all prior encum-
 20 brances ; he sold the interest of Robert Woodward and his wife ; before being asked the question, what the prior encumbrances were, he said he did not know ; he sold Robert Woodward's right by virtue of the execution in favor of the parties named ; I know of the existence of the Black mortgage, as it is called.

Quest. How did you know of this Black mortgage? [Objected to.]

Ans. Robert Woodward told me that there was such a mortgage. [Objected to.]

Quest. State when and what he told you, and the statements
 30 that he made about that mortgage? [Objected to.]

Ans. About the 1st of October, 1872, Robert Woodward gave me a statement of his indebtedness to different persons, and among his indebtedness was this of E. Black's, for \$4500, and that it had priority over William Bullock's mortgage ; after No. 2 was put up, there was bidding upon it ; it got up from \$1100 to \$1400, as I understood ; it was then adjourned for five minutes ; then Anthony Bullock bid \$4000, the first bid after ; it was set up again, and other bids carried it up a little over \$5000, and then it was cried off to Anthony Bullock ;

it was from fifteen to thirty minutes from the time that No. 2 was put up till it was cried off.

Quest. At and during the bidding, and until after the property was struck off, what did you understand was it sold subject to? [Objected to.]

Ans. My understanding was that it was sold subject to the claim of Emily Woodward, Mary Woodward and E. Black's mortgage; after I went up to the depot to start home, was when I first discovered it was not sold, and that execution embraced Black's claim. [Answer objected to as hearsay.] I have been 10 on Robert Woodward's farm; have seen it riding the road; I have never been all over it; I have been at the house; I do not know what the house is worth; I would suppose it would cost \$10,000 to build such a house now; it is an excellent house; there are few in the county equal to it; I cannot tell what the out-buildings are worth; my attention has never been specially drawn to them; as tract No. 2 now stands, I think it could be sold for \$16,000 or \$17,000, and it is worth that to anybody who wants it; I did not notice during the interval of adjournment of five minutes, any conversation between Mr. Bullock and 20 Sheriff Hendrickson; I do not know Sheriff Hendrickson; I did not notice Mr. Bullock what he did during the five minutes adjournment.

And being cross-examined, says—

I did not come here to attend the sale and did not attend it as a purchaser; I did not want to buy; I took no personal interest in it; I was not there when the execution was read by the sheriff, and did not hear the conditions of sale read; just as I stepped in the house, the sheriff was giving a discription of what we call the Francis Burtis Farm, No. 1; he held papers 30 in his hand, but he did not read the description from his papers while I was there; I did not hear him make any mention of a will; the will was talked about while I was there; I heard questions asked him about the encumbrances in general; I do not recollect his making any mention of the will: I do not recollect him making mention of the Black mortgage; when I speak of the sheriff, I refer to the deputy sheriff, Mr. Conover; I heard the testimony of Mr. Conover, at Bordentown.

Quest. Did you not state after that, that he gave a truthful statement of what occurred at the time of the sale? [Objected to because no person is mentioned to whom such statements are claimed to be made.]

Ans. I said then and say now, that his statements were nearly in accordance with my recollection—not exactly; I told Mr. Anthony Bullock nothing on the day at Bordentown; I had a talk with him at Jamesburgh, this morning, and I told him his (Mr. Conover's) statement made under oath at Bordentown,
 10 was pretty near, according to my recollection; I do not remember that I said “not exactly,” this morning; on my return from Bordentown, I saw Josiah Shinn, who keeps the toll-gate on the road from Bordentown to Recklesstown, on the day the evidence was taken; he inquired how they were getting along with it; I told him slowly, they had examined three witnesses; I said to Josiah Shinn then, that the deputy sheriff's statement made at Bordentown, was pretty nearly in accordance with my recollection of the statement he made at the sale; I have had
 20 conversations with another party with reference to the value of this farm; that person was Dr. Bean; he told me he paid or was to pay Anthony Bullock \$14,750 for tract No. 2; I did not state to him that he had paid too much for it; I may have spoken to some one else, but I have no recollection of it; I never have had any conversation as to value of it, with Isaac Woodward or with any one in his presence; I have not seen him to talk to him in six months; I did not state to him in the presence of others, that the value of this farm was \$60 per acre.

And being re-examined, says—

I did not understand how much Dr. Bean was to give Mr.
 30 Bullock for his bargain; the interest I took in the sale was this, Dr. Bean was bidding on it; I told him I understood that he would have to pay the Black claim and the legacies, too; Dr. went and asked the crier what the prior encumbrances were; it was then he said a second time, that he was selling it by virtue of the execution before named; he did not tell him anything about the encumbrances; said he did not know; he said he sold subject to all prior encumbrances, and placed emphasis on the

word "all;" I do not know that any execution was read at all; it was not read in my presence.

And being again cross-examined, says—

I never examined the execution, and did not try to find out from it how it was to be sold.

OLIVER H. P. EMLEY.

Sworn and subscribed before me, April 24th, 1874.

C. ROBBINS,

Examiner in Chancery.

James M. Bean, a witness produced on the part of the defend- 10
ants, being duly sworn, deposeseth and saith—

I am a practicing physician at Jacobstown, New Jersey; have been practicing in that place for about nineteen years; this place is about two and a-half miles from Robert Woodward's place; I am well acquainted with the parties in this case; I never was on tract No. 2 but once and that was yesterday, except once at the house; I am not very well acquainted with it; it joins up to our public road and another public road runs through it; I have passed riding through his farm hundreds of times; I remember the sale of this property; I attended the 20
sale; I came down in the cars, in the morning, and went back in the afternoon; I attended the sale as a purchaser; I had had information as to the encumbrances on tract No. 2; Mr. Anthony Bullock had given them to me on several occasions before the sale; I knew of the existence of the Black mortgage; Mr. Bullock told me of it; it was a prior encumbrance to Mr. Bullock's mortgage; I was at the place of sale when the property was first put up; we were in the bar-room at the hotel, at time of sale; the deputy sheriff sold tract No. 1; he then put up tract No. 2; he said he was selling tract No. 2; it was taken 30
in execution at the suit of the executors of William W. Bullock, deceased; then he named the executors, and said he sold subject to all prior encumbrances; these were the words he used, to the best of my knowledge, as I understood it; I was a little surprised, as I had asked Anthony Bullock a number of times before the sale, and he had said it would be sold, subject to the en-

cumbrances of the will ; and being a little excited on the bidding for the other farm, which I bid on, I asked the deputy sheriff, at the time he put up tract No. 2, what the encumbrances were on the property ; he told me he did not know ; and I supposed from his statement, that he included the Black mortgage, and I bid accordingly.

Quest. Did you understand or not, at and during the time the bidding was going on and until the property was struck off, that it was being sold by the sheriff subject to the Black mortgage? [Objected to as too leading.]

Quest. What was your understanding about the sale? [Objected to.]

Ans. I understood that it was sold subject to the Black mortgage.

Quest. Did you or not act upon that understanding on your bidding?

Ans. I bid with that understanding, of course, thinking that that mortgage would have to be paid by the purchaser of the farm.

20 *Quest.* If you had known that the purchaser would not have been compelled to pay the Black mortgage, in addition to the bid, would you have bid more for the property? [Objected to.]

Ans. Certainly, I would ; I should have bid it up to near what I am to pay Mr. Bullock for it ; I would as lieve pay one as the other for it ; I give Mr. Bullock for it, \$14,750, including the legacies to remain on the property—\$5000 as Emily Woodward's, and \$2000 for the niece, Mary Woodward—making \$7000 to remain on the place as legacies ; then the Black mortgage is to remain this year, and the balance goes to 30 Mr. Bullock ; it comes to about \$2000 advance on Mr. Bullock's bid, that I give him, as I understood it ; at the sale, I did not intend to bid the property up to \$100 per acre ; it cost me more than I intended to pay for it when I went to the sale ; this arrangement or bargain with Mr. Bullock, was made that afternoon, immediately after the sale.

And being cross-examined, says—Mr. Bullock gave me the amount of the encumbrances on the property several times, and correctly every time ; he gave them to me the evening before

the sale; he told me it would be sold subject to the legacies under the will; I bid up to a certain point on the property myself; it adjourned on my bid; when I asked the sheriff how he sold it, I did not look at the execution or his statement—I took his word, and that was, that he sold it subject to all encumbrances under Bullock's execution; I did not go and examine the execution before the sale; I thought the deputy sheriff would give a correct statement when he put it up, and did not think it necessary; I never saw the sheriff, and did not know where his office was; I did not inquire for him; Mr. Bullock was present at the sale; on the day of the sale he told me the property would be sold subject to the will of Robert Woodward, senior; Bullock gave me the right statement; I do not remember saying anything to the deputy sheriff about the Black mortgage; I think I asked him whether he was selling subject to the will, or subject to the Black mortgage under Bullock's decree; this was during the sale, and he told me he did not know; after the sale commenced, I said nothing more to Mr. Bullock about it; I saw the deputy sheriff holding a paper in his hand—I do not remember hearing him say it was a decree of the Court of Chancery; the information I had was at the beginning, when the deputy sheriff said he would sell the tract of land subject to all prior encumbrances; that was what confused me; what Bullock said did not confuse me; I did not examine any papers, to see how he was selling—I took the deputy sheriff's word; when I went to Mr. Bullock's house, the evening before the sale, I said that the tract No. 2 reminded me of New Hampshire, where I lived formerly, and that was the reason that I paid so much for it.

Quest. Did you not say to Anthony Bullock, George Sykes, and Mrs. Mary I. Bullock, that you understood the conditions of the sale thoroughly, but, as the bidding continued, you became very much excited, and it slipped your memory?

Ans. I might have said something of the kind, but I do not remember it just in that light.

Quest. Did you tell Joseph Carter that you had paid more for the farm than it was worth, or more than you would pay again?

Ans. I do not remember—I might have told him so; I did

not tell him that I thought Mr. Bullock would get his deed, but I hoped he would not.

And being re-examined, says—

Joseph Carter is a tenant of Mr. Bullock's ; he rents his farm ; I told Carter that it would not be worth so much to me if I did not get possession of it this spring before planting time ; as near as I can remember, I said to Mr. Bullock at his house in presence of Mrs. Bullock and Mrs. Sykes, that I was a little confused ; I had been bidding on the other place and got a little
 10 excited, as I have stated, and then heard the deputy sheriff's statement that he sold it subject to all prior encumbrances, different from what Mr. Bullock told me ; I know that I did not intend to say that I understood the deputy sheriff thoroughly at that time ; I would think they were twenty or twenty-five minutes in selling tract No. 2 ; this is my best judgment on it.

And being again cross-examined, says—

Samuel Conover bid for me that day after it was adjourned on my bid of \$1400 ; I do not think he went to the deputy sheriff to inquire about the terms of the sale and the encumbrances ; he
 20 sat in a chair all the time ; I do not know anything about what the deputy sheriff told Samuel Conover. [Objected to as not a proper subject of cross-examination.] I did not say to any one that I knew all about the sale ; I did not bid much after the farm got over \$1500 ; I did not bid after it got up \$5000 ; I think my bids went up with what I authorized Conover to bid to about \$1700 ; I cannot tell whether I bid after the sale was resumed or not ; after Bullock made his bid of about \$3000, additional to what had been bid, I did not make a bid ; the bidding was then continued between Mr. Bullock and William W.
 30 Conover ; I cannot tell how much I bid ; I know that it adjourned on my bid, and I do not know that I bid after that ; I know this much, that after Bullock made his big bid of about \$3000 advance, I did not make another bid.

And being again re-examined, saith—

Mr. Samuel Conover sat within ten feet of me in a chair when he was bidding ; he did not bid much for me ; may be three or

four times ; when Mr. Bullock made his advance bid of \$3000 over my bid, I went to Samuel Conover and told him to stop bidding.

JAMES M. BEAN.

Sworn and subscribed before me, April 24th, 1874.

C. ROBBINS,

Examiner in Chancery.

George Goodell, a witness produced on the part of the defendants, being duly sworn, on his oath saith—

I am 65 years old, and reside at Sykesville, Burlington 10 county, New Jersey ; I am well acquainted with the parties to this suit, and had occasionally seen tract No. 2 ; have lived in three or four miles of it for forty years ; I have been at the place occasionally ; I am a physician and farmer ; I own real estate ; a farm ; in my judgment, this farm, tract No. 2, is worth \$100 per acre ; I was in Freehold on the day of the sale ; came expressly to attend the sale ; I have a claim against the estate of Robert Woodward, Sr., and Robert Woodward ; I was cited to appear, and am a party to suit under which property was sold ; my claim, including interest, is about \$2000 ; the 20 property did not reach enough to pay anything on my claim, at this sale ; I was present when the property was put up ; I was present during the whole sale ; the Burtis part was put up first, subject to previous claims ; after that, tract No. 2 was put up, subject to previous claims, the same way as I understood ; the deputy sheriff stated that he offered tract No. 2, subject to previous claims ; that was the substance of what he said ; I knew of the existence of the Black mortgage ; I understood that this mortgage was prior to Mr. Bullock's mortgage ; at and during 30 the bidding for the property, I understood that it was sold subject to the Black mortgage ; I first got information to the contrary at Mr. McLean's office, after the sale ; I was told it was not understood so ; some one came down from the sale and said so. [The last two answers objected to as hearsay.] They were less than half an hour selling the tract, I would think, including the adjournment ; I did not bid on the property.

And being cross-examined, says—

Mr. McLean was my attorney ; I had a judgment against the executors ; my claim was a note against Robert Woodward, Sr., and I obtained a judgment on it against his executors, Robert and Edward Woodward ; my object in coming to the sale was to protect that claim ; I got my information as to the sale, from the announcement of the deputy sheriff at the commencement of the sale ; I did not go to the sheriff's office to inquire, before the sale, and made no inquiries as to how it was to be sold, prior to
10 the sale ; I had only seen the advertisement of the property in the papers and never saw anything else relating to it ; when I went to the sale, I did not know what the execution directed the sheriff to do ; I know nearly what the amount against the property was ; I obtained it from a statement from Mr. McLean ; he did not inform me on that day, but had written to me prior to that, stating to me what he knew about it ; I did not attempt by other efforts, on the day of sale, to find out what there was against the property ; I did not pursue that course, because I was satisfied that it would not bring enough to pay my claim ;
20 I had, at the time, a number of the different claims that Mr. McLean had furnished me ; when I came I did not know whether I should bid or not ; the judgment was against Robert and Edward Woodward, as executors ; I do not know whether Edward is responsible or not ; he got a part of his father's property ; Mr. McLean and I did not agree, before we went to the sale, that the property was encumbered on all it was worth ; when I left home, I had not made up my mind whether to bid or not ; when I went from Mr. McLean's to the sale, I had not made up my mind whether I would bid anything over and
30 above the encumbrances or not ; and I took no other means before I went to the sale, to find what was against the property, only what Mr. McLean wrote me ; I heard the execution read by the deputy sheriff ; he read it aloud in the bar-room ; he did not read a statement of the encumbrances against the property ; I saw no statement there and did not ask for any ; when I went there, I did not know anything of how the property was ordered to be sold ; the question was asked of the deputy sheriff what the encumbrances were in the will, and he said he did not know ; my impression is that the deputy sheriff or the sheriff,

in answer to some one's question, stated that he was selling Robert Woodward's interest, subject to the will.

And being re-examined again, says—

I do not know whether the sheriff read all the execution or not; I cannot tell what part of the execution he read; I stood near him and listened very attentively, and am certain he was selling it subject to prior encumbrances; I understood he was selling subject to the Black mortgage; when he sold the first tract, he sold subject to prior encumbrances; I knew of mortgages on the first tract that was prior to the Bullock mortgage, and it was sold subject to that; he put the second tract up in precisely the same way. 10

Quest. Explain, if you please, more fully, your answer in cross-examination, viz.: "I did not pursue that course, because I was satisfied it was not sufficient to pay that claim of mine?"

Ans. If the property had been sold, as I supposed it was being sold, I supposed my claim would be good.

And being cross-examined, saith—I do not say positively that I would have bid the amount of the encumbrances for the property that I did; I knew the first tract was sold subject to the Cox mortgage, and from that reason I supposed the second tract was sold the same way, and thought it was bringing enough to pay my claim. 20

And being again re-examined, says—

Quest. You say that one reason why you supposed the second tract was sold subject to encumbrances was, because the first tract was sold so?

Ans. Yes, sir; that is what I stated.

Quest. Did, or not, the sheriff announce that the second tract was sold subject to prior encumbrances? 30

Ans. Yes, sir; he did.

GEORGE GOODELL.

Sworn and subscribed before me, April 24th, 1874.

C. ROBBINS,

Examiner in Chancery.

- John G. Meirs*, a witness produced on the part of the defendants, being duly sworn, on his oath says—I live in Upper Freehold township, one mile and a-half from Robert Woodward's; I own two farms up there, and am somewhat interested in real estate; I know this property of Robert Woodward's—have lived right by it all my life; I came down to Freehold on the day of sale partly to attend it; I came with the intention of buying it, if it did not go over a certain price; I was present during the sale; tract No. 2 was put up immediately after tract
- 10 No. 1 was disposed of; I understood he was selling tract No. 2 subject to all prior legal encumbrances; the deputy sheriff made this announcement at the time he read the conditions; I heard him; I was sitting about ten feet from him, in Flemming's hotel; I knew of the Black mortgage; I knew it was prior to Bullock's mortgage; I supposed that the money that was being bid went to pay Bullock's claim; I made no bid; Mr. Bullock told me after the sale, that he understood how it was sold, that he had informed himself in the sheriff's office; he did not tell me how he came to raise the bid to \$4000, nor anything about
- 20 a conversation he had with the sheriff during the adjournment; I was on tract No. 2, yesterday, and made a thorough examination of everything; in my judgment, tract No. 2 is well worth \$100 per acre; the house is considered one of the best, if not the best house in the township; it is a very nice house—is of brick, fitted up with bath-rooms, and in the best manner throughout; I consider the out-buildings in a good condition—as good a condition as any in the neighborhood.

And being cross-examined, says—

- 30 I did not go on the property before I attended the sale; after I came here I did not go see the sheriff, or seek to find out how the property would be sold; I did not seek to inform myself after I came to Freehold; I thought I knew before I came; I knew what encumbrances were on it, and Bullock's being the last, I supposed the others had to be made good first; as it has turned out since, it seems that such is not the case; it was after the sale was over that I found this out; I listened, but there was considerable of noise in the bar room, and it was hard to hear what was said; I put \$90 on it per acre as

my price; I thought there was money in it at that price; according to my understanding of the sale, it brought a good deal more than that; I figured it up that it brought from \$110 to \$120 per acre; I thought it was bringing from \$10 to \$20 an acre more than it was worth; I did not see a statement in the hands of the sheriff and did not look for one; I heard a question asked about the will, and the answer was made by some one that it was about \$7000; I heard Dr. Bean ask the sheriff twice about the Black mortgage; I do not know whether it was the deputy sheriff or the sheriff; and I 10 did not hear him make any answer; I did not hear him say he was selling subject to the legacies under the will, or encumbrances under the same; I told Mr. Bullock, one reason I did not bid was because I did not know the amount of interest due on the legacies; Woodward did not say to me before the sale, that Bullock was buying the property in for him; he said so after the sale; Woodward told me that he had told Bill Warwick that Bullock was buying the property for him; I do not remember Woodward saying that he would keep the property 20 as long as he could, whether he broke the sale or not; I do not remember his saying anything of the sort; I had quite a long talk with him; about twenty-five to thirty acres of the land on tract No. 2 is in timber; the rest of it is tillable land, except a few little spots; the locust and timber on the thirty acres will nearly pay for that land at \$75 per acre.

JOHN G. MEIRS.

Sworn and subscribed before me, April 24th, 1874.

C. ROBBINS,

Examiner in Chancery.

Gilbert S. Lawrie, a witness produced on the part of the de- 30
fendant, being duly sworn, deposeth and saith—

I am a neighbor of Robert Woodward's; I join farms with him; I have lived in that locality sixty-four years; I am familiar with tract No. 2; have often been upon it; the house is a very substantial, well-built brick house; the out-buildings are tolerable only; very decent; about medium; they were not dilapidated when I saw them last; I have not been around there

for the last two years ; I have not been on the place to go across it for the last two years ; I have been at the house and through the farm, but not over it ; I passed through the road that runs through it ; in riding on this road you can see most of it ; it would be safe to say that I have seen it from along the road, on an average of once in two weeks ; there is a nice lot of pear trees, and thrifty apple orchard ; the pear trees are in the garden—a nice lot of them.

10 *Quest.* In your judgment, what is the present value of that farm ?

20 *Ans.* To a man who can afford to live in a house of that kind, it is worth a \$100 an acre at the present prices ; I do not think the house could be built for less than \$10,000 ; it is fitted up inside with water closets and bath tubs, and in complete order ; I own somewhat of real estate ; I suppose it is worth \$40,000 ; I attended the sale of the property by the sheriff ; I came down principally for that purpose ; my wife came down to make a little visit, and I wanted to attend the sale ; I was present at and during the sale ; I think I came with the intention of being
30 a purchaser ; it depended on the price ; I had not fairly made up my mind ; I did not intend it should be sacrificed ; when I went into the room where the sale was held, they had, I think, just commenced reading the execution ; the bar-room was very noisy ; it was a rainy day ; I suppose some fifty or sixty men were in the room ; about a dozen appeared to be attending to the sale, and the rest were drinking, talking and making considerable noise ; the execution was read pretty fast, and in a monotonous kind of a tone, so I could make nothing out of it, much ; I am a little deaf in one ear, but can hear pretty well—
not so well when there are a good many sounds together—I
cannot then distinguish ; I finally gave it up, and thought I would get my knowledge from the sheriff when he sold it ; tract No. 2 was sold subject to all prior legal claims ; Dr. Bean asked the deputy sheriff what those claims were ; he said that was none of his, the sheriff's, business ; then the farm was set up by Anthony Bullock, the first bidder, at \$800 ; then it went up till it got to about \$1100 ; then there was an adjournment of five minutes ; then it was started again, and went up to along about \$1400 or \$1500 ; Anthony Bullock then disappeared ;

he walked towards the other end of the room; the farm was dragging at about \$1400 or \$1500; I was making a calculation in my head, and thinking it was about time for me to bid; I was running over what the debts were; Anthony Bullock came back and bid \$4000; I then had no more thought of bidding—that knocked me out; then the bidding went on to \$5100, and it was cried off to Mr. Anthony Bullock; soon as it was cried off, I turned to Robert Woodward and tapped him on the shoulder, and said, that is a good sale, better than you could have made if you had had the farm in your own hands; in a few minutes William W. Conover came out and said, gentlemen, you are mistaken: that money goes to Black; Oliver Emley stepped up and said, I know better—it don't go to Black; that it could not go to Black, because it was sold under Bullock's execution, subject to all prior claims; Mr. Conover said it was so, and he knew it was so; then we concluded to come over and see the sheriff; we came, John Meirs, myself, Dr. Bean, and, I think, Mr. George Taylor and Forman Taylor; we asked the sheriff how it was; we did not understand it; he said it was all right, that Black had joined Bullock in the suit—Anthony Bullock, I mean; then he said, “Why, Bullock himself did not know it till I told him;” he said he called or beckoned him out, and said, Bullock, do you know that you are not getting a dollar on your claim from that sale? that money all goes to Black; we found that we were floored, and gave it up; we felt we had been deceived, somehow, but could not tell how; about a week after that, Anthony Bullock came to my house; I told him it looked to me as if he did not understand the sale himself; he said he did; then he went on to say that, when he was bidding, that Sheriff Hendrickson beckoned him to the bar and said, Bullock, do you know you are not getting a dollar on your claim—that money all goes to Black; then he said, I said to him, sheriff, are you sure of that? and sheriff said, I am; and then I rushed back to my place, and bid \$4000; the deputy sheriff announced at the beginning of the sale of lot No. 2, that he sold it subject to all prior legal encumbrances; I had previously been informed of the existence of the Black mortgage by Robert Woodward, and that it was prior to the Bullock mortgage, and I thought, to be sure, it laid

on the farm with the will, and besides the will (the will of Robert Woodward, senior.)

Quest. At, and during the time of the bidding for this property, how did you understand, from the deputy sheriff selling it, that this tract, No. 2, was sold with reference to the Black mortgage? [Objected to, because the facts are not stated on which the opinion was based.]

Ans. I understood it was sold subject to the Black mortgage, and all the money that it brought went to Bullock; that prevented me from bidding; my acts were affected by this understanding; and I did not bid because I thought the property got up to more than it was worth with the Black mortgage laying on it.

And being cross-examined, says—

If the property went cheap enough I came here to buy it; I knew the amount of encumbrances on the property from Robert Woodward's statement of it; that is all I know about the amount of the encumbrance, except the encumbrance about the will; I had heard of that from a dozen sources, from those who had seen it; Robert Woodward and I think Israel Woodward and Mr. Isaac Harrison told me about it; it was the general talk of the neighborhood; they said it was \$14,000 on all the property—supposed to be \$7000 on Robert Woodward's property, with two years' interest on \$5000 of it; Robert Woodward told me this was the amount of the encumbrance under the will; I took it in writing; he told me the amount of the Black mortgage was \$4500, and the Bullock mortgage \$5000; he did not tell me how it was to be sold, prior to my coming here to the sale; I had no understanding that I was to buy it from him; he came to see me to talk over his troubles, I suppose, and to see if there was any way to get out of them; it might have been a friendly visit; he often comes to see me with his wife; I do not think he asked me to buy the property for him; he did not ask me to attend the sale; all the information I had as to the encumbrances of the will, was from the parties I have named; and as to the Bullock and Black mortgages, was from Robert Woodward; I do not think he informed me of the day of sale; I think I had a paper at the time; I came here as a purchaser,

if the price suited ; I came that it should not be sacrificed ; I did not make up my mind what I would give for the property ; after I came, I did not go to the sheriff and look after the execution, or ask him for a statement of the sale ; I asked Mr. Cannon and he said the little farm would be sold first, and walked off ; I did not know Sheriff Hendrickson, but knew that he had an office in Freehold ; I had heard so ; I did not seek to inform myself of the terms or how it would be sold ; I expected it would be made plain at sale ; I heard the execution read ; I could hear it read, but not plainly ; I am a little deaf 10
in one ear, but hear pretty well in money matters ; the deputy sheriff had the execution in his hand ; I have attended many other sheriff's sales ; that is one thing that deceived me so ; I suppose I could have gone to the sheriff and found out the encumbrances on the property, before the sale, but I thought I knew without that ; I knew the amount of the claims against the property, but I did not know which had been adjudicated and adjusted ; when Robert Woodward told me of the encumbrances on the property, he did not tell me what claims it would be sold subject to ; I did not at any time try to inform myself 20
on that point, prior or at the time of the sale ; I did not try to inform myself whether the property would be sold subject to the Black mortgage or not ; I knew it was sold subject to the legacies in the will ; it seems I did not know whether it was sold subject to the Black mortgage, but I thought I knew ; I did not try to ascertain whether the purchase money should be first applied on the Black mortgage, and then the balance on the Bullock mortgage ; tract No. 1 was sold first ; the conditions of sale were read prior to the sale of that tract ; they were not read after the sale of tract No. 1 ; they were only 30
read once, I think ; the deputy sheriff made the statement that the property was sold subject to prior legal encumbrances before he sold tract No. 1 ; I knew what the encumbrance on that tract was ; this was just after he read the conditions of sale ; he made no statement, that I remember of, at the time he sold tract No. 1 ; I did not hear any one ask the deputy sheriff about the encumbrances under the will ; heard him asked about the encumbrances generally ; did not hear him ask about the Black mortgage, particularly ; I did not hear him state that he sold subject

to the encumbrances of the will ; he did not state that he sold it subject to the Black mortgage—I did not, and I did not hear any one ask him what was the directions of the execution to him ; prior, or at the time of the sale, I did not, nor did any one in my presence, ask him for a statement of the encumbrances on the property, or the priority of the encumbrances ; I relied on the statement of Mr. Robert Woodward as to that matter ; I did not try to inform myself at Freehold how, or in what manner, the encumbrances were to be paid ; I did not bid on
10 the property ; the value of this property is based somewhat on the amount of buildings on it ; the buildings are not more commodious than necessary for farming purposes ; the house might be smaller ; what I mean when I say, if a man can afford to live in such a house is, that it is too elaborate for a poor man to live in, who expects to make his living out of the land ; altogether a less elaborate house would answer the purpose ; my estimate of the value of the property is based somewhat upon the value of the house ; why I did not bid for the property was, that Bullock cut me off with his \$4000 bid ; it did not
20 take me long to add that up ; I put Black's mortgage in, and had nothing further to say ; I did not try to ascertain at that time whether Black's mortgage was in ; Mr. Bullock's bid, as I calculated it, was \$16,700—I thought that was more than I wanted to give for it, and rather more than it was worth ; this did not satisfy me that I had formed a wrong impression as to the sale ; I did not know that this would more than pay Mr. Bullock's claim, after paying all prior claims ; I knew it was not enough ; the claims against the property was \$7700 under the will—\$4990 under the Black mortgage ; Bullock's was
30 \$5000 and two years' interest, Mr. Woodward said ; Mr. Bullock's mortgage covered tracts No. 1 and No. 2 ; I understood the way the first tract was sold ; I did not hear any one say that they did not understand how that was sold ; I think Bullock got \$1700 on his mortgage from this tract ; in my judgment, if you put the balance of Bullock's mortgage on tract No. 2, it was encumbered for more than it was worth ; he had a judgment on his bond also ; I did not tell Mr. Bullock that I was satisfied that the sale was conducted in a fair and legal manner ; I called to see Mr. Bullock on the Thursday following the sale,

which was on Tuesday; I called to take him to the turnpike meeting; I did not tell Mr. Bullock that I was a little deaf, and that the commotion in the bar-room prevented me from understanding the terms and conditions of the sale; Mr. Bullock did not say to me that I heard the execution read, and asked me why I did not bid on the property; and I did not say that I could not hear very well, and in the commotion I could not understand what was said; I have not said that if Robert Woodward's farm was worth \$75 per acre, mine was worth \$150; Anthony Bullock told me that himself; when I came over to see the sheriff, after the sale, he did not show the execution and we did not ask to see it or the statement; we only asked for an explanation; I did not feel that I had been deceived by my own carelessness; I did not know by whom I had been deceived; I do not think the sheriff did it or his deputy; there was something wrong somewhere; either with the sheriff, the deputy or with ourselves, or else we would have understood it; I did not try to inform myself as to the facts, either before or at the time of the sale. 10

And being examined re-direct, says—

I understood the counsel to ask me as to the statement of the encumbrances, when I stated that the deputy sheriff made no statement when he offered tract No. 2; he did, to the best of my knowledge and hearing, say at the time he put up tract No. 2, that he sold it subject to all prior legal encumbrances, but he did not particularly specify the Black mortgage. 20

And being again cross-examined, says—

He made no mention of the encumbrances under the will or the Black mortgage at the time he offered the property or during the sale. 30

And being again re-examined, says—

Quest. What was your conversation with Bullock as to the sale, on the Thursday following the sale; do you desire to explain it? [Objected to as not proper for cross-examination.]

Ans. Mr. Bullock explained to me the execution and also, that the deputy sheriff said, "I sell this property under the will;"

I told him that might be so, but I did not hear it; I was a little thick of hearing.

GILBERT S. LAWRIE,

Sworn and subscribed before me, April 24th, 1874.

C. ROBBINS,

Examiner in Chancery.

Samuel T. Hendrickson, a witness produced on the part of the defendants, being duly sworn, on his oath saith—

I was present at the sale of this property; I remember the
 10 intermission of five minutes that was given from bidding; I had a conversation with Anthony Bullock, when the property was up to \$1400; I told him that the money bid would all go to the Black mortgage; I do not remember what he said to that; he then bid \$4000; I put this property up subject to all prior legal encumbrances; that announcement was made at the beginning of the sale; the conditions of sale contained that statement also.

And being cross-examined, says—

During the intermission I had this conversation with Bul-
 20 lock, and after the sale started he bid \$4000; the next bid was made he bid the \$4000; he stood on the outside of the bar counter, I stood on the inside; I did not talk right out loud, I told him so he could hear it; I did not try to keep it from anybody else; a statement of all the claims against the property was made out, and was there; I was there during the whole sale; no statement was made by me or the deputy sheriff that tract Fo. 2 was sold subject to the Black mortgage.

And being again examined-in-chief, says—

I do not know how it was—whether Bullock understood,
 30 before I spoke to him, that the sum bid was to be applied to the Black mortgage or not.

Quest. Why did you speak to him about it—was it not because you thought he didn't understand it?

Ans. It was; I will give you the whole conversation; I asked him if the \$1400 was his bid; I think he said no; then I said, you won't get any of that, it will all go on the Black

mortgage; I do not remember telling Mr. Vredenburgh, after the sale, that I did not think Bullock understood it—I might have told him so.

SAMUEL T. HENDRICKSON.

Sworn and subscribed before me, April 24th, 1874.

C. ROBBINS,

Examiner in Chancery.

Edward B. Woodward, a witness produced on the part of defendants, alleging himself to be conscientiously scrupulous of taking an oath, on his solemn affirmation, saith— 10

I am the brother of Robert Woodward; I have a sister Emily; Mary B. Woodward is my niece; my father was Robert Woodward, and he died, leaving a will; [paper shown witness—a certified copy of will of Robert Woodward, Sr., deceased; this copy of will, dated June 18th, 1857, offered in evidence, and marked *Exhibit A*, on part of petitioner;] I hold my farm under this will—my farm is called the Lippincott Place—and my brother Robert holds tract No. 2 under this will; my sister Emily is fifty-two or fifty-three years old, and unmarried; Mary Woodward is about seventeen years old; the proportion of the legacies under the will, to be paid by myself and brother Robert, from our farms, has never been settled by any agreement; the whole amount of the legacies is \$14,000; the understanding between us was that he should pay half of the interest on the legacies, and I half. 20

Quest. Has it ever been determined or settled by any court whether the legacy to your sister Emily, in case of her death without issue, lapses or becomes extinct, or goes to the benefit of the residuary legatees? [Objected to.]

Ans. No, sir; the will has never been before any court for construction, to my knowledge; I was present on the day of the sale of this property; I heard it offered for sale; the sheriff read the terms of sale; there was a Cox mortgage on the first tract; that was prior to the Bullock claim; there was the Black mortgage on tract No. 2; that was prior to the Bullock claim; the sheriff sold it as taken in execution at the suit of the executors of Wm. W. Bullock; he stated that he sold it subject to all prior encumbrances. 30

Quest. At, and during the bidding for the tract in question—how did you understand the bidding was being made, with regard to the Black mortgage? [Objected to, as the opinion of witness, not based on proper facts or statements, made at the time.]

Ans. I understood that the \$5100—the price for which it was sold was over and above the Black mortgage—I understood that the purchaser was to pay the Black mortgage, in addition to his bid, although nothing said about it; I mean
10 about the Black mortgage; I saw Bullock make his bid; I didn't notice his having any conversation with the sheriff before he made his bid—they went off together; I think after Bullock came back he bid \$4000; it is true, as Mr. Bullock stated, that my brother Robert and myself went to see him, (Bullock,) after the sale; at that time Robert asked him if he would not do as he had agreed to, or as he said he would; he made reply that it was too late now; Robert did not tell him that his friends would swear to anything, or that his friends would swear to anything to break the sale; the bid
20 was hanging at \$1400 before Anthony made the bid of \$4000.

20 And being cross-examined, says—

I came to Freehold the morning of the day of sale; I did not go to the sheriff for a statement or to see the manner in which the property was to be sold; I was at Freehold some time previous to the date after the property was advertised; I came on other business; I asked the deputy sheriff to give me a copy of the advertisement of sale; I did not ask him to see the execution or to inform me the manner the property was to be sold; I heard the execu-
30 tion and statement of the sheriff read on the day of sale; when the execution and statement were read was prior to when first tract was put up, and I think he made the declaration that it was sold subject to all prior encumbrances at the time he put up the first tract; I heard him make that declaration before the first tract was offered; I think I am certain I heard him make the same declaration before he put up the second tract; I do not know that I infer that he made this statement when he sold the second tract, because he made it

before he put up the first tract; I think he read a statement before he put up the second tract, also.

Quest. Did you or not infer from the announcement made by the sheriff at the time he offered the first tract, that the second tract was to be sold in the same way?

Ans. I drew no inference.

Mr. Lawrie, prior to the sale, told me that he thought the sale had better be adjourned; he didn't tell me that I had better employ counsel to see and look into the matter of the sale of Robert's property or lien.

10

EDWARD B. WOODWARD.

Robert Woodward, a witness produced on the part of the defendants, alleging himself to be conscientiously scrupulous of taking an oath, upon his solemn affirmation, saith—

I am the owner of the farm in question, tract No. 2, and have been since my father's death; I have a brick house on the premises; my father built most of it; I built an addition to it and remodeled it somewhat; I suppose the house is worth \$10,000 or \$12,000; I do not think it could be put up for \$12,000 at the present prices; the out-buildings are not dilapidated; they are rather large buildings, suitable for such a place; not extra large; there is one barn with stables attached 90 by 26 feet; the other is cow-house 24 by 30; the wagon-house is 26 by 40; then a hog-building 60 by 16; this is an entirely new building, built within the last four years; it is an enclosed building with oak frame, and built in the best manner, with a place for cattle underneath; also, wagon-shed, ice-house, wood-house; there is considerable fruit on the place; there is an apple orchard of about one hundred and fifty trees, and pear orchard, standards, of one hundred trees, besides pear trees in the garden, and some cherry trees; my land has always stood fair, I thought, as good land; the broken land they speak about is worth as much as any of it, being covered with locusts; they are valuable; my father has cut \$400 off of a quarter of an acre of it, besides fencing the place, and there yet remains some equally as good; Higbee Pullen, who was a witness, was a tenant of mine; made all the money he has got on that farm; Joseph Carter was a tenant of mine; I think he made money out of the place; I

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do not know how much he made; all the paling fence on the farm has locust posts; the fence on all the farm is better than fences on average farms.

Pullen and Carter did not live on good terms with me; I have always thought the farm was worth \$125 per acre; I attended the sale at Freehold and heard the property put up by the deputy sheriff; it was put up by a decree of the Court of Chancery, in favor of the executors of Wm. W. Bullock, subject to all prior encumbrances; there was a Cox mortgage on the first tract, and that tract was sold subject to that mortgage; that mortgage was prior to Bullock's mortgage; the sheriff was not ordered to raise the money for the Cox mortgage out of the execution; the purchaser of that tract took that tract subject to the Cox mortgage; there was a Black mortgage on the second tract; that was prior to Bullock's mortgage.

10 *Quest.* How did you understand that the sheriff was selling tract No. 2, with reference to the Black mortgage at and during the time of the bidding? [Objected to as not in proper form, and not giving the facts on which witness' opinions are based.]

20 *Ans.* I supposed it was being sold subject to that mortgage; I first heard to the contrary in Mr. Vredenburgh's office shortly after the sale; it is true, as Mr. Bullock said, that my brother and I had a conversation with Mr. Bullock after the sale; he did most of the talking; it was not much of a conversation; my brother Edward and I went there; Mr. Bullock came to my house two weeks before the sale; I was not at home; he left word for me to come and see him, as he had business of great importance; I went over

30 the following morning, alone; I saw him; he said, I suppose you know the farm is for sale—I have a proposition to make; he said, it was this—he was to buy the farm and make a deed of trust to my sister Emily, and that would cut out all my creditors; I scouted the idea; I said my property was sufficient to pay my debts; that Dr. Goodell's judgment or claim was as just as his, and should be paid; no one was present at this conversation; I asked the question why he could not make me a deed for it and take a mortgage on all

40 my property, as I only wanted to hold the house until I could

make a division, or sell it all; he said he could not do it; he said before this that he wanted to befriend me, that his father told him that if I ever got in trouble he must befriend me, and I told him that he now had the opportunity; there is nothing else that I recollect of of this conversation. [The above conversation is objected to, and was taken under the objection that it is irrelevant.]

The Thursday previous to the sale Bullock came to my house and asked me what arrangements I had made; I told him none; he still adhered to his proposition of buying it and making a deed of trust; I told him I did not see any necessity for it, as I only had a few hundred dollars, I guess I told him \$300, and I did not want to be laboring under these debts, as I could never pay them after being sold out; he said, I do not propose to take the things away from you, but will buy them in for you; I also told him I did not want to be turned out of house and home till I found another place to go to; he said, I mean for you to stay here; I intend to buy the place if it don't go too high; I asked him what difference that could make, if he only wanted his claim; he could not take a mortgage for more than that amount; he said something about my giving him security if the farm went above a certain price. [This conversation was objected to and taken subject to objection that the same is irrelevant.] I did not see him again till the day of the sale; after the sale I saw him at his house; I asked him if he proposed to do what he said he would; I believe he said it was to late; he talked a great deal; he refused to convey the property to me; I did not say to him that my friends would swear to anything to set aside the sale; that is pure trash.

And being cross-examined, says—

I did not go to the sheriff prior to the sale to see the execution in statement, or anything, to see how the property was to be sold—I did not ask him how the property was to be sold; in neither of the conversations that I had with Mr. Bullock, prior to the sale, he did not tell me that the executors of the Black mortgage were made parties to the suit; he told me they did not want their money; I do not remember any conversation with Mr. Bullock in reference to the Cox mortgage

to that effect; I knew they were not made parties to the suit, I inferred that from Bullock's conversation, that the holders of the Cox mortgage were not made parties to the suit; I knew it; in fact not much was said about it; I saw Mr. Cox himself, I suppose he told me; I did not go to see him, to see if he was a party to the suit, I knew it before in some way; I did not know whether Black's were parties to the suit or not; prior to the sale I said something to Mr. Nathaniel Rue about buying the property for me, this was a few days before the
 10 sale; I asked him if he would not come down to see about it; I did not ask him direct if he wouldn't buy the place for me; I do not think it was my object in going to him to get him to buy the place for me.

ROBERT WOODWARD.

Sworn and subscribed before me, April 27, 1874.

C. ROBBINS,
Examiner in Chancery.

George Taylor, a witness produced on the part of the defendants, being duly sworn, on his oath saith—

20 I know Mr. Robert Woodward's homestead farm; I live in Freehold; I act as appraiser of property in this county for insurance companies; in my judgment the value of the house of Robert Woodward is \$8000; the out-buildings are worth \$2500—I think from that to \$3,000; the land is worth, in my judgment, without any buildings on it \$75 to \$85 per acre.

And being cross-examined, says—

30 I have not travelled over the farm for a good many years—I have travelled along by it within the last six months; I would say it is worth at this time \$110 per acre, with the buildings on it; I have known properties to be sold for not much more than their buildings were worth—but not very lately.

GEORGE TAYLOR.

Sworn and subscribed before me, April 27, 1874.

C. ROBBINS,
Examiner in Chancery.

And hereupon, William H. Vredenburg, solicitor of said defendants, declared their testimony to be closed.

April 27, 1874.

C. ROBBINS,

Examiner in Chancery.

Wherever in the foregoing examinations both questions and answers have been entered, I determined the same to be necessary, from the subject matter and manner of the witnesses, for the correct understanding of the evidence, and the disposition of the witnesses giving such answers.

C. ROBBINS,

Examiner in Chancery.

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Opinion.

THE CHANCELLOR. Application is made by Robert Woodward, who was the owner of the equity of redemption of the mortgaged premises ordered to be sold in this cause, to set aside a sale made by the sheriff of Monmouth, under the execution.

The ground of the application is the alleged unfairness of the sale arising from a misunderstanding, said to have existed on the part of persons present, who intended to bid in the property, as to the manner of sale and the encumbrances to which the premises would be subject in the hands of the purchaser.

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The unfairness alleged, is claimed to have arisen from the announcement made by the deputy sheriff, by whom the property was put up for sale and cried off, that the premises were sold subject to all prior encumbrances.

The property in question, was the second tract mentioned in the execution. It is known as the homestead. The first tract which was struck off just before the second was put up, was sold subject to the encumbrance of a mortgage called the Cox mortgage upon it, the holder of that encumbrance not having been made a party to the suit.

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The execution commanded the sale of the two tracts separately, and that out of the proceeds of the sale of the first, the complainant should, in the first place, be paid \$5,900.96 with interest and costs; and that out of the proceeds of the sale of the homestead, the sheriff should first pay to Edward Black, executor of Job Black, deceased, \$4,825.50 with interest and costs, and then to the complainants any balance of the debt, interest, and costs remaining unpaid.

- 10 There appears to have been no misunderstanding as to the sale of the first tract, but it is alleged that that tract having been sold subject to the Cox mortgage, the announcement made by the deputy sheriff that the sale of the homestead was to be made subject to all prior encumbrances, induced some of those present at the sale to conclude that that property was to be sold subject to the Black mortgage.

The first tract was struck off to Anthony Bullock, one of the complainants, at \$1,700, and the homestead was struck off to him at \$5,100.

- 20 By the will of Robert Woodward, senior, legacies to the amount of \$14,000 were charged on the farm called the Lippincott Place, and the homestead. It was estimated that the homestead ought to pay one-half of the legacies, and on that half, interest was in arrears, so that the encumbrances on the legacies on the homestead property amounted to about \$450.

The price paid by Mr. Bullock for that property, therefore, was about \$12,550, equal to about \$70 an acre, for there are 160 acres of it.

- 30 Soon after the sale Mr. Bullock, the purchaser, sold the homestead and made a contract to convey it accordingly to Dr. James M. Bean, one of the bidders thereon, at the price of \$14,550.

Much testimony has been taken by the parties which I have very carefully examined and considered. It appears very clearly, from the evidence, that the deputy sheriff set up the property for sale, subject to all prior encumbrances, and that he made no announcement or statement whatever to the effect that the property was to be sold subject to the Black mortgage. Dr. George Goodell, one of the petitioner's witnesses, testifies that the deputy sheriff was asked "what the

encumbrances were in the will," and he said he did not know; and the witness says that his impression is that the deputy sheriff, or the sheriff, in answer to some one's question, stated he was "selling the petitioner's interest, subject to the will." All present understood that the homestead was sold subject to its proportion of the legacies.

It is claimed by the petitioner that the first tract having been sold subject to the Cox mortgage, the conclusion was very naturally drawn by the bidders present, or some of them at least, that the homestead was sold in like manner, subject to the Black mortgage, that being an encumbrance prior to the complainant's mortgage. 10

It is alleged that Mr. Bullock, the purchaser, was himself under this erroneous impression during the bidding up to the time when the property was standing at a bid (which was Dr. Bean's) of \$1,400, and that then the sheriff, who was present, told him that that money would go to the Black mortgage, whereupon, Mr. Bullock made a bid of \$4,000. But Mr. Bullock testifies that he fully understood the matter before the sheriff spoke to him on the subject, and it appears that he had 20 taken pains to inform himself before the sale as to how, and subject to what the encumbrances the property would be sold; and not only so, but that he had given the benefit of his information in the subject to Dr. Bean the evening before the day of the sheriff's sale, and also at the opening of the sale. Of the persons who have been produced as witnesses on behalf of the petitioner, Dr. Bean is the only one who appears to have been a bidder at the sale, and he admits that he knew that the property was not sold subject to the Black mortgage, but says that in his excitement arising from the contest 30 in bidding on the first tract he became confused and forgot it. His bidding on the homestead was done through Samuel Conover. The latter, however, is not produced as a witness. The other witnesses of the petitioner who testify on the subject, are Oliver N. P. Emley, George Goodell, John G. Meirs, Gil-S. Lawrie, and Edward B. Woodward, a brother of the petitioner. Mr. Emley testifies that he did not attend the sale as a purchaser, and did not want to buy, that he took an interest in it and was not there when the execution and conditions of sale were read. 40

Dr. Goodell was the holder of an encumbrance of about \$2000, subsequent to the complainants' mortgage. He says he came to look after his debt, and that he knew what the encumbrances against the property were, from a statement which he had obtained from his counsel. He gives as his reason for not making further inquiries that he was satisfied that the property would not bring enough to pay his claim, and he says he will not say he would have given the amount of the encumbrances for the property. He does not appear to have made a bid upon it. Mr. Meirs attended the sale intending, he says, to buy the property if it did not bring more than \$90 an acre. He however made no bid upon it, and admits that he gave to Mr. Bullock as a reason, (he says he gives it as one reason,) for not bidding, that he did not know what amount of interest was due on the legacies. Mr. Lawrie attended the sale, he says, to bid on the property to prevent it from being sacrificed, but he did not bid on it. He seems to have taken no steps to inform himself as to the encumbrances. He says he heard the execution read. Edward B. Woodward did not bid and does not appear to have been present with an intention to bid. On the other hand, the person, Mr. William W. Conover, who bid against Mr. Bullock, from the bid of \$4000, testifies that he heard all the conditions of the sale read; that he understood from the sheriff that the 160 acres were sold subject to a legacy of about \$7000; that he bid for the property with that understanding, and declined advancing his bid beyond \$5050; that the sheriff at the sale in reply to a statement by some one that the premises were sold subject to the Black mortgage, said openly, that they were not sold subject to that mortgage. This witness testifies that he has attended sheriff's sales frequently in Monmouth county, and never saw a fairer sale conducted than that was. The price at which the property was struck off to Mr. Bullock, affords no reason for setting aside the sale. Five witnesses are produced by him from whose testimony it appears that the price was all that the property could be reasonably expected to bring at a forced sale. It is proved that Dr. Bean regarded the price which he agreed to pay Mr. Bullock for the property, as a high one, and one which he would not have been willing to give for it, but for the fact that he desired to own it, because it reminded

him in its hilliness of his old home in New Hampshire. The sale was fairly conducted. There was a large number of persons present, from seventy-five to one hundred, no improper or unfair conduct is imputed to the sheriff or his deputy. From twenty minutes to half an hour was occupied in selling the property, including an intermission of five minutes.

The deputy sheriff had the execution there, and read it in the hearing of the persons present at the sale. The purchaser appears to have taken pains to induce others to buy.

He testifies that while the property was being sold he 10 stepped back into the crowd and told them—the bid being then \$4600—that the property was being cried at \$12,100 including its share of the legacies, and that he thought it was worth a little more. But it is urged that the property was sold at a disadvantage, because there had never been any apportionment of the legacies. But the petitioner's witness, Gilbert S. Lawrie, testifies that he had heard about the encumbrance of the legacies from a dozen sources; that the petitioner among others told him about it, and that it was the general talk of the neighborhood; that they said it was \$14000 20 on all the property, supposed to be \$7000 on the petitioner's property, with two years interest on \$5000 of it, and that the petitioner told him that that was the amount of the encumbrances under the will, and the witness adds that before the sale he had written it down. The deputy sheriff testifies that he heard the petitioner and his brother Edward stating something about the legacies before the sale began. It appears, also, that by agreement between the owners of the property charged with the legacies, the petitioner was to pay in respect of his ownership of the homestead, the interest of one-half of 30 the legacy of \$14,000.

I see no reason for setting aside the sale. The petition will be dismissed with costs.

Notice of Appeal.

[Filed October 30th, 1874.]

Robert Woodward, who filed a petition in above cause, to set aside the sale made by the sheriff of Monmouth county to Anthony Bullock, March 31st, 1874, under the execution issued in said cause, as to lot No. 2, named in said execution, and to restrain the said sheriff from executing or delivering to said Anthony Bullock any deed for the said land so sold, hereby appeals from so much of the order made in this court
 10 on said petition, as adjudged and decreed that the prayer of said petitioner be denied and his petition dismissed, to the Court of Errors and Appeals, of the last resort in all causes at law.

WM. H. VREDENBURGH,
Solicitor of Petitioner.

Dated October 22d, 1874.

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

WM. H. VREDENBURGH,
Of Counsel with Petitioner.

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Petition of Appeal.

Between Robert Woodward, appellant, }
 and
 Anthony Bullock, respondent. }

To the Honorable Court of Errors and Appeals in the last resort in all cases of law:

The humble petition of Robert Woodward, the appellant in

the above stated cause, respectfully shows, that your petitioner finds himself aggrieved by a certain order and decree made by his Honor, Theodore Runyon, Chancellor of New Jersey, bearing date October, eighteen hundred and seventy four, upon a petition filed by this appellant, in a cause wherein Mary J. Bullock, Anthony Bullock and George Sykes, executors of William W. Bullock, deceased, were complainants, and your petitioner and Lydia B., his wife, and others, were defendants, in this respect, to wit: That said order and decree adjudges and decrees that the prayer of said petitioner be denied and his petition dismissed; and your petitioner appeals from that part of the said decree of the Chancellor which decrees as aforesaid, on the ground that the same is erroneous, for that the prayer of said petitioner (*i. e.* that the sale made by the sheriff of Monmouth county, on the 31st day of March, 1874, of lot No. 2, set out in said petition, should be set aside, and said sheriff restrained from executing or delivering to said Anthony Bullock, the purchaser, any deed for the said lot No. 2) should have been granted and allowed.

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

WM. H. VREDENBURGH,

Of Counsel with and Solic'r of Appellant.

Answer to Petition of Appeal.

[Filed December 4th, 1874.]

The answer of Anthony Bullock, the above named respondent.

This respondent, not confessing or acknowledging all or any of the matters or things in the said petition of appeal contained and set forth, to be true, for answer thereunto says, that this respondent believes it to be true that such final order, as

is complained of by the said appellant, was made by the Court of Chancery, as in the said petition of appeal is set forth, but as to the date, substance, and contents thereof, this respondent humbly prays leave to refer thereto when the same shall be produced.

And this respondent is advised and believes that the said order is not erroneous, and is in all things agreeable to equity and justice.

And this respondent humbly prays that the said order may be in all things affirmed, and that the said petition of appeal 10 may be dismissed by the Honorable Court, with costs to be adjudged to this respondent.

GARRIT S. CANNON,
Solicitor and of Counsel with Respondent.

IN CHANCERY OF NEW JERSEY.

Between

MARY I. BULLOCK, ANTHONY BULLOCK,
and GEORGE SYKES, Executors of WM.

W. BULLOCK, Deceased,

Complainants,

and

ROBERT WOODWARD, et ux. et al.,

Defendants.

On petition to set
aside Sheriff's
Sale.

[Filed May 4, 1874.]

Examination of witnesses, &c., in a cause depending in the Court of Chancery of the state of New Jersey, wherein Mary I. Bullock, Anthony Bullock, and George Sykes, executors of the last will and testament of William W. Bullock, deceased, are complainants, and Robert Woodward and Lydia D. his wife, and others, are defendants, taken at the office of Philip S. Scovel, in the city of Bordentown, in the county of Burlington, and state of New Jersey, on the fourth day of May, in the year of our Lord one thousand eight hundred 10 and seventy-four, before me, one of the masters and examiners of the Court of Chancery, in the presence of Garret S. Can-

non, Esquire, solicitor and of counsel with the complainants, and of Robert Woodward, one of the defendants in this cause, in pursuance of a notice duly given to the solicitor of the defendants, which was duly proven before me, and is marked, herewith, *Exhibit No. 5, ex parte* complainants.

Samuel T. Hendrickson, of Freehold, in the county of Monmouth, and state of New Jersey, a witness produced on the part of the complainants, being duly sworn according to law, on his oath saith—

- 10 I am sheriff of Monmouth county, and have a deputy sheriff, D. V. Conover, who has been duly qualified as such; Mr. David V. Conover conducted the sale; he did the most of the talking; he read the execution in the first place, and then the conditions of sale; at least Mr. Conover did; I did not make any statement there; my deputy did; the sale was made according to the execution; he could not make it any different; I did not say anything myself in reference to the property; Mr. Conover made the statement; one condition said is was made subject to all prior encumbrances; there was nothing said by him or me
20 in reference to the Black mortgage; the Black mortgage was in our written statement; Robert Woodward, John G. Meirs, Gilbert S. Laurie, Dr. James S. Bean, and Oliver H. P. Emley did not come to my office and examine the execution, conditions of sale or statement, to my knowledge; they could have examined these papers at the office, if they had so desired it; we keep nothing in the dark; what I mean by selling subject to all prior legal encumbrances, is beyond what we have in the execution; he knew nothing beyond the execution; if there is anything in my former testimony inconsistent with what I have here said,
30 this is in explanation of it.

S. T. HENDRICKSON.

Sworn and subscribed before me, May 4th, 1874.

PHILIP S. SCOVEL, *M. C. C.*

Josiah H. Shinn, of Recklesstown, in the township of Chesterfield, in the county of Burlington, and state of New Jersey, a witness produced upon the part of the complainants, alleging

himself conscientiously scrupulous of taking an oath, and being duly affirmed, saith—

I live in Recklesstown ; have been a justice of the peace in this county for five years, and am at present assessor in the township in which I live, and have been assessor for nearly seven years last past ; I know Oliver H. P. Emley, Esq. ; I saw him in the afternoon of the twentieth day of April last, being the day on which the former examination of witnesses took place in Bordentown in this case—he was on his return from that examination ; I saw him at the toll-gate at Recklesstown ; I had 10
some little conversation with him—it related to the examination which took place at Bordentown on that day ; he said he did not hear much of the evidence ; that Mrs. Bullock and her daughter and the deputy sheriff were all he heard ; that the deputy sheriff gave a very correct statement, he thought, in the manner in which he understood it, of the proceedings on the day of sale, or to that effect ; this was a voluntary statement on his part ; I knew nothing about it ; I merely asked him how they were getting along ; he did not qualify this statement in any way. 20

JOSIAH H. SHINN.

Affirmed and subscribed before me, May 4th, 1874.

PHILIP S. SCOVEL, *M. C. C.*

George Sykes, of Mansfield township, in the county of Burlington, and state of New Jersey, a witness produced upon the part of the complainants, alleging himself conscientiously scrupulous of taking an oath, and being duly affirmed, saith—

I am one of the executors of William W. Bullock, deceased, and one of the complainants in this case ; I know Dr. James M. Bean very well ; I think, on the first day of April last, at 30
the house of Anthony Bullock, at Recklesstown, I saw him ; he said that when the sale opened, he understood the conditions thoroughly of the sale ; that after the bidding commenced, he got excited, and did not think, at the time, what he was doing, or forgot the liens that were on the property ; Anthony Bullock asked him if he, Anthony, did not explain to him, when the sale opened, about the sale and execution, and he said he did ; there was nothing said by him at that time about the deputy sheriff

having made any misstatement as to the encumbrances, and nothing as to the fairness or unfairness of the sale—at least about any unfairness, or about any misunderstanding in any way; I should think he was at Mr. Bullock's three or four hours, perhaps longer.

GEORGE SYKES.

Affirmed and subscribed before me, May 4th, A. D. 1874.

PHILIP S. SCOVEL, *M. C. C.*

Anthony Bullock being recalled, saith—

(*Exhibit No. 5* being shown to witness, being notice of the
 10 examination in this case;) this is a copy of the notice I served on Wm. H. Vredenburgh, Esq., in this case; it is in my handwriting, and is notice of the taking of the testimony here to-day; the original notice was in the handwriting of Garret S. Cannon, Esq., and which I gave him personally in Trenton, on Tuesday, the 28th day of April last; he accepted the notice, and wished me to notify Mr. Robert Woodward of this present examination, and at this request of Mr. Vredenburgh, I went to see Mr. Robert Woodward and notified him personally; I have seen Oliver H. P. Emley since
 20 the last examination was had here before Mr. Scovel, and had a conversation with him; it was at Jamesburg; it was in regard to a conversation which he had with Josiah H. Shinn, the witness just examined; he said that Mr. Shinn had told me correctly that the deputy sheriff's evidence, that he gave at Bordentown, agreed with his understanding of the case at the time of the sale and what there occurred; I know Dr. James M. Bean; he came to see me on the 1st day of April last, and came about half past seven o'clock, in the evening, and stayed until about half past eleven o'clock; I asked him why it was
 30 he stopped bidding; that I had told him the liens that were on the property and the amount of encumbrance that the sheriff sold subject to; he said yes, Anthony, you told me correctly, and I understood the whole thing, and during the bidding I became excited and nervous and the whole thing slipped my memory; he said he was paying me too much money for the farm; that he would not have paid any such a price for the property if it did not remind him so much of his home in New Hampshire; that it was hilly like the land in New Hampshire,

and reminded him of the homestead there ; and that Oliver H. P. Emley told him he had paid too much, also ; before the sale, Dr. Bean came to my house and asked me how high I was going to bid the property up, and I told him seventy to seventy-five dollars per acre, and he said you will get the farm for certain ; that he would not bid it up over sixty-five dollars per acre ; and that Oliver Emley told him that was more than it was worth and advised him not to buy it at that price, as sixty-five dollars per acre was more than it was worth for farming purposes ; Dr. Bean and Oliver H. P. Emley are connected by 10 marriage ; I know John G. Meirs, a witness examined upon the part of the defendants in this case ; I had a conversation with him the day of the sale, but after the sale took place, and he said farm No. 2 he would advise me to let Dr. Bean have it, as ninety dollars per acre was a very big price ; I also know Gilbert S. Laurie ; he came to see me the same week or a few days after the sale ; he said he heard the conditions read and also execution, but he did not understand them ; and I asked him why, and he said it was because he was a little deaf and there was some commotion in the bar-room, and that Robert ought to 20 have had a lawyer and made an explanation.

ANTHONY BULLOCK.

Sworn and subscribed before me, May 4th, 1874.

PHILIP S. SCOVEL, *M. C. C.*

EXHIBIT No. 3.

CONDITIONS OF SALE.

Conditions of the sale of lands, made this 31st day of March, A. D. 1874, by Samuel T. Hendrickson, sheriff of the county of Monmouth, state of New Jersey, by virtue of an execution issued out of the Court of Chancery of the state of New Jersey, 30 subject to all legal prior encumbrances :

First. The highest bidder shall be the purchaser, and at the close of the sale, shall pay 20 per cent. of the purchase money in cash, and sign these conditions with approved security for the balance.

Second. The deed will be delivered on Monday the 27th day of April, A. D. 1874, at my office in Freehold, when and where the balance of the purchase money shall be paid in cash.

Third. In case the purchaser or purchasers neglect or refuse to take his or their deed on the day aforesaid, the property will
 10 be re-advertised and sold again, and if it produces less than the former bid, interest and expenses, the purchaser or purchasers, his or their security will be held liable for the difference; but the defaulting party or parties, shall not be benefited by such resale, but in addition thereto, shall forfeit the amount paid by him or them at this time.

S. T. HENDRICKSON, *Sheriff*.

Dated March 31st, 1874.

This is to certify, that I have this day bought at sheriff's sale, the property of Robert Woodward, et ux. et al., as sold by
 20 Samuel T. Hendrickson, sheriff of the county of Monmouth, for the sum of \$1700, and hereby agree in all things to comply with the above conditions of sale.

ANTHONY BULLOCK.

Dated March 31st, 1874.

This is to certify that I this day buy the second tract as mentioned in said decree, as sold by Samuel T. Hendrickson, sheriff, as aforesaid, for the sum of \$5100, and hereby agree to comply with the above conditions of sale.

ANTHONY BULLOCK.

30 Dated March 31st, 1874.

EXHIBIT No. 4.

LEVY.

Levy.....	\$1 12	Decree for Complainant.....	\$5,910 06
Statement	1 58	Interest from Nov. 27th, 1873.....	172 42
Affidavit.....	40	Costs taxed.....	157 91
Advertisement...	3 50	Interest from January 12th, 1873.....	3 29
Printing.....	18 00	Decree for Edward Black.....	4,825 50
Conditions.....	1 00	Interest from Nov. 27th, 1873.....	140 77
Crier.....	1 00	Costs.....	25 34
2 Deeds.....	6 00	Decree for I. Wm. Bull, of Hightstown	267 83 10
2 Affidavits.....	2 00	Interest from Nov. 27th, 1873.....	7 81
Per centage.....	93 64	Decree for Geo. S. Goodell.....	1,955 08
		Interest from Nov. 27th, 1873.....	57 02
	\$128 24	Costs taxed.....	26 60
Add 25 per cent.	27 50	Interest from January 12th, 1874.....	56
	\$155 74	Decree for Church at Platsburg.....	171 93
		Interest from Nov. 27th, 1873.....	5 02
			\$13,723 04
		Sheriff's ex. fees.....	155 74
			\$13,883 78 20

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sent shows that it was not caused by *carelessness*, or *non-inquiry*, or *ignorance of the incumbrances*, or of the order of priority thereof. All the parties and bidders knew the facts as to the incumbrances. Bullock, the purchaser, and one of the complainants, had been specially posted by his counsel, Mr. Cannon [Book 1, p. 19, line 23; p. 21, line 15, &c.], and had informed others of the facts. Yet, he, they and all having fallen into the same error, it is clear that something occurred at the sale which was calculated to, and did, produce the same impression on each, and led each into the same mistake. It was a reasonable mistake, and mutual, up to the five minutes' intermission.

Point 4.—The effect of the mistake, *before the intermission*, was to cause all the bidders to suppose that the sum then bid for the farm was *thirteen thousand eight hundred and fifty dollars*, to wit: legacies and interest, *seven thousand four hundred and fifty dollars* [Book 1, p. 21, line 4, &c.]; Black mortgage, *five thousand dollars* [Book 2, p. 7]; Dr. Bean's bid, *fourteen hundred dollars*. And the effect, *after the intermission*, was to cause all, except W. W. Conover and Bullock, the purchaser, to suppose that the bid of the latter, of four thousand dollars, had *increased* the price of *thirteen thousand eight hundred and fifty dollars*, bid before the intermission, to *sixteen thousand four hundred and fifty dollars*; while the fact was (known only to W. W. Conover, Bullock and the Sheriff), that the supposed price of *thirteen thousand eight hundred and fifty dollars* was *reduced* to *eleven thousand four hundred and fifty dollars*; and the final result was, that W. W. Conover, Bullock and the Sheriff knew the farm had sold for *twelve thousand five hundred and fifty dollars*—all the others supposed it had brought *seventeen thousand five hundred and fifty dollars*.

Point 5.—A further effect of the mistake, upon those not set right by the Sheriff, was to *deter them from bidding* after the intermission.

Book 1, p. 30, line 20—25; p. 32, line 31—33; p. 36, bottom line; p. 39, line 1—5; p. 42, line 18—21.

And to confine all bidding, after the intermission, to W. W. Conover and Bullock, who had been set right by the Sheriff.

Book 1, p. 12, line 30—34; p. 13, line 35, &c.; p. 14, line 7—10; p. 32, line 27—30.

The result was, to give Bullock the farm for two thousand dollars less than Bean was willing to bid, and for a less sum than Lawrie would have bid: for Lawrie was about to *begin bidding* when the farm stood, as he thought, at thirteen thousand eight hundred and fifty dollars. There was thus 10 an *inadequacy of price of at least two thousand dollars, caused by the mistake.*

Point 6.—Admitting that this inadequacy of price, by itself, is not sufficient to vitiate the sale, yet, with the added ingredient of the general mistake, it is sufficient.

Rorer on Jud. Sales, § 398, 406.

Marlatt v. Warwick, 3 C. E. G., 108, 122—3.

Point 7.—The mistake was caused by the manner in which the Sheriff announced the sale, verbally, and in the conditions of sale. 20

Book 1, p. 10, line 17—23; p. 16, line 10—13; p. 26, line 17—23; p. 29, line 30 to line 7, p. 30; p. 33, line 24—27; p. 35, line 4—12; p. 36, line 9—12; p. 38, line 31—35; p. 44, line 14—18. Book 2, p. 2, line 18—19, line 26—27; p. 5, bottom line.

Such announcement was *volunteered*, and no part of his duty. Not only not authorized by his writ, but *quasi* in contradiction of it. It purported to be his *official construction* of his writ, but was a *mistake*, and calculated to, and did, mislead his hearers. *He did not read the directions of his writ, but stated them orally and inaccurately.* This vitiates the sale. 30

Rorer on Jud. Sales, § 417—421.

Collier v. Whipple, 13 Wend., 224, 229, 230.

Morrice v. Bishop of Durham, 11 Ves., 57.

Lefevre v. Laraway, 22 Barb., 167, 173.

Hubbell v. Sibley, 5 Lans., 51, 55.

Even if he had read the directions of the writ, yet his official announcement of its purport and effect, and the wording of the conditions of sale, misled the bidders, and freed them from the obligation to attend to the directions of the writ.

1 *Sugden on Vendors* (*Perkins' Ed.*), p. 23, § 57.

Point 8.—The Sheriff, both as Sheriff and as Auctioneer, occupied a *fiduciary relation* toward the property, the owner, the parties to the suit, the bidders, and intending or possible bidders present at the sale, being *pro hac vice* their agent and trustee.

Conover v. Walling, 2 McCar., 173, 178.

Cummins v. Little, 1 C. E. G., 48, 56.

Conway v. Nolte, 11 Mo., 74, 76.

Neal v. Stone, 20 Mo., 294, 296.

Hilliard on Vendors, 2d Ed., p. 72, § 58, p. 73, § 1.

Point 9.—The Sheriff being such agent and trustee, it was a *breach of official duty* to correct the mistake of Conover and Bullock and leave the mistake of all others uncorrected. And it was a *breach of trust* to communicate information to them which he withheld from the others. Such breaches vitiate the sale.

Kerr on Fraud (*Bump's Ed.*), p. 125.

Veeder v. Fonda, 3 Paige, 94, 97, 98.

McGown v. Sanford, 9 Paige, 290, 291.

Brown v. Frost, 10 Paige, 243, 246.

Point 10.—Bullock, as one of the complainants and the manager of the suit, occupied a position as such that bound him to the utmost fairness toward the defendants and the other bidders.

Little v. Luntz, 2 Ala., 260, 261.

Collier v. Whipple, 13 Wend., 228.

King v. Platt, 37 N. Y., 153, 160.

Point 11.—Bullock obtained information from the Sheriff which he knew other bidders had not, and which he was bound to communicate to them, and which he concealed from them, although he knew that their want of information was misleading them, deterring them from bidding, and enabling him to get the property at a diminished price. This vitiates the sale.

1 *Story Eq. Jur.*, § 138c, 147, 212a.

Kerr on Fraud (Bump's Edn.), p. 94, 400, 401.

Marlatt v. Warwick, 3 *C. E. G.*, 108, 123.

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Morris v. Woodward, 10 *C. E. G.*, 32, 35.

Hutchinson v. Moses, 1 *P. A. Browne*, 187, 193.

Abbey v. Dewey, 25 *Penna.*, 413, 416.

Veeder v. Fonda, 3 *Paige*, 94, 99.

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