

Court of Errors and Appeals.

EDWARD G. BLACK, et al,
Executors and Respondents,

and

ISABEL E. MILLER,

Appellant.

} On Appeal.

APPELLANT'S BRIEF.

This is an appeal from an order of the Court of Chancery approving a sheriff's sale of mortgaged premises, objections having been made to the sheriff's report of sale.

The facts proven at the hearing on the objections to the report are, that on July 18, 1906, the day the sale was advertised to take place, the appellant called at the sheriff's office and saw William V. A. Blauvelt, the under-sheriff of Bergen County, and asked him for a *month's* adjournment of the sale. He testifies that he told her she could have four weeks adjournment, week by week (*Case, p. 8, l. 10*); that this took place in the ladies waiting-room, not in the sheriff's office (*Case, p. 11, l. 30*); that sales were called at 2 o'clock in the afternoon; that the sale was then adjourned for four weeks, from week to week; that Mr. Luce, the solicitor of the complainants, who was present in the room where the sale was conducted, said that would bring it on the 15th of August, and that he would not then be at home in August; that he

was going away, and asked to have the sale adjourned to September 14th; that the sheriff then adjourned it to September 12th, from week to week (*Case, p. 8, l. 20*). Mrs. Miller, the appellant, was not present, but was in the ladies waiting-room; that the sheriff did not then inform the appellant when the next sale would take place (*Case, p. 11, l. 28*); *that it does not appear that he ever informed her*; that on September 12th the sale was further adjourned till October 10th—four weeks, from week to week; that no advertisements of any of the above adjournments were made; that on October 10, 1906, the property was sold to Horace Enos for \$17,185.00, or \$32.60 less than amount called for by the fi fa.

Objections were filed on behalf of the appellant to the confirmation of the sheriff's sale on the ground that the adjournments had been for periods greater than one week, and had not been advertised as required by the statutes of the state regulating sales of land.

The objections came on for a hearing before Vice-Chancellor Stevenson. Only one witness was sworn, Wm. V. A. Blauvelt, Under Sheriff of Bergen County. The Vice-chancellor overruled the objections and, on November 12, 1906, made an order confirming the sale by the sheriff,

From this order the appellant appealed.

The grounds of appeal are chiefly as follows:

1. Because the adjournments actually made were for periods greater than one week and were not advertised, as required by law.
2. Because the Chancellor erroneously found that *in no case* was any adjournment made for a period of more than one week.

3. Because the Chancellor made an erroneous order confirming the sale and directing the sheriff to execute and deliver a deed to the purchaser.

The real grievance suffered by the appellant was that the adjournments between July 12th and October 10th, 1906, were not advertised; that no publicity was given to the sale between those dates; that in consequence thereof there was not proper competition at the sale on account of the paucity of the bidders present, and that in consequence thereof the property was sacrificed and sold for a totally inadequate price.

A statement of the case in the present instance appears to be the strongest argument, but is urged in behalf of the appellant.

First—That failure to comply with the provisions of the statutes regulating sales of land makes the sale void.

Philhower vs. Todd. 3 Stock. 312.

Parsons vs. Lemming. 12 C. E. Green. 70.

Cummins vs. Little. 1. C. E. Green. 58.

Den, ex Dem. Todd vs. Philhower. 53 at. 796.

Hewitt vs. Railway. 10 C. E. Green. 392.

Chamberlin vs. Larned. 5 Stew. 295.

Second—That where an adjournment is for more than one week it must be advertised.

The Act of April 6, 1906 (p. l. 130), and the Sixth Section of the Act of November 27, 1277 (Revision), 3 Gen. Stat. 2, 980, so provides.

Third—That in this matter there have been adjournments for a period greater than one week without such adjournment being advertised.

To simplify matters, it is admitted that *where both parties agree*, the sheriff may make an adjournment for four weeks, or for any other period, week by week.

But it is insisted that such adjournment cannot be made in this case *without such express consent of both parties*.

The object of such adjournment is to enable the Sheriff to appropriate the whole of the adjournment fee of \$5.00 for a month's adjournment instead of having to pay most of it for the expenses of advertising the single adjournment for a month. This practice has grown to be an established custom.

In this case there have been two *actual* adjournments—one for eight weeks, one for four weeks.

In the first adjournment the Under Sheriff testifies that he stated to the appellant that it would be for four weeks, week by week. The appellant had asked for a *month's* adjournment (*case, p. 11, l. 20*) and she absolutely thought she was getting a full month's adjournment.

When the public adjournment was made on July 18th, the Sheriff first adjourned the sale for four weeks, week by week. Mr. Luce, the solicitor of the complainants, requested a fourth adjournment of four weeks to September 12th, to suit his own engagements, which further adjournment was granted and made week by week, *but the appellant was not consulted; did not consent, and was not even informed of it.* (*Case, p. 11, l. 28.*)

It is most strenuously insisted that this further adjournment not being made with the consent, not even the knowledge of the appellant, for four additional weeks, week by week, was irregular, in derogation of the statute and unlawful, and rendered the sale made by the sheriff unlawful and void. The

Vice Chancellor, when he said in his opinion that Mrs. Miller "accepted the arrangement" (*Case, p. 21, l. 8*), was mistaken, as there is absolutely no evidence to found such a conclusion on.

Fourth, That the price realized at the sale was grossly inadequate.

There is no direct prove of this. Why the then solicitors did not adduce it, as witnesses were on hand at the hearing, it is hard to comprehend.

The tertimony of the Under-sheriff (*Case p. 16, l. 24*) shows he was asked on cross-examination as follows .

"Q. The sheriff himself did not like to knock the property down at either the second or third bid that was made?"

An answer would have shown he considered the price totally inadequate.

The question was objected to, admitted, and afterwards withdrawn—why it can not be conceived.

For these reasons the appellants respectfully ask this Court that the order of the Chancellor confirming the sale be reversed and set aside, and that the sale itself be set aside and a new sale ordered.

E. A. S. MAN,
Solicitor for and of Counsel with
Isabel E. Miller, Defendant.

Court of Errors and Appeals.

EDWARD G. BLACK, *et al.*

Executors, etc.,

Respondents,

and

ISABEL E. MILLER,

Appellant.

} On Appeal.

RESPONDENTS' BRIEF.

This is a frivolous appeal. The only objection urged against the confirmation of the sale was, that the sheriff had adjourned the sale for a period of more than one week, without advertising notice thereof. No evidence was offered as to the value of the land, or the adequacy of the price at which it was sold. It was admitted that the sale was regularly advertised to take place first upon July 18th, 1906 (case pp. 8 & 15); and, as the order recites, all objections, other than the single one above mentioned, were expressly waived by the counsel for the appellant (case p. 25).

As to that solitary objection, the facts are, that, on July 18th, 1906, at the request of the appellant, and with the consent of counsel for complainant, the sheriff agreed to adjourn the sale until September 12th, 1906, by adjournments to be made and proclaimed by him each week. This agreement was carried out and the weekly adjournments were duly

made and proclaimed by the sheriff. On September 12th, the appellant asked for another postponement, and the sheriff, without objection from the complainant, agreed to again adjourn the sale until October 10th, by adjournments, to be made and proclaimed by him each week: which was thereafterwards done. On October 10th, 1906, the property was sold for \$17,185, being \$32.60 less than the amount of the decree and costs.

We cannot understand upon what ground it can be contended that the order confirming this sale can be criticized.

The adjournments were duly proclaimed and, being made from week to week, did not need to be advertised.

Coxe v. Halsted, 1 Gr. Ch. 311

Allen v. Cole, 1 Stock. 286

Hewitt v. Montclair Co., 10 C. E. Gr. 392

Hunt v. Swayze, 26 Vroom 33

Gen. Sts. p. 2980 § 6

1906 p. 130

There can be no doubt that, had the sheriff, of his own motion, and with the knowledge of the appellant, adjourned the sale from week to week, in just the manner in which he did do so, the law would have been complied with, in all respects. The fact that he did so, not merely with the knowledge, but at the instance and request of the appellant, and with the knowledge and consent of the complainant, makes his course a more, not a less, perfect compliance with the letter and the spirit of the law. There can be no pretence that the rights of the appellant were not fully and in every substantial particular respected and protected. There are cases in which a sale has been set aside, where the letter of the law has been

complied with, but where its spirit has been disregarded by adjournments made without the knowledge of the persons interested. Among such cases are *Trustees etc. v. N. J. West Line Co*, 3 Stew. 494; and *Chamberlain v Larned*, 5 Stew. 295, the latter a decision of this court. But these were cases in which the parties were, and inevitably must have been, misled, so that they had neither notice nor knowledge of the sale. It was not, and cannot be, pretended that such was the fact here. Mrs. Miller was present at the sale on October 10th (Case p. 15 line 3), and she does not deny that she was there because she knew that was the day upon which the sale was to take place.

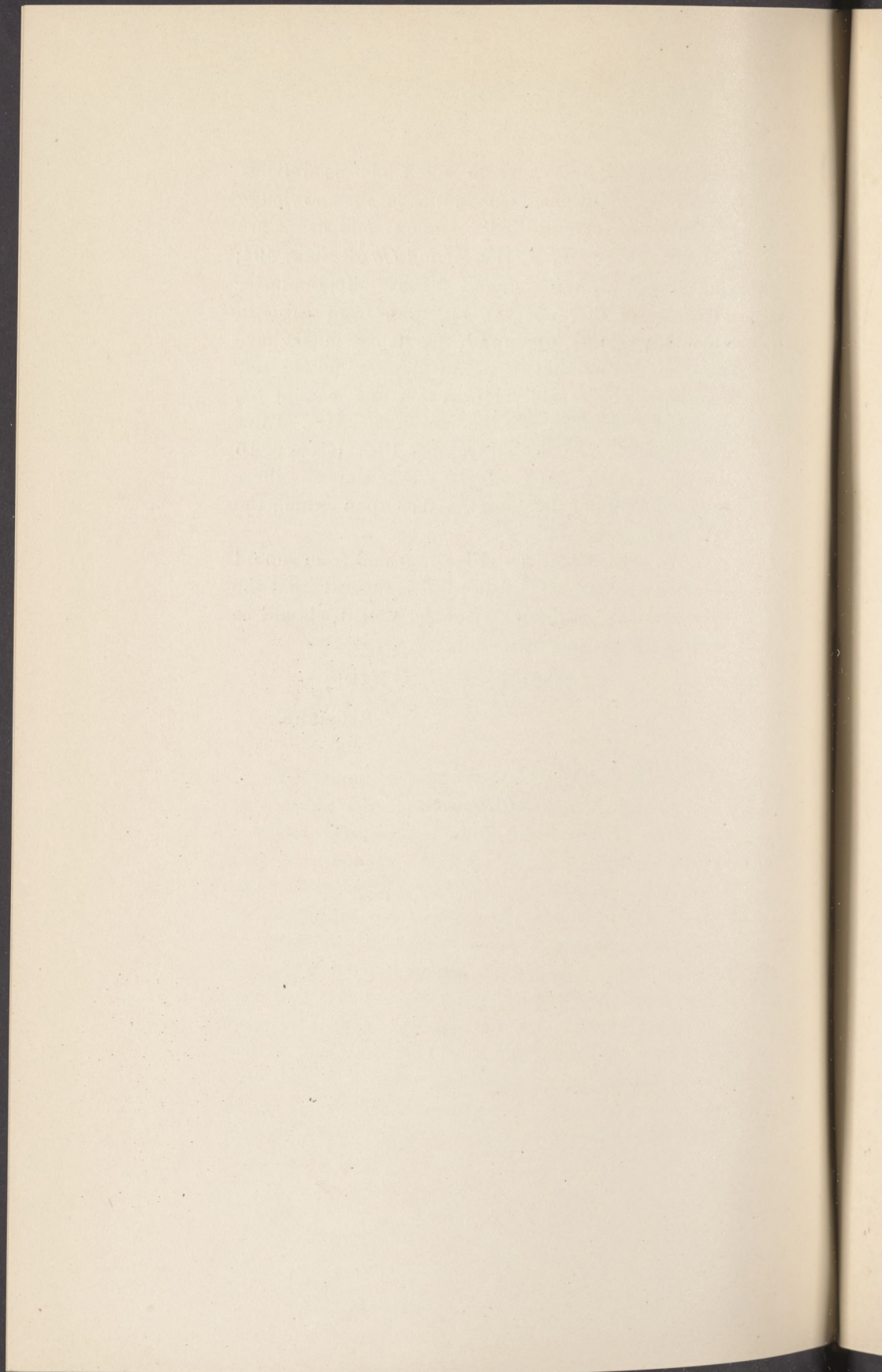
We submit that the order appealed from should be affirmed, and we respectfully suggest that the appeal is so palpably frivolous that it should be summarily so dealt with.

E. J. LUCE & W. A. KIPP,

Solicitors.

EDWARD J. LUCE

of Counsel.



In Chancery of New Jersey. 10

Between

E. G. BLACK, et als,

Complainants,

and

ISABEL E. MILLER, et als,

Defendants.

Fi. Fa.

For Sale of Mort-
gaged Premises.

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To His Honor WILLIAM J. MAGIE, Chancellor of the
State of New Jersey :

I, James W. Mercer, Sheriff of the County of Ber-
gen, do hereby respectfully report that I did, on the
tenth day of October, 1906, sell at public vendue, at
the Court House in the Village of Hackensack (hav-
ing first duly advertised the same), the lands and 30
premises described in the writ of execution issued to
me in the above-stated cause to Horace Enos of the
Borough of Orvil, County of Bergen and State of New
Jersey, for the sum of seventeen thousand one hun-
dred and eighty-five dollars, he being the highest bid-
der therefor.

Respectfully submitted this tenth day of October,
1906.

JAMES W. MERCER,

Sheriff.

40

NEW JERSEY, }
Bergen County, } ss.

James W. Mercer, sheriff of the County of Bergen,
State of New Jersey, being duly sworn according to
law, on his oath says that the mortgaged premises
mentioned and referred to in the foregoing report
10 were duly sold by me at the highest and best price
the same would bring in cash at the time of said sale.

JAMES W. MERCER,
Sheriff.

Subscribed and sworn to be- }
fore me this tenth day of }
October, A. D. 1906. }

WILLIAM V. A. BLAUVELT,
Notary Public of New Jersey.

Filed October 11, 1906.

20

IN CHANCERY OF NEW JERSEY.

Between EDWARD G. BLACK and others, Ex- ecutors, &c., of Joseph Jeffer- son, deceased, 30 and ISABEL E. MILLER and others, Defendants.	{ Complainants, { Defendants.	On bill to fore- close. Objections to con- firmation of sale.
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To His Honor, WILLIAM J. MAGIE, Chancellor of the
State of New Jersey :

Isabel E. Miller, one of the defendants in the above-
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entitled cause, respectfully represents that she is the owner of the lands mentioned and described in the bill of complaint in the above cause, which lands, by virtue of a final decree made in said cause were ordered to be sold to pay and satisfy the amount found to be due and owing to the complainants on the mortgage mentioned in said bill of complaint. That pursuant to said decree, a writ of *feri facias* was directed to the sheriff of the County of Bergen, the county wherein the lands in question are situate, and by virtue of said writ James W. Mercer, the sheriff of said county, advertised the lands to be sold on Wednesday, the eighteenth day of July, nineteen hundred and six, at two o'clock in the afternoon of that day, at the Court House in the village of Hackensack.

That at the time and place so advertised the said sheriff James W. Mercer adjourned the sale of the said lands for a period of eight weeks from that date and to the twelfth day of September nineteen hundred and six, at the same hour and place. That on the twelfth day of September, nineteen hundred and six, James W. Mercer, sheriff as aforesaid, again adjourned the sale for a period of four weeks from said mentioned date, and to the tenth day of October instant, at the same hour and place, at which time, the sale having been called, the said Sheriff James W. Mercer did sell at public vendue at the Court House in the village of Hackensack the said lands to Horace Enos, of the Borough of Orvil, County of Bergen and State of New Jersey, for the sum of seventeen thousand one hundred and eighty-five dollars.

And the said Isabel E. Miller respectfully represents that she verily believes and therefore charges that the sale of the said lands by virtue of the said writ of *feri facias*, was not duly advertised as required by law for Wednesday, the 18th day of July, 1906.

That the said sale having been adjourned on Wednesday, the 18th day of July, 1906, by the said Sheriff as aforesaid, from that date to the twelfth day of September, 1906, a period of more than one week, no notice of such adjournment, and no statement of the parties to the cause and the time and place of such adjournment was published once within one week after the date of such adjournment in the same two newspapers in which the original notice of sale was published, nor was any other notice of adjournment of sale published at any time in any manner whatsoever, as provided by an act entitled "An act to amend an act 'An act relative to sales of lands under a public statute or by virtue of any judicial proceedings'" (Revision), approved March 27, one thousand eight hundred and seventy-four, approved April 6, 1906, or as provided by the Sixth section of "An act relative to sales of land under a public statute or by virtue of any judicial proceedings," approved March 27, 1874.

That the said sale having been adjourned on Wednesday, the twelfth day of September, 1906, by the said Sheriff as aforesaid, from that date to the tenth day of October instant, a period of more than one week, notice of such adjournment or statement of the parties to the cause and the time and place of such adjournment, was not published once within one week after the date of such adjournment in the same two newspapers in which the original notice of sale was published, nor was any other notice of the adjournment of the sale published at any time in any manner whatever as provided by an act entitled "An act to amend an act 'An act relative to sales of lands under a public statute or by virtue of any judicial proceedings'" (Revision), approved March 27, one thousand eight hundred and seventy-four, "Approved April 6, 1906, or as provided by the Sixth section of 'An act relative to sales of lands under a public statute or by

virtue of any judicial proceedings,' approved March 27, 1874.

That the said lands were not sold to the highest bidder as the said Isabel E. Miller verily believes.

The said Isabel E. Miller therefore respectfully represents that for the reason above set forth, the said lands were not sold for the best price that could be obtained therefor, and in addition thereto, was for said mentioned reasons, null and void, and she for said reasons objects to the confirmation of the sale. 10

Dated October 17, 1906.

ISABEL E. MILLER, Deft.
WARD & MCGINNIS,
Solicitors and Counsel with
Isabel E. MILLER, 20
16 Clark St., Paterson, N. J.

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

Isabel E. Miller, being duly sworn on her oath, says that she is one of the defendants in the foregoing stated cause, and the owner of the lands ordered to be sold by the decree of the Court of Chancery, and actually sold by the Sheriff of the County of Bergen. 30
That the objections hereinbefore set forth to the confirmation of said sale are made in good faith, and the causes and grounds of said objections, so far as they relate to her own knowledge or acts are true, and so far as they relate to the acts and doings of others, she believes them to be true.

ISABEL E. MILLER.

Sworn and subscribed to before me }
 this 18th day of October, A.D. 1906. }

WILLIAM EVERETT, Jr.,

Attorney at Law
 of New Jersey.

10 Filed Oct. 20, 1906.

IN CHANCERY OF NEW JERSEY.

20	EDWARD G. BLACK, et als.,	}
	Executors, etc.,	
	Complainants.	
	vs.	
	ISABEL E. MILLER, et al.,	}
	Defendants.	

Transcript of shorthand notes of proceedings taken
 in the above entitled cause before Hon. Eugene Stev-
 enson, Vice Chancellor, on Monday, the 12th day of
 November, 1906.

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Chancery Chambers, Jersey City, Monday, Novem-
 ber 12th, 1906.

40

IN CHANCERY OF NEW JERSEY.

Between	
EDWARD G. BLACK, et als.,	
Executors of Joseph Jefferson,	
deceased,	On bill to fore-
	close. 10
Complainants,	On objections to
	confirmation of
and	sale.
ISABEL E. MILLER, et als.,	
Defendants.	

Messrs. Ward & McGinnis for the defendant, and
objectant, Isabel E. Miller.

Mr. Edward J. Luce for the complainant.

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Transcript of shorthand notes of testimony, etc.,
taken in the above stated cause, at the Chancery
Chambers, in Jersey City, New Jersey, this twelfth
day of November, 1906, before his Honor, Eugene
Stevenson, Vice Chancellor.

WILLIAM V. A. BLAUVELT, sworn for the complain-
ant, testifies as follows:

Direct Examination by Mr. Luce.

30

Q. You are the Under Sheriff in Bergen County,
are you?

A. I am.

Q. Are you the one who gave actual personal at-
tention to the conduct of the sale in this case under
the fieri facias?

A. I am.

Q. Have you your sales-book?

A. I have.

40

MR. LUCE: I think it is admitted that the notices were posted and advertised for July 18th?

MR. WARD: Yes.

Q. On July 18th will you state what took place?

10 A. On July 18th Mrs. Miller appeared at the Court House between half past one and two and she asked for an adjournment, and I asked her on what grounds she wanted an adjournment. She said that if she had some time she could get some money to pay the thing off. I asked her if she was sure, and she said yes. "Why," I said then, "there isn't any reason why you shouldn't have an adjournment for four weeks from week to week." She says, "Will you grant it to me?" I says, "I don't see anything in
20 your way now. The sheriff is in Newark, but I will do everything I can for you." So, it came two o'clock, and I read the title of the sale and I said that "this sale would be adjourned for four weeks from week to week"—after Mrs. Miller told me that she could raise the money to pay the judgment for the amount of the decree. Mr. Luce was there at that time, and said that would bring it on the 15th of August, if I remember right; and he says, "Well, I won't be home in August; I am going away." He says, "Why don't you adjourn it until September 14th?" I says, "I
30 won't until I look at the calendar." I says, "The sale day falls on the 12th of September. I will adjourn it to the 12th of September." He says, "All right;" and so the sale was adjourned from week to week up to the 12th of September.

Q. Is that your sales-book there (pointing to book in Court)?

A. Yes.

Q. Will you turn to the record of this sale and
40 read your entries there?

A. The adjournments?

Q. Yes.

A. "July 18th sale was adjourned to July 25th; July 25th to August 1st; August 1st to August 8th; August 8th to 15th; August 15th to 22nd; August 22nd to August 29th, and adjourned from the 29th to September 5th; September 5th to September 12th." 10

Q. Were those entries made on those respective dates by you?

A. Yes.

Q. Was the sale actually called in the office and adjourned on those days?

A. Yes, we always do.

By the Court.

Q. Just what was done on each of these occasions? What public act was done by you? 20

A. Nothing more than this, your Honor: "In Chancery of New Jersey, between Black et als., complainants, and Isabel E. Miller, et als., defendants. Sale stands adjourned"—each week.

Q. That was the announcement each time?

A. Yes.

Q. When did you make the entry, afterwards?

A. Right afterwards.

By Mr. Luce.

Q. What on September 12th took place? 30

A. On September 12th there was a telephone—the sheriff was home at that time—he got a telephone from a gentleman in Paterson, and also from a lawyer in New York.

Q. Was Mrs. Miller in the office that day?

A. I think she was.

Q. Did you see her yourself, or did the sheriff see her?

A. The sheriff was there at that time. 40

Q. What took place, so far as you know, that day?

A. So far as I know, this gentleman from Paterson and also the lawyer in New York, assured the sheriff—

By the Court.

Q. You weren't there?

10 A. I was alongside of him while he was talking—that Mrs. Miller stood a good chance of getting the money and would like to have an adjournment for Mrs. Miller for four weeks from week to week, and the sheriff said to the gentleman from Paterson, "Are you sure that you are right?" "He says, "Yes; I have every reason to believe that Mrs. Miller will get this money." So, he says, "We will adjourn the sale for Mrs. Miller for four weeks from week to week."

20 *By Mr. Luce.*

Q. What are the entries in the books there now?

A. The last one was September 12th to September 19th, 26th, October 3d and October 10th, the date the property was—

Q. What was done by you on each of those dates?

A. The day the property was sold, October 10th?

Q. On each of these dates that appear in the sales-book, did you make the same proclamation as before?

A. Yes.

30 Q. And made the entry when?

A. Just the same.

By the Court.

Q. I understand that you personally made all the announcements of the adjournments?

A. Yes.

Q. Including the announcement that was made on September 12th?

A. Yes.

By Mr. Luce.

Q. On the last day—what was the day?

A. October 10th.

Q. And on that day the property was—

A. The property was sold to Dr. Horace Enos for \$17,185.

10

Cross Examination by Mr. McGinnis.

Q. Sheriff, the first talk that you had with anybody about adjourning this matter was with Mrs. Miller.

A. It was, yes.

Q. And how long before the 18th of July was that?

A. Why, I think it was the day before; maybe two days before.

Q. And at that time, as I understood you to say, she asked for a month's adjournment? 20

A. Yes, and I told her she was entitled to four weeks from week to week.

Q. And you took your calendar to ascertain at that time the date of the next adjournment?

A. No, not then.

Q. How did you inform Mrs. Miller at that time when this sale would take place?

A. I didn't inform her then when the next sale would take place.

30

Q. And where was this conversation had?

A. In the ladies' waiting room, as there was some people in the office and she didn't want to talk business in the office.

Q. Did you at that time say anything about bringing her lawyer over to attend to the matter?

A. I told her it would be better for her to bring Mr. Ward over to attend the sale.

Q. And Mr. Ward did come over that day?

A. He did. He was there that afternoon.

40

Q. And as a matter of fact the sale was adjourned four weeks?

A. It was from week to week.

Q. Then, as Mr. Luce suggested that that would bring it at a date inconvenient to him, the matter was then adjourned four weeks more?

10 A. Up to September 12th. That is the day I looked at the calendar on July 18th. That is the day I told Mr. Luce the day the sale would take place.

By the Court.

Q. Was Mr. Luce present on September 12th?

A. No, he wasn't there. It was done over the telephone.

Q. There was no opposition to the application for a further postponement?

A. He did oppose it to the sheriff before the
20 sheriff told him the conditions.

Q. I am referring now to what took place on September 12th.

A. There was nobody there on September 12th.

Q. And there was no opposition to a request for postponement by telephone or otherwise?

A. Not that I know of.

By Mr McGinnis:

Q. So that when you first adjourned it, you said it was to be adjourned four weeks from week to week?

30 A. Yes.

Q. And then when Mr. Luce said that would bring it to a date inconvenient to him, then the date September 12th was suggested, and the matter was then adjourned to September 12th?

A. It was.

Q. Without anything further being stated?

A. Yes.

Q. And the matter then go over to September 12?

A. Yes.

Q. Now, between the dates mentioned, that is, between July 18th and September 12th, was there anybody to attend these sales?

A. There was not.

Q. Mrs. Miller was not there?

A. No.

Q. You know Mr. Ward?

10

A. Yes.

Q. He was not?

A. He was not.

Q. And no personal representative of hers was there?

A. Not so far as I know, no.

Q. She was not notified to be there?

A. No.

Q. Or to remain away?

A. No.

20

Q. There was nothing at all said with reference to these particular dates it was adjourned to, between July 18th—

A. Nothing whatever, so far as I know.

Q. So that when the people all left the office on the 18th of July it was understood that the sale would come up on the 12th of September?

A. 12th of September.

Q. And that was all?

A. That was all.

30

Q. And nothing said about the intervening dates?

A. No.

Q. On the 12th of September—that fell, I believe, on a Wednesday?

A. That fell on a Wednesday, yes.

Q. And do you remember the Saturday before receiving a telephone call from New York?

A. I don't know whether it was on a Saturday or Friday, I know it rained very hard.

40

Q. From a Mr. McNulty?

A. Yes.

Q. Who told you he was a New York counsel for Mrs. Miller?

A. Yes.

Q. And I believe at that time—at least, I take
10 from your direct examination—he asked for a month's adjournment?

A. He asked the sheriff. He didn't ask me.

Q. Then, he had a second conversation, did he not? I believe on Saturday, the sheriff was not in and he called up again on Monday. You told him to call up again?

A. It was either Friday or Saturday, and then he called up the following day. I don't know which it was. He called up one day and I told him the sheriff
20 would not be in, but he would be in Monday morning between nine and ten.

Q. Did he talk to you what it was about?

A. No, sir.

Q. So that on Monday he called him up again, and the sheriff had the conversation with him?

A. Yes, the sheriff had the conversation with him.

Q. So what he said to the sheriff you couldn't hear?

A. No.

Q. You said on your direct examination that in
30 this conversation he told the sheriff he wanted it adjourned from week to week?

A. He asked for a month's adjournment. I heard the sheriff say "I will give you the month's adjournment from week to week for four weeks."

Q. What the sheriff said was, "I will give you four weeks' adjournment from week to week?"

A. For four weeks from week to week.

Q. Now, between September 12th and October

10th, the date of the sale, was Mrs. Miller there at any of these week days?

A. Not until the 10th of October, if I remember right.

Q. And it was understood by the sheriff and by Mr. McNulty, and presumably by Mrs. Miller, that the 10th day of October was the date that that property would be sold? 10

A. Yes.

Q. And that the sale would not take place at any date between those periods?

A. No, sir.

Q. And, as a matter of fact, she was not there before that date nor was Mr. Ward nor any representative for Mrs. Miller?

A. Not so far as I am aware of. If they were they weren't in the office. 20

Q. Now; between July 18th and October 10th was there any advertisement in the papers in which the original——

Mr. Luce: It is admitted that no adjournments were advertised.

The Court: I understood you to say that you did not object to the sale on the ground that there was any defect in the advertisement of the sale for July 18th?

Mr. McGinnis: No. 30

The Court: I have since looked through the objections and I see that objection is taken. We can note that counsel for the objector withdrew the objection that there was any defect in any advertisement for July 19th.

Mr. Luce: We advertised it for five weeks and the last advertisement was six days before the sale. 40

By Mr. McGinnis.

Q. The day of the sale—how many bids were there, sheriff; I may refresh your recollection; there were two bids, were there not?

A. My recollection of it is there was three, but I didn't turn around to look who they were.

10 Q. The property did not bring the cost of the foreclosure and the mortgage; the amount mentioned in the decree, did it?

A. It was \$32.60 deficiency.

Q. How many persons were there in the sheriff's office at the time of the sale other than the officials and counsel?

A. Why, I guess there was nine or ten, but not more.

Q. How many persons bid?

20 A. Why, I think there were three or four bidders. I didn't turn around to see who they were or look who they were, because I was facing the wall at my desk.

Q. The sheriff himself did not like to knock the property down at either the second or third bid that was made?

Mr. Luce: I object to that.

30 The Court: I don't see the materiality of it Mr. McGinnis.

Mr. Ward: It shows that the sheriff did not think the property was bringing a fair price.

The Court: You object on the ground first specified—that the original sale was not properly advertised and that objection you withdraw; and, secondly, that the advertisement to August, the adjournment to August—was not advertised, and,

thirdly, that the subsequent adjournments were not properly advertised. And then you end up by saying that for these reasons the property did not bring a fair price.

Mr. McGinnis: I say that because of these reasons the property did not bring the 10 best price obtainable, and say that the sale itself was void.

The Court: Then I will take it.

Mr. Luce: My objection goes to it even on that ground; it is not material what the sheriff thought.

(Question withdrawn.)

By Mr. McGinnis.

Q. Part of your conversation with regard to this adjournment the first time was had with Mr. Ward, was it not? 20

(Question withdrawn.)

Re-direct Examination by Mr. Luce.

Q. Mr. McGinnis asked you, recurring now to what took place on July 18th, the time when the first adjournment was made; he asked you whether when the adjournment was made to September 12th; was 30 that all that was said—was that all that was said, that you adjourned it to September 12th?

Mr. McGinnis: The question was put to the witness and he answered.

The Court: I think the witness has answered that quite fully; he stated that what was said was that the applicant, Mrs. Miller, might have an adjournment for four weeks 40

once a week—from week to week; that is what he testified to distinctly.

Mr. Luce: He was then asked; that would bring it, of course, to August?

The Court: If you want to ask him if more was said ask him.

10 Q. Just tell what was said about adjournment to September 12th.

A. I think you said something to me. You said, "I am going away in August, or going away the first of August, and wont be home to attend this sale. Why don't you adjourn it until September 14th?" I said, "No, Mr. Luce, I cannot do that at all until I look at the calendar," which brought it on the 12th. I says, "I will adjourn that until the 12th of September and, as far as I know now, at that time the prop-
20 erty will be sold."

Q. Is that all you said?

A. I think so—unless you can refresh my memory.

Q. Did you say anything about from week to week?

A. I always say that in the office. If a party asks for an adjournment for four weeks we say it will be for four weeks from week to week.

Q. Is that all you did then?

A. I think I said, "This sale stands adjourned from week to week until September 12th."

30 *By the Court.*

Q. Are you now stating the announcement that you made—the formal announcement of the adjournment—or simply what you said to these parties?

A. What I said to these parties.

By Mr. Luce.

Q. What formal announcement did you make?

A. That the sale would be adjourned from week to week for four weeks, and Mr. Luce said he would

not be home until August, and he said, "Why don't you adjourn it for four weeks?" I said then, "It will be adjourned for four weeks from week to week."

By the Court.

Q. You are saying what agreement was made between you and these parties, but counsel asks you what formal announcement you then made after that? 10

A. Each week, each Wednesday.

Q. Did you make a formal announcement immediately, or did you go on with your business and hold other sales and make other announcements?

A. Before the other sales.

Q. The last thing you do is to make these announcements?

A. Yes.

Q. At that time were any of the parties in the room there, or were they all gone. 20

A. All gone. After the arrangement was made they left immediately.

Recross Examination by Mr. McGinnis.

Q. Then, what did you announce when you made this formal announcement, after the parties had all left and after all the other sales?

A. "This Miller sale stands adjourned until July 25th."

Q. That was the announcement you made?

A. "Black against Miller will be adjourned for one 30 week to July 25th."

By the Court.

Q. Same time and place?

A. Same time and place.

Q. Have you a regular formal announcement that you go through with—regular announcement that you make?

A. Nothing more than this: "In Chancery of New

Jersey. Between Edward G. Black, et als., complainants, and Isabel E. Miller, et als., defendants. Fieri facias. Returnable October Term, A. D. 1906. This sale stands adjourned for one week—at the same time and place.

Q. Do you make a great many adjournments from week to week?

10 A. I have got one here that has been adjourned since—same time as Mrs. Miller's.

By Mr. McGinnis.

Q. Who was in the office when you made this announcement—anybody at all?

A. Some Wednesdays we don't have any sales and there is nobody there. We just read them off.

MR. LUCE: I put the book in evidence.

20 THE COURT: It will be received—that is to say, the record of this sale.

(Page 116 of the book from which the witness has been testifying is offered in evidence.)

CASE CLOSED.

STEVENSON, V. C. (orally)—I do not think that the objection which is made on behalf of the owner of the equity is valid or should prevail here. The parties
30 met on July 18th, when the sale had been advertised, at the sheriff's office. The sheriff had the power to make two adjournments and for periods aggregating not more than eight weeks. That was a discretionary power that the sheriff was entitled to exercise. He is not obliged to grant or refuse an application for a postponement on the first day advertised for the sale. In this instance undoubtedly the sheriff exercised his authority properly, upon representations made by Mrs. Miller or on her behalf, that the money would

be paid. Now, then, what followed? The complainants and the owner of the equity, Mrs. Miller, made an agreement as to how the sheriff should postpone the sale. It was not an agreement that there should be an adjournment for four weeks—that is to say, a formal adjournment for four weeks and so announced in the sheriff's office in the usual way at the conclusion of the sales and published as such in the newspapers according to law. Nothing of the kind. The agreement was distinct that Mrs. Miller should have the benefit not of four weeks—the matter was adjusted otherwise to suit Mr. Luce's convenience—but Mrs. Miller was to have the benefit of eight weeks—four weeks more than she had asked for—and she accepted the arrangement, and this time that was thus given her by consent was to be granted by successive adjournments from week to week. This was an agreement between the parties. This was not an adjournment in the face of the public for the information of the public. It was a bargain between the parties that there should be an adjournment from week to week. To question the validity of such a bargain at this date requires a good deal of courage on the part of counsel. If this Court should countenance such an objection it would be proceeding in violation of the accepted law of the State for years and years upon which hundreds of thousands of titles to-day stand in this State.

Now, then, what was done? Why, the sheriff carried out this bargain which these people had made, and against the validity of which neither of them can now be heard. If either one of them should come into Court and object to what the sheriff did, he or she would be undertaking to go back on his or her agreement without the slightest justification. All that the sheriff did he did because these two parties agreed that he should do it, and he carried out their wish. It

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would be strange, indeed, if either of them could now complain. He went on and made a formal adjournment from week to week, and this arrangement was extended at Mrs. Miller's request and without objection on the part of Mr. Luce. He might have objected, but he did not—extended from September 12th until October 10th, at which time the sale was held. Why, 10 how can Mrs. Miller object here to the carrying out of the very arrangement that she entered into with full knowledge of its effect?

Now, then, were the public in any way deceived? Suppose it be conceded, as I think it must be, that this whole arrangement was brought about by Mrs. Miller, assented to by her, and the sheriff acted upon it, and therefore she cannot complain; let us go further, and say, suppose that she is entitled to protection even 20 against her own improvident agreements, wasn't this sale advantageous? Why, there isn't a particle of evidence adduced here to show that the property did not bring its full value, not the faintest spark of evidence is produced here showing that this was an unfair sale, that it did not realize all that the property should bring. And further, was there anything about this arrangement which necessarily tended toward repelling purchasers or deceiving purchasers, or leaving the public without notice? Certainly not, if possible bidders had overheard this private arrangement. But 30 this was not done before the public. It was unknown to them, this private arrangement between the parties. But if they all heard of it, or they learned that the sale would not go on until September 12th, and if they all heard what took place on September 12th, they were notified that the sale would not go on until October 10th. But as a matter of fact, there is no evidence here to show that a solitary possible purchaser was brought into this arrangement, or knew anything about it. Therefore, so far as the public was con-

cerned, the whole business was conducted precisely as if no private arrangement were made and as if the sheriff had made his adjournments from week to week and kept everybody in touch with them. Now, everybody knows that these weekly adjournments oftentimes have the effect to wear out the public and the sale is brought on when nobody knows anything about the property whatever and the property is struck off to the complainant or to a single purchaser, as is illustrated by one or two of these cases which Mr. McGinnis has cited. This Court is always ready upon a showing that the sale was in fact unfair to open the sale and set it aside on the ground that there has been unfairness in this sort of a postponement. Counsel all know that counsel oftentimes purposely adjourn a sale until nobody knows anything about it, until everybody has lost interest in the sale, public attention is not called to it, and for the purpose of perfecting a title \$20,000 worth of real estate may be struck off for \$1,000. The sale is a mere form, and the postponement is had in order to prevent bidders from coming in and meddling with what does not concern them. But if there is any injustice done by any arrangement like that the Court is always ready to hear the parties who are injured, and if there were any evidence here that Mrs. Miller's property was sacrificed, she might, in the face of her own distinct agreement, make out a case for relief.

All that was done she agreed to and it was done for her advantage, to give her time to raise the money.

In the second place, there is nothing about this arrangement that was made that is violative of the letter or spirit of the statute, because what was done was a mere private arrangement to have the sale adjourned from week to week, and by the weekly announcements, in theory of law, the public were duly notified and kept in contact with the sale.

I think it is perfectly plain that the objections must be overruled.

The foregoing is a true and correct transcript of the proceedings before the Vice-Chancellor in the matter in which it purports to be.

WARD & MCGINNIS,
Solrs. of Isabela Miller.

IN CHANCERY OF NEW JERSEY.

20	Between EDWARD G. BLACK and SARAH A. JEFFERSON, Executors, etc., Complainants, and ISABEL E. MILLER, et al., Defendants.	}	On Bill, &c.
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This matter being opened to the court by Ward & McGinnis, solicitors, and of counsel with the said defendant, Isabel E. Miller, in the presence of Edward J. Luce, solicitor, and of counsel with the complainants and also for the purchaser, Horace Enos, and Cornelius Doremus, also of counsel with said Horace Enos, upon the objections of the said Isabel E. Miller, filed in said cause, to the confirmation of the sale of the lands and premises in the bill of complaint in said cause mentioned and described, heretofore made and reported to this court by the sheriff of the County of

Bergen; whereupon, upon reading the said objections and hearing the parties and their proofs and the arguments of counsel, and the said defendant Isabel E. Miller, by her counsel, waiving all the other objections by her filed and insisting only that the sale ought not to be confirmed because she says that the same was adjourned for more than the space of one week without notice thereof being published according to law; and it appearing that the said sale was by due notice and advertisement duly posted and published according to law appointed in the first place to take place on the eighteenth day of July last, at the sheriff's office in Hackensack, at the hour of two o'clock in the afternoon, and was thereafterwards, on said eighteenth day of July, by adjournment duly made and proclaimed, adjourned for one week to take place at the same hour and place, and thereafterwards by like adjournments made from week to week until the tenth day of October last when said sale was made as heretofore reported by the sheriff of the County of Bergen; and it appearing that in no case was any adjournment made for a longer period than one week. 10 20

It is on this twelfth day of November, nineteen hundred and six, ordered that the said objections of the said defendant, Isabel E. Miller, be overruled and that the said sale heretofore reported by the said sheriff, to wit, the sale of the said land and premises to Horace Enos for the sum of seventeen thousand one hundred and eighty-five dollars be and the same is hereby confirmed as valid and effectual in law. 30

And it is further ordered that the said sheriff do execute a good and sufficient conveyance in law to the said purchaser for the said mortgaged premises so sold but in case the said defendant, Isabel E. Miller, shall take and perfect an appeal from this order to the next term of the Court of Errors and Appeals, be- 40

ginning on the twentieth day of November instant,
and shall notice the same for hearing at the said
term, of all which the complainants shall accept short
notice, the said deed shall not be delivered by the said
sheriff to said purchaser until after the thirtieth day
of November instant, to the end that the said defend-
ant may apply to the Court of Errors and Appeals for
10 a further stay.

And it is ordered that the costs of the complaints
in this matter be taxed and paid by the said defendant,
Isabel E. Miller.

W. J. MAGIE,
C.

Respectfully advised,
EUGENE STEVENSON,
V. C.

20 A true copy,
VIVIAN M. LEWIS,
Clerk.

Filed November 22, 1906.

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IN CHANCERY OF NEW JERSEY.

Between

EDWARD G. BLACK and SARAH A.

JEFFERSON, Executors, &c., of

Joseph Jefferson, deceased,

Complainants,

and

ISABEL E. MILLER and others,

Defendants.

On Bill, &c.
Notice of Appeal.

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To

EDWARD J. LUCE, Esq.,

Solr. of Compls., and

CORNELIUS DOREMUS, Esq.,

Solt. of Horace Enos.

Sirs:

The defendant, Isabel E. Miller, hereby appeals
 from the final order, and from the whole and every
 part thereof, made in this court, in the above-stated
 cause on the twelfth day of November, nineteen
 hundred and six, overruling the objections of the said
 defendant, Isabel E. Miller, to the confirmation of the
 sale of the lands and premises in the above-stated
 cause heretofore reported by the sheriff of the County
 of Bergen, and ordering that the said sheriff do
 execute a good and sufficient conveyance in law to the
 purchaser for the said mortgaged premises so sold, to

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the Court of Errors and Appeals in the last resort in all causes.

Dated November 21, 1906.

WARD & MCGINNIS,

Solicitors of Defendant,

Isabel E. Miller.

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PETER J. MCGINNIS,

Of Counsel.

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

PETER J. MCGINNIS,

Of Counsel with Defendant,

Isabel E. Miller,

No. 16 Clark St.,

Paterson, N. J.

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NEW JERSEY COURT OF ERRORS AND APPEALS.

Between
EDWARD G. BLACK and SARAH A.
JEFFERSON, Executors &c. and
HORACE ENOS,

Respondents,

and

ISABEL E. MILLER,

Appellant.

On Appeal from 10
Court of Chan-
cery.
Petition of Ap-
peal.

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

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The petition of Isabel E. Miller, the above-named appellant, respectfully shows that by a final decree in a certain cause in the Court of Chancery, wherein the above-named Edward G. Black and Sarah A. Jefferson, executors &c. of Joseph Jefferson deceased were complainants, and your petitioner herein and others were defendants, on bill to foreclose a mortgage on lands described in the bill of complaint in said cause, it was amongst other things ordered that the lands therein described be sold to satisfy the amount men- 30
tioned in said decree, and for that purpose, a writ of fieri facias issued to the sheriff of Bergen county, who advertised and sold the said described lands to one Horace Enos on the tenth day of October, nineteen hundred and six. That your petitioner filed objections to the confirmation of said sale, and the objections having been brought on to be heard, before his honor, the Chancellor, in the presence of Ward & McGinnis, solicitors and of counsel with your petitioner, and of Edward J. Luce, solicitor and of coun- 40
sel with the above-named respondents, a final order was made by his honor, William J. Magie, Chancellor

of the State of New Jersey, bearing date the twelfth day of November, nineteen hundred and six, overruling the objections of your petitioner, and confirming said sale.

That your petitioner respectfully shows that she finds herself aggrieved by the said final order made by his Honor, William J. Magie, Chancellor as aforesaid, bearing date the twelfth day of November, as aforesaid, in these respects, to wit:

First.—That said sale by said sheriff having been adjourned by him from the eighteenth day of July, nineteen hundred and six, to the twelfth day of September, nineteen hundred and six, and on said twelfth day of September, nineteen hundred and six, until the tenth day of October, nineteen hundred and six, each of said adjournments being for a period of more than one week, without notice of such adjournments being advertised, as required by law, and your petitioner having filed her objections to the confirmation of said sale because of the failure of the sheriff to advertise such adjournments, as aforesaid, the chancellor erroneously found that in no case was any adjournment made for a period of more than one week, and erroneously ordered that said objections be overruled and the sale confirmed.

Second.—Because his Honor, the Chancellor, after hearing the proofs and testimony produced in said matter erroneously found that the said sale was by due notice and advertisement posted and published according to law, appointed in the first place to take place on the eighteenth day of July, nineteen hundred and six, at the sheriff's office in Hackensack, at the hour of two o'clock in the afternoon, and was thereafterwards, on said eighteenth day of July, by adjournment duly made and proclaimed, adjourned for one week, to take place at the same hour and place, and thereafterwards, by like adjournments, made from week to week, until the tenth day of October last,

when said sale was made, as heretofore reported, by the sheriff of the County of Bergen; and that in no case was any adjournment made for a longer period than one week, erroneously ordered that the said objections of your petitioner, Isabel E. Miller, to the confirmation of said sale, on the ground that the said adjournments were for a period of more than one 10 week be overruled and the said sale as theretofore reported by the said sheriff, to-wit, the sale of the said lands and premises to Horace Enos for the sum of seventeen thousand one hundred and eighty-five dollars, be confirmed as valid and effectual in law.

Third.—Because his Honor, the Chancellor, ordered that said sheriff do execute a good and sufficient conveyance in law to the said purchaser for the said mortgaged premises so sold, whereas upon the proofs 20 presented at the hearing of said objections, your petitioner's objections should have been sustained and said sale set aside.

Your petitioner therefore prays that the said final order of the chancellor may be, in the particulars aforesaid, for the reasons aforesaid, and in all respects reversed, set aside and for nothing holden, that your petitioner's objections be sustained and said sale set aside.

Dated November 22, 1906.

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WARD & MCGINNIS,
Solicitors of Appellant.
PETER J. MCGINNIS,
Of Counsel.

NEW JERSEY COURT OF ERRORS AND AP-
PEALS.

	Between EDWARD G. BLACK and SARAH A. JEFFERSON, Executors, etc., and 10 HORACE ENOS. Respondents, and ISABEL E. MILLER, Appellant.	On appeal from Court of Chan- cery. Answer to petition of appeal.
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The answer of the above-named respondents to the petition of appeal of the above-named appellant.

20 These respondents, not acknowledging all or any of the matters which in the said petition of appeal are contained to be true, for answer thereto, nevertheless, say and admit that an order was, on the twelfth day of November last past, made and entered in the Court of Chancery, in the cause for that purpose mentioned in the said petition, as is therein stated, but as to the substance and form thereof, these respondents pray to refer thereto when the same shall be produced. And these respondents are advised and believe that

30 the said order is agreeable to equity, and they pray that the same may be affirmed, with costs to be adjudged to these respondents.

E. J. LUCE & W. A. KIPP,
Solicitors.

EDWARD J. LUCE,
Of Counsel.

