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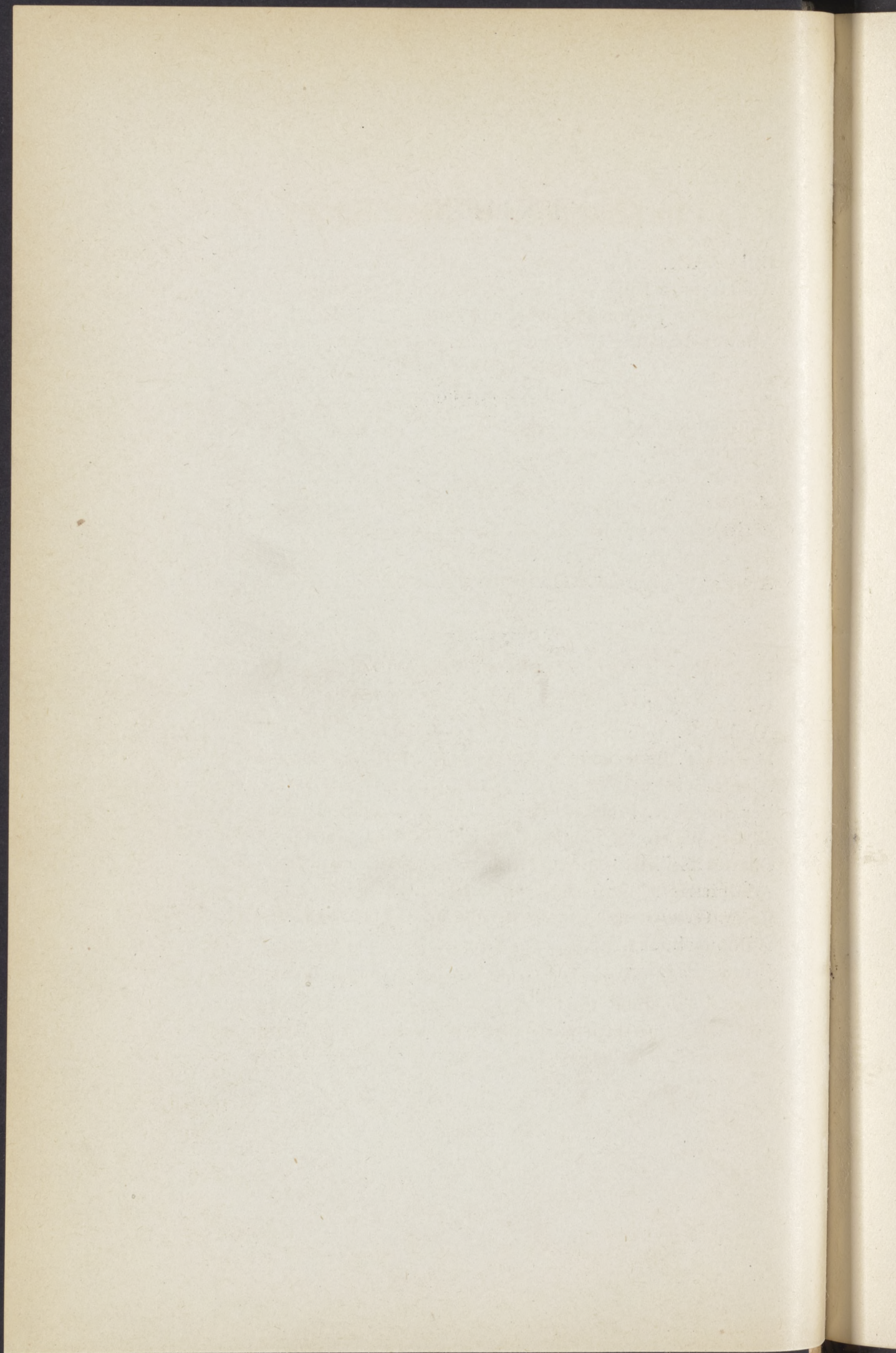
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In Chancery of New Jersey

Between

ISAAC A. OWEN, ET AL.,

Complainants,

AND

JOSHUA P. OWEN, EXECUTOR,

ET AL.,

Defendants.

BILL FOR RELIEF

10

Filed February 9th, 1916.

TO HIS HONOR, EDWIN ROBERT WALKER,
CHANCELLOR OF THE STATE OF
NEW JERSEY:

20

1. COMPLAINING, showeth unto your Honor, your orators, ISAAC A. OWEN, JR., of the City and County of Salem, and MARTHA T. OWEN, of the City of Millville, County of Cumberland, of the State of New Jersey; that your orators are beneficiaries under the will of Isaac A. Owen, Sr., deceased; and that the said Isaac A. Owen, Sr., departed this life on or about June 1st, 1906, testate. 30

2. And your orators further show that pursuant to the terms of said will, a copy thereof being hereunto annexed. Exhibit C. 1. Your orators are each entitled to an equal one-third part of the net estate of the said Isaac A. Owen, Sr., deceased.

3. And your orators further show that the real estate owned by the said Isaac A. Owen, Sr., at the time of his decease, consisted of a frame dwelling and a large lot of land adjoining, located on South Second Street and a small brick dwelling and adjoining lot on South Third Street, in the City of Millville, County of Cumberland, in said State, and about forty acres of timberland, in the Township of Maurice River, in said County of Cumberland; that the
 10 said residence property and adjoining lot located on South Second Street, as aforesaid, is bounded and described as follows:

ALL that certain tract or parcel of land and premises, hereinafter particularly described, situate, lying and being in the City of Millville, in the County of Cumberland and State of New Jersey.

BEGINNING at a point in the west line of Third Street three hundred and seventy-seven feet and three
 20 inches north from the northwest of Third Street and Florence Avenue, the same being also ten feet north from the south edge of the stone wall of the City Culvert running from Third Street, and runs from thence by True Meridian Standard of Cumberland County, along the north line or edge of said Culvert south sixty-six degrees and five minutes west two hundred and fifty-six feet and six inches to a corner in the east line of Second Street; thence along the east line of said Second Street north twenty-four degrees and ten minutes west one hundred and twenty three feet and six inches to a corner of formerly L. C. Stanley's now
 30 Charles Barnes' lot; thence along his line of same north sixty five degrees and forty minutes east, one hundred and eighty two feet and six inches to a corner of a lot this day conveyed to John Fath, by the party of the first part; thence along his line of same bounding on the west edge of a stone wall south twenty-four degrees and ten minutes east forty

feet and three inches to a corner of same; thence still thereby north sixty five degrees and forty minutes east seventy four feet to a corner in the west line of Third Street aforesaid; thence along the west line of Third Street south twenty four degrees and ten minutes east, eighty feet to the place of beginning. CONTAINING one hundred and three square perches of land, more or less.

4. And your orators further show that on or about the middle of June 1915, your orator, Isaac A. Owen, Jr., one of the executors of the will of the said Isaac A. Owen, Sr., deceased, was removed by an order of the Orphans' Court for failing to promptly proceed with the settlement of the estate of the said Isaac A. Owen, Sr., deceased. 10

5. And your orators further show that on August 23, 1915, the remaining executor, Joshua P. Owen, advertised the real property of Isaac A. Owen, Sr., deceased, for sale at public auction to be holden on September 22, 1915.

6. And your orators further show that the said executor failed to properly advertise the aforesaid real estate; that the advertised description of same did not contain any statement tending to show the nature and kind of improvements upon said real estate; that said advertisements recited that at the above time "all of the real estate that Isaac A. Owen, Sr., died seized of, consisting of a tract of land having a frontage of 125 feet on South Second Street and a frontage of 123 feet on South Third Street, and that the properties will be sold in lots, the size and dimensions of each will be made known at the time of the sale"; that the entire verbiage of said advertisements tended to convey the idea that said real estate consisted of lots which were unimproved. 20 30

7. And your orators further show that the Second Street property, was formerly the Homestead of Isaac A. Owen, Sr., now deceased; that it is in a good residential

section of the City of Millville and is worth not less than \$3,000.00; that it is taxed by the City of Millville at \$1975.00.

8. And your orators further show that upon the day of the sale of the Homestead property on South Second Street, it was sold, at auction, to one Percy W. Owen, a son of Joshua P. Owen, executor, for the sum of \$1575.00, and that said title to said property still remains in the said
10 Percy W. Owen.

9. And your orators further show that if proper notice of the sale of the aforesaid real estate had been given a much greater sum could have been realized from the sale thereof; that at the said auction persons were present desiring to bid upon the Homestead or South Second Street property a greater sum than that at which the property was knocked off by the auctioneer to Percy W. Owen, but that after the bid had been made by one of the persons present, the bid of the said Percy W. Owen was made and the prop-
20 erty immediately sold at his bid of \$1575.00, without an opportunity being given for the other bidders to make any advance over said last mentioned bid.

10. And your orators further show that no notice of the sale was received by them or either of them, and that neither of your orators had any knowledge of the fact that the sale of said property was scheduled to take place until after the same had been sold.

11. And your orators further show that they were in-
30 formed and believed it to be true that the Homestead prop-
erty was sold subject to encumbrances amounting to \$400., which would have made the purchase price of said property approximately \$2,000.00 and that your orators did not know that the property aforesaid was sold clear of encumbrances until the final account of said Joshua P. Owen was filed in the latter part of the month of December last passed,

and that the daily papers reported the sale subject to encumbrances as aforesaid.

12. And your orators further show that during all the time of the advertisement of the sale of said property, your orator Isaac A. Owen, Jr., was working and resided in the City of Salem, New Jersey, and your oratrix Martha T. Owen, was residing in the City of Millville, New Jersey, and that it would have been entirely possible and convenient for notice of the sale of the said property to have been mailed or otherwise given to your orators by the said Joshua P. Owen, executor. 10

13. And your orators further show, that the Homestead property can be sold at the present time for at least \$2500.00; that one Albert Seifermann, Jr., has offered to pay that much for the Homestead property aforesaid, which would result in your orators receiving a considerably larger sum from the estate of the said Isaac A. Owen, Sr., deceased.

14. And your orators further show that the real estate was not advertised and the sale conducted in a manner conducive to the securing of the greatest sum therefor, and that the purchase by said Percy W. Owen, was in reality a purchase by Joshua P. Owen, the said Percy W. Owen being the agent of the said Joshua P. Owen, who is the executor of said estate. 20

15. IN CONSIDERATION WHEREOF, and for as much as your orators are without adequate remedy in the premises at and by the strict rules of the common law, and can only obtain relief in this Honorable Court, where matters of this nature are properly cognizable and relievable. 30

16. TO THE END, THEREFORE, that the said Joshua P. Owen, executor, of the City of Millville and the said Percy W. Owen, of the City of Bridgeton, New

Jersey, may, but without oath, to the best of their respective knowledge, information and belief, full true and perfect answer make to all and singular the matters aforesaid, and that as fully and particularly as if the same were here again repeated and they and each of them thereto particularly interrogated, paragraph by paragraph; and that they and each of them may answer and declare to this Honorable Court why, he the said Percy W. Owen, should not be directed by this Honorable Court to reconvey the aforesaid
10 Homestead or Second Street property described as aforesaid, to Joshua P. Owen, executor, and that he the said Joshua P. Owen, executor may answer and declare to this Honorable Court why he should not be directed to readvertise and resell the aforesaid property either at public or private sale and for the best price that can be obtained therefor, and that in the meantime the said defendant, Percy W. Owen, may be restrained by the order and injunction of this Honorable Court, from selling, conveying or otherwise transferring the title to the aforesaid South
20 Second Street property; and that your orators may have such further and other relief in the premises as the nature and circumstances of the case may require, and to your Honor shall seem meet and agreeable to equity and good conscience.

17. May it please your Honor, the premises considered, to grant unto your orators, not only the State's writ of injunction issuing out of and under the seal of this Honorable Court, to be directed to the said Percy W. Owen, restraining and enjoining him from selling, conveying or
30 otherwise disposing of the land and premises known as the Homestead property on South Second Street, in the City of Millville aforesaid, but also the State's writ of subpoena issuing out of and under the seal of this Honorable Court, to be directed to the said Joshua P. Owen and Percy W. Owen, therein and thereby commanding them and each of

them on a certain day and under a certain penalty therein to be expressed, personally to be and appear before your Honor, in this Honorable Court, then and there to answer the premises and to stand to, abide by and perform such decree therein as to your Honor shall seem meet, &c.

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

ALBERT R. McALLISTER,
Solicitor for and of counsel with Complainants.

STATE OF NEW JERSEY,
COUNTY OF CUMBERLAND, ss.

ISAAC A. OWEN, being duly sworn according to law upon his oath deposes and says:

I reside in the City of Salem, Salem County, New Jersey, and have been employed and a resident there since September, 1914. I am a son of Isaac A. Owen, Sr., who resided in Millville, New Jersey, in his life time and who departed this life June 8th, 1906. By the terms of his will Joshua P. Owen and myself were co-executors. In the month of June 1915, by virtue of an order of the Cumberland County Orphans' Court, I was removed as one of the executors of the said will because my residence in Salem and employment there, made it practically impossible for me to promptly attend to the active settlement of the estate and my brother, Joshua P. Owen, has continued as the sole executor ever since. At the time of my father's decease, he owned a single frame house and one large lot on South Second Street and a single brick house and two lots on South Third Street, in the City of Millville, New Jersey, and about forty acres of woodland in the Township of Maurice River, in said State, together with certain personal property. None of this property had ever been disposed of until September 22, 1915, when Joshua P. Owen, executor, advertised this aforesaid property at public sale. The advertisement of this sale was a four inch ad. which appeared in the Bridgeton Evening News and the Millville Daily Republican. This advertisement described the aforesaid property as follows:

EXECUTOR'S SALE OF VALUABLE REAL ESTATE

The subscriber, executor under the last will and testament of Isaac A. Owen, Sr., deceased, will offer for sale at

public vendue, on Wednesday, the twenty-second day of September, next, at two o'clock in the afternoon, on the premises at No. 157 South Second Street, City of Millville, New Jersey, all of the real estate that Isaac A. Owen, Sr., died seized of, consisting of a tract of land having a frontage of one hundred and twenty-five feet on South Second Street, and a frontage of one hundred and twenty-three feet on South Third Street, also forty acres of bush land, situate at Dorchester, Maurice River Township. The property on South Second and South Third Streets will be sold in lots, the size and dimensions of each will be made known at the time of sale. 10

Terms and conditions made known at time of sale.

Dated August 23rd, 1915.

JOSHUA P. OWEN,
Executor.

Martin W. Lane, Proctor.

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No mention whatever was made of the improvements upon any of said properties and no notice of the sale was given to this deponent and I did not know that the sale was to be made until two days after the property had been sold, when a copy of the advertisement was handed to me by a man in Salem. The brick house and two lots were sold for \$1227.00 and the Homestead property on South Second was sold for \$1575. The Homestead property was purchased by one Percy W. Owen, a son of Joshua P. Owen, and the price at which said property was sold was greatly inadequate. The property is assessed at \$1975.00. The Homestead property and brick house properties are located in such a way that the rear of said properties abut. The Homestead property on South Second Street is in a desirable residential district and the brick house property is in a 30

section where residences are located, but of a greatly inferior character and have a greatly reduced valuation, the lot upon which the Homestead is located is more than three times the size of the brick house and adjoining lots. There is located on the Homestead property a brick shop and other frame buildings. The valuation of the Homestead property is not less than \$2500.00 or \$3,000.00 in its present condition. The Homestead property which was purchased by
10 Percy W. Owen, son of Joshua P. Owen, executor, is still standing on the records in the Clerk's Office of Cumberland County in the name of the said Percy W. Owen. By the terms of the will of said Isaac A. Owen, Sr., deceased, the proceeds of the real and personal estate remaining after the payment of all just expenses is to be divided equally between Joshua P. Owen, Martha T. Owen, daughter of the deceased brother, Buzby Owen, and this deponent. The final account of said Joshua P. Owen sets forth the purchase price of said Homestead property at \$1575.00, which said
20 final account was filed in the Surrogate's Office of Cumberland County on December 18, 1915.

Sworn and subscribed to
before me this 29th day of
January, A. D., 1916.

ISAAC A. OWEN, [SEAL]

E. V. FLANAGAN,

Notary Public of New Jersey.

STATE OF NEW JERSEY,
CUMBERLAND COUNTY, ss.

Martha T. Owen, being duly sworn according to law on her oath, deposes and says: I reside in the City of Millville, Cumberland County, New Jersey. I am the only daughter of Buzby Owen, deceased. I am now twenty-seven years of age, and my father died when I was about twelve years old, he was the son of Isaac Owen, Senior. My mother died about seven years ago. Under the will of Isaac Owen, senior, I am entitled to one third of all the estate, real and personal of which my grand father, Isaac Owen, Senior, died seized. The real estate owned by my said grand father consisted of a brick house and land on Third St. and a frame dwelling and land on Second St. in the City of Millville and some timber land in Maurice River Township, Cumberland County, New Jersey. Isaac A. Owen, Sr., died in nineteen hundred and six, but the estate has not been settled and the real estate was not sold until September of last year. I have always lived in Millville and was living there in September last. I had no notice of the sale of my grand father's real estate and did not know of the sale until after it had taken place. I understand that the frame dwelling and land on Second Street, which was the homestead property was purchased by my cousin, Percy Owen, son of Joshua P. Owen, the sole executor of said estate at this time. This homestead property was purchased by Percy Owen for Fifteen hundred and seventy five dollars. The price is about one half of the present value of this property. Under my grand father's will, my uncles Isaac A. Owen and Joshua P. Owen, were the executors, but Isaac A. Owen, Jr., was removed by the court prior to the sale because of his failing to proceed in the settlement of the estate. Since the sale I have seen the advertisement which the executor caused to be inserted in the newspapers.

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It does not properly advertise the properties because it does not state that there were any improvements on either of the lots in Millville, whereas, there was a brick house on the Third Street lot and a frame dwelling house on the Second Street lot. I know of responsible persons willing to pay considerably more for the Second Street property than Percy Owen, the son of the executor, paid for it. I also know that at least one of these persons would have paid more for the property at the time of the sale had he known that this particular property was going to be sold.

Sworn to and subscribed before me this 28th day of January, A. D., 1916.

MARTHA T. OWEN.

J. M. HELBLING,

Notary Public of N. J.

STATE OF NEW JERSEY,
COUNTY OF CUMBERLAND, ss.

Albert Seifermann, Jr., being duly sworn, according to law on his oath deposes and says:

I am resident of the City of Millville and have lived here all my life. I know the two residence properties formerly owned by Isaac A. Owen, Sr., one is located on South Second Street and the other on Third Street, in the City of Millville, New Jersey. I did not know the date set for the sale of these properties by Joshua P. Owen, the executor, until the day that the sale took place. I work for Whitall Tatum, and on the day of the sale one of my fellow workmen told me that he understood that this property was to be sold that day, but it was then too late for me to arrange to get off and get there. I never saw the advertisement offering these properties for sale until after the date of the sale. I am informed that the homestead property on South Second Street was purchased by Percy Owen who is a son of Joshua P. Owen, the executor, for Fifteen Hundred and seventy-five dollars, clear of all encumbrances. If I had known of the sale I would have paid at the time as much as Twenty-five hundred dollars, for the homestead property on South Second Street which was sold for Fifteen Hundred and Seventy-five dollars, and if given the opportunity, I would pay that sum, Twenty-five Hundred Dollars, for it today. The property as I am informed is in the same condition today that it was on the day of the sale. I have been told by men familiar with the building of residences and Millville property that this Second Street house and lot is worth between twenty five hundred and three thousand dollars. The location of this property on South Second

Street is good. It is in residential section and in a good neighborhood. There is a trolley line on this street.

Sworn to and subscribed before me this 28th day of January, A. D. 1916.

ALBERT SEIFERMANN, JR.

J. M. HELBLING,

Notary Public of N. J.

EXHIBIT C. I

IN THE NAME OF GOD. AMEN.

I, Isaac Owen of Millville, Cumberland County, State of New Jersey, being of sound and disposing mind, memory and understanding, for which blessing, I thank my Heavenly Father, do make this my will and testament in regard to my worldly estate, and property. (If such be in my possession at my death.) 10

First: I wish my funeral expenses and all other just debts be paid.

Whereas, my wife Naomi, has ever been to me a kind, obliging, faithful, and saving wife, and a dutiful loving Mother to her children.

Therefore, Seckondly:

I give and bequeath to her all my real estate, (if any left after my death,) to be used for her benefit while she remains my widow. Also all of my personal property that she wants. 20

If there is any that my Son's wants, that Naomi does not, give it to them.

When Naomi S. Owen, is no longer my widow, either by marriage or death, then the property to go to my children. (If there is any left.)

Divided into three parts; deduct from each ones share, the amount that I have claims against them, in the way of book accounts, notes, or loaned money, and divide the remainder. If there should be any to Buzby's credit after his debt is deducted, give it to his Heirs. 30

I will appoint Buzby the Guardian for his Heirs, and their property if any.

I will appoint my Wife Naomi to settle my accounts with such help as she wants.

This is my last Will and Testament. all before this is void

May 6th 1896

Isaac A. Owen (Seal)

Signed and sealed
in the presence of
10 Owen W. Worstall
• Seward Sheppard

My Children are Buzby
Joshua P., and Isaac A. Owen Jr.
Isaac A. Owen Sr

My Property, and all my possessions being willed to one Person, prevents the necessity of having to go through a course of law under the Surrogate's direction. My Wife
20 can settle the affairs without that expense.

Isaac A. Owen Sr.

A Codicil To A Will.

I, Isaac A. Owen Sr., of the City of Millville, County of Cumberland, and State of New Jersey do this Seventh day of June, 1906 make and publish this codicil to my last Will and Testament in manner following:—

30 First I do hereby ratify and confirm my said Will in all respects save so far as any part thereof shall be revoked or altered by this present Codicil; whereas since making my last Will and Testament, my beloved wife Naomi S. Owen has departed this life, and I do hereby constitute and appoint my two sons Joshua P. and Isaac A. Owen, Jr., of the City of Millville, State of New Jersey to be sole executors of this my last Will and Testament, and I do

give my said executors full power and authority to grant, bargain, sell and convey any or all of my land or lands to any person or persons in fee simple or otherwise, at public or private sales at such time or times and upon such terms or conditions as they may seem meet.

In witness whereof, to this present writing, which I hereby declare to be Codicil to my last Will and Testament, said Will being dated the Sixth day of May, 1896, and to be taken apart thereof, and which I direct to be added thereto, I have set my hand and seal this seventh day of June 1906. 10

Isaac A. Owen Sr (Seal)

Signed, sealed, published and declared by the said Isaac A. Owen, Sr. as and for a Codicil to his last Will and Testament and to be taken as a part thereof, in the present of two several persons, whose names are hereunder subscribed as witnesses to the signing, sealing and publishing the same; which said two persons did do hereunder subscribed their names, at the request and the presence of the said Isaac A. Owen, Sr., and in the presence of each other. 20

William. A- Angelo
Robert Hampton

Attest

A True Copy
(Seal) Frank F. Wallace
Surrogate.

IN CHANCERY OF NEW JERSEY.

Between,
ISAAC A. OWEN, JR., ET ALS.,
Complainants,
10 AND
JOSHUA P. OWEN, EXECUTOR,
&C., ET ALS.,
Defendants.)

ON BILL FOR RELIEF.
ANSWER OF JOSHUA P.
OWEN, EXECUTOR &C.,

Filed March 20, 1916.

20

The answer of Joshua P. Owen, executor, &c., one of the defendants, to the bill of complaint in the above stated cause.

This defendant, answering the bill of complaint, says that:

30 1. Admits that Isaac A. Owen, Sr., departed this life as stated in said bill, and that exhibit "C. 1" is a copy of the will of said Isaac A. Owen, Sr; This defendant denies that Martha T. Owen one of the complainants is entitled to an undivided one third part of the net estate of said Isaac A. Owen, Sr., but avers that the share of Martha T. Owen is subject to a charge of certain sums of money due and owing said estate from Buzby Owen, father of said Martha T. Owen, which indebtedness exceeds the undivided one third part of the net estate.

2. Admits paragraph 2, except so much thereof as is contained in the description of the South Second street property and lot adjoining; this defendant avers that the description so recited in said bill contains a description of the homestead property and lot adjoining, and also two vacant lots on South Third street.

3. Paragraphs 3 and 4 are admitted.

4. This defendant denies paragraph 5, except so much thereof as recites a part of the advertisement of sale. 10

5. Paragraph 6 is admitted so far as therein stated that the Second Street property "was formerly the homestead property of Isaac A. Owen, Sr., now deceased. This defendant denies that it is in a good residential section and worth \$3000,00, or that it is taxed at \$1975,00.

6. Paragraph 7 is admitted.

7. This defendant denies paragraph 8, and avers that 30 days notice of sale was given, and that all persons present at the sale, were urged by the auctioneer, to bid a greater sum than \$1575,00. 20

8. This defendant neither admits or denies paragraph 9, and has not sufficient knowledge or information upon which to form a belief of the matters and things therein contained.

9. This defendant denies that the homestead property was sold subject to encumbrances amounting to \$400,00, but avers that it was publicly stated at the sale "that the property would be sold free and clear of all encumbrances, except so much of the 1915 taxes as had accrued at the date of sale". This defendant further avers that there was no encumbrance in way of taxes or other liens at the time of sale. As to other matters contained in paragraph 10, he has no knowledge or information sufficient to form a belief. 30

10. This defendant has no knowledge or information sufficient to form a belief as to the matters and things stated in paragraphs 11 and 12.

11. Defendant admits that he is the sole acting executor of the estate of Isaac A. Owen, Sr., deceased; that all other matters stated in paragraph 13, he denies.

12. This defendant therefore prays:

10 That he may be hence dismissed with his proper costs and charges.

MARTIN W. LANE,

Solicitor of defendant Joshua P. Owen, executor, &c.,

IN CHANCERY OF NEW JERSEY

Between

ISAAC A. OWEN, JR., ET AL.,

Complainants,

AND

JOSHUA P. OWEN, EXECUTOR,

ET AL.,

Defendants.

ON BILL FOR RELIEF
ANSWER OF PERCY W.
OWEN

10

Filed March 20, 1916.

20

The answer of the defendant, PERCY W. OWEN, to the bill of complaint in the above cause.

The defendant, PERCY W. OWEN, answering the bill of complaint, says that:

1. Paragraph 1 is admitted except as to that part which alleges that Martha T. Owen is entitled to an equal one-third part of the net estate of the said Isaac A. Owen, and this is admitted after the deduction from her share of the debt of her father, Buzby Owen, to the estate of Isaac A. Owen, deceased.

30

2. Paragraph 2, 3 and 4 admitted.

3. This defendant denies the allegation in paragraph 5 of complainants' bill and says: that the advertisement was ample to effectuate the purpose of the executor, inasmuch as

under the will of Isaac A. Owen, deceased, the said executor was clothed with full power to sell at public or private sale in his discretion; and that neither this defendant, nor any other person present at the sale, had received the idea from the advertisement that this property was unimproved property for the reason that every one in fact knew its condition and character.

4. Paragraph 6 is admitted so far as it alleges the
10 Second Street property to have formerly been the homestead of Isaac A. Owen, deceased, but it is denied as to the allegations remaining; this defendant averring that the actual value of said premises is not the sum of \$3,000, but, on the contrary, the value is not in excess of the sum of \$1,575, the amount which was bid at the sale by this defendant and this defendant further avers that the premises had
20 been seriously neglected for so many years that it was in a dilapidated and greatly run down condition, necessitating the expenditure of large sums of money by the purchaser in order to put it into a condition fit for occupancy; and that the assessment for taxes, this defendant is informed, is much less than the sum of \$1,975, to wit, about the sum of \$1,700, the sum of \$1,975 including parcels of land not included in defendant's purchase.

5. Paragraph 7 is admitted.

6. Paragraph 8 is denied so far as it relates to the insufficiency of the notice of the sale, or that persons were present desiring to bid upon the homestead a greater sum than that at which the property was sold to Percy W. Owen,
30 and that insufficient opportunity was given for other bidders to make any advance over the bid of Percy W. Owen; but this defendant avers that ample notice was given of the sale and that all persons desiring to bid had the fullest opportunity and were urged to increase the bid over that which had been made by the defendant, Percy W. Owen.

7. This defendant has no knowledge or information sufficient to form a belief of the matters contained in paragraph 9 and so is not in a position to admit or deny.

8. This defendant has no knowledge or information sufficient to form a belief as to statements in paragraph 10 and 11 and 12.

9. Paragraph 13 is denied, and this defendant avers that his purchase of this property was a bona fide transaction and was for his own benefit, and not as the agent of Joshua P. Owen or any other person, and that he purchased the same at the sale for the highest price that could be obtained for the same, and that the amount of this defendant's bid was the full and fair value of the premises at the time of the sale. 10

10. This defendant therefore prays:

That the title to the said premises described in the bill of complaint may be confirmed in this defendant, and that he may be hence dismissed with his proper costs and charges. 20

ROYAL P. TULLER,
Sol'r of Defendant, Percy W. Owen.

IN CHANCERY OF NEW JERSEY.

Between

ISAAC A. OWEN, JR., ET AL.,
Complainants,
10 AND
JOSHUA P. OWEN, EXECUTOR,
&C., ET AL.,
Defendants.)

ON BILL, &C.,
FINAL HEARING

Before his Honor, E. B. LEAMING, Vice Chancellor,
at the Chancery Chambers, Camden, New Jersey, on Tues-
day, October 31st, 1916.

20

Appearances:

ALBERT R. McALLISTER, Esq., for complainants.

MARTIN W. LANE, Esq., for Joshua P. Owen, Ex-
ecutor, &c., one of the defendants.

ROYAL P. TULLER, Esq., for Percy W. Owen, one
of the defendants.

ISAAC A. OWEN, Jr., the complainant, being duly
30 sworn according to law, on his oath says—

Direct examination.

By MR. McALLISTER:

Q. Where do you reside, Mr. Owen?

A. In Salem.

Q. How long have you been a resident of Salem?

A. A little over a year.

Q. Prior to that time where did you make your home?

A. In Millville.

Q. You are one of the complainants in this suit against Joshua P. Owen?

A. Yes, sir.

Q. And the other complainant is who?

A. Martha, do you mean? 10

Q. Who is Martha Owen?

A. Martha is a niece of mine.

Q. She is the daughter of a deceased brother?

A. Yes, sir.

Q. How long has your brother been dead?

A. Well, he has been dead, I should think, twelve years, or something like that, ten or twelve years.

Q. Who was your father, Mr. Owen?

A. Who was he?

Q. What was your father's name? 20

A. Isaac A. Owen.

Q. And where did he reside?

A. In Millville.

Q. When did he die?

A. He died in 1906.

Q. Did he leave a will?

A. Yes, sir.

Q. And under the terms of the will what became of the real estate,—what became of his property?

A. Why, it was sold by my brother. 30

THE VICE CHANCELLOR: I apprehend the will is admitted, is it not? I have not seen the answer.

MR. TULLER: Oh, yes, the will is admitted.

THE VICE CHANCELLOR: Can you stipulate that under the will the property went to this witness and his niece?

MR. TULLER: No; under the will, as I understand it, the property was left to the children of Isaac A. Owen. Isaac A. Owen, Jr., and Joshua Owen, the brother, were the surviving children. Buzby Owen died. Is that correct?

10

MR. LANE: Yes, and left him surviving Martha, the niece.

MR. TULLER: And I think that they all three took share and share alike, didn't they?

MR. LANE: Yes; subject to the debts.

THE VICE CHANCELLOR: Then it is admitted that the two complainants have an interest in the estate?

20

MR. TULLER: Subject to the obligations that were owing by Buzby Owen and Isaac A. Owen, Jr.,—that were owing to the estate of Isaac A. Owen, Sr.

THE VICE CHANCELLOR: Is that correct, Mr. McAllister?

MR. McALLISTER: That is correct.

Q. And under the will you and your brother Joshua
30 were the executors?

A. Executors.

Q. And when did your father die?

A. 1906.

Q. Has that estate ever been closed?

A. No, sir.

Q. At the time of your father's death did he own any real estate?

A. Yes, sir.

Q. Where was that real estate?

A. In Millville and in Dorchester.

Q. And of what did it consist?

A. In Millville it consisted of—

THE VICE CHANCELLOR: The averments of the bill are probably admitted as to that,—are they not?

10

MR. TULLER: As to the ownership of property, yes, sir. There is no dispute as to the ownership of property. The sole question, I take it, if your Honor please, to shorten this matter up somewhat, is the validity of a sale made by the remaining executor.

THE VICE CHANCELLOR: Yes, I assume so.

MR. TULLER: He sold this property spoken of and described in the bill.

20

THE VICE CHANCELLOR: That was the homestead property?

MR. TULLER: That was the homestead property, and I think the Dorchester property also was put up for sale at the same time, all the property was sold at public sale in September, 1915.

THE VICE CHANCELLOR: If you want to develop the character of this particular property you may do so.

30

MR. McALLISTER: If your Honor please, in order that the matter may be clearly presented to the court I feel that it is necessary, inasmuch as

one of the complainants was this minor of a deceased parent, to show in this case when the father died, what his property consisted of, and that it was held intact until a certain date, and the date and the reason for the filing of a first inventory and appraisement years afterward.

10 THE VICE CHANCELLOR: Very well. Go on. The only point was I thought it was hardly worth while to bring out by testimony what counsel will admit.

MR. MCALLISTER: I am perfectly willing to make a stipulation, but in order that the record might be complete I would like to have those matters covered in the event that they are not admitted.

20 THE VICE CHANCELLOR: State what you want to prove and let counsel admit such portion as they want to admit.

MR. MCALLISTER: Yes.

THE VICE CHANCELLOR: My notion was to save time and shorten the record.

30 MR. MCALLISTER: It is admitted that Isaac A. Owen, Sr., died in 1906, leaving a will, and that will provided as has already been stipulated; that in the summer of 1914, upon the application of Martha T. Owen, the inventory and appraisement of the estate, was made and filed; that in June, 1915, the complainant Isaac A. Owen, Jr., now on the stand, was removed by the order of the Orphans' Court of Cumberland County for failure to file an accounting.

MR. LANE: No, failure to perform his duties.

MR. TULLER: Failure to perform his duties as executor.

MR. MCALLISTER: Failure to perform his duties as executor. That on August 23d, 1915, Joshua P. Owen advertised the real estate for sale, the property of his father, Isaac A. Owen, Sr., and the property was sold at public auction on September 22d, 1915. In December, 1915, Joshua Owen, the surviving executor, filed his accounting as executor of Isaac A. Owen, Sr., in the Orphans' Court of Cumberland County, and in January, 1916, within a month thereafter, this suit was commenced that is now before your Honor.

10

THE VICE CHANCELLOR: Yes. Now can you state the amount that the property was sold for? There is no dispute about that, I apprehend. Also, who it was struck off to, &c.

MR. LANE: There is no dispute as to that.

20

MR. MCALLISTER: The homestead property on south Second street was sold for \$1,575.

MR. LANE: That is correct.

MR. MCALLISTER: The property on south Third street was sold for \$800, and the lot on Third street was sold for—

MR. LANE: The Third street house isn't in this suit, neither is the Maurice River Township.

30

MR. MCALLISTER: It isn't in the suit at all.

MR. TULLER: If your Honor please, the only two pieces, as I understand it, that are in issue in this suit are the homestead property on Second street and two building lots on Third street, in the

rear of the homestead. That was bid in at the Executor's sale and the deed was made to Percy W. Owen for those two pieces of property for the sum of \$2,002. Is that correct?

MR. LANE: That is correct, the two lots and the homestead property.

10 MR. TULLER: And they are the only pieces that are in issue in this suit.

THE VICE CHANCELLOR: These proceedings are to set aside the sale of the homestead property.

MR. MCALLISTER: Yes, which was purchased by Percy W. Owen.

THE VICE CHANCELLOR: But not the lots?

20 MR. TULLER: The lots also, I understand, are in issue. That property which was bid in by Percy W. Owen consisted of the homestead property and two lots in the rear of it.

THE VICE CHANCELLOR: It is that property that was purchased by Percy Owen that is sought to be set aside?

MR. TULLER: The others sold are not in issue.

30 MR. MCALLISTER: The only part of the sale that we take exception to is the homestead property and not the lots which were purchased.

THE VICE CHANCELLOR: They were sold in two parcels, as I understand it,—the homestead and the rear lots?

MR. LANE: No.

MR. MCALLISTER: This suit is only about the property which was sold for \$1,575, which comprised the homstead property and the lot upon which that house stood.

MR. LANE: I don't so understand the bill.

MR. TULLER: Well, he confines it now, I suppose the testimony will cover to that effect.

MR. MCALLISTER: I don't think, your Honor, that there are any other matters that we might stipulate.

10

THE VICE CHANCELLOR: That is all that occurs to me that you can probably stipulate.

MR. MCALLISTER: That will save us a lot of time. Do you think of any other matters that we might agree upon?

MR. TULLER: No.

By MR. MCALLISTER:

20

Q. Now, it has been stipulated and agreed, Mr. Owen, that the sale of this property was held in Millville, September 22d, 1915. Where were you working or where were you living at that time?

A. In Salem.

Q. The property was advertised in August, 1915?

A. I don't know.

Q. Were you living in Salem at that time?

A. Yes, sir.

Q. Did your brother, Isaac Owen—

30

A. Joshua Owen.

Q. —take up with you the matter of this sale?

A. No, sir.

Q. Did he tell you that he had advertised it?

A. No, sir.

Q. When did you first know that this property had been sold or was for sale?

A. Two days afterwards.

By THE VICE CHANCELLOR:

Q. After the sale?

A. After the sale; yes, sir.

By MR. McALLISTER:

10 Q. How did you secure the information at that time?

A. Well, there was a man named Herbert Hollinger came in with a newspaper and showed it to me.

Q. I show you the Millville Daily Republican dated Thursday, September 23d, 1915, and ask you if that is the paper that Hollinger showed you?

A. No, the Bridgeton News, the Bridgeton News he showed me.

Q. Would you recall the article that he showed you concerning sale?

A. It is not in this paper.

20 Q. I show you what purports to be a clipping from another newspaper and ask you if that is the article that Mr. Hollinger showed you?

A. This is one like it, yes, sir.

Q. And that is a newspaper man's report of what took place—

A. Yes, sir.

Q. —at the sale?

A. Yes, sir.

30 MR. TULLER: Well, I object to that as proof.

THE VICE CHANCELLOR: It shows on its face all that it can be made to show, perhaps.

Q. Did you make any inquiry at the time as to the purchase prices that had been paid for the various lots or tracts of land?

A. No, I didn't know only what I saw in the paper.

Q. Have you ever seen the paper, the Millville Daily Republican, dated Thursday, September 23d, 1915? Have you seen that paper?

A. Yes, sir.

Q. And have you seen the article that appeared in there?

A. About the encumbrance?

Q. Yes.

A. Yes, sir, \$400 encumbrance or over.

10

Q. Is that the article that you read in the Millville Daily Republican?

A. Yes, sir, that is the article.

Q. Now, do you know whether or not the properties were sold clear of encumbrance?

A. I understand it was sold subject to their encumbrances.

Q. Do you know the amount of the encumbrances against the property,—the homestead property?

A. Only what the paper says there, \$400, a little over.

20

Q. You have since seen the account that was filed by your brother in the Surrogate's Office of Cumberland County?

A. Yes, sir.

Q. And you have gone over that account, have you not?

A. Yes, sir.

Q. And does that account show any taxes or other bills that were against this property?

A. Does that show it?

30

Q. Yes. Did you find in there any charges against the estate for bills that would have been encumbrances against this property if it had been sold subject to encumbrance?

A. Why, yes; yes, sir.

Q. Do you recall the first time that you saw the account?

A. In the Surrogate's Office in Bridgeton.

Q. And were you surprised to find that this accountant had charged the estate with these encumbrances?

A. I certainly was.

Q. And prior to that time had it been your understanding that the encumbrances were to be assumed by the purchaser?

A. I understood so; yes, sir.

Q. And was it because of your reading of that account that you engaged me to begin these proceedings?

A. Yes, sir.

Q. In what kind of a neighborhood is that property in the city of Millville,—the homestead property?

A. Well, it is in a good locality, some of our head men lives there, right near there, the cashier of the bank, &c., and so it must be a good locality.

Q. Is it in the same condition at the present time that it was in at the time your father died?

A. No, sir.

Q. Better or a worse condition?

A. Well, it is in a worse condition.

Q. Very much worse, isn't it?

A. Yes, sir.

Q. Have you any idea as to what the value of this property was at the time that your father owned it,—prior to his death?

A. When father owned it?

Q. Yes.

A. Father used to say he—

MR. TULLER: One minute. I object.

THE VICE CHANCELLOR: I do not think that it is competent.

Q. Do you know? Not what your father used to say, but do you know what the property was worth immediately prior to your father's death?

A. I should judge it was worth all of \$4,000.

Q. You are speaking now of simply the Homestead property and lots?

A. Just the homestead.

By THE VICE CHANCELLOR:

Q. Not the lots in the rear? 10

A. No, not the lots, just the homestead.

By MR. McALLISTER:

Q. Did you as executor have any person to apply to you for the purchase of that property?

A. To me, myself?

Q. Yes.

A. No, sir, not to me.

Q. Do you know whether any one ever applied to your brother Joshua to buy the property? 20

A. Yes, sir, I do.

Q. Do you know who applied to him?

A. Thomas Souders was one,—that is, Tom Souders' son Harry, he was after it twice.

Q. Do you know whether or not he made your brother an offer for the property?

A. No, I don't know that. There was several after it, saying "Name your price. Name your price." Dr. Slade was after it.

Q. You mean he was after it with the idea of purchasing it? 30

A. Purchasing it, making it a residence for himself.

Q. Who are the people who live in the immediate vicinity of this property,—some of the people?

A. Henry Weatherby was one.

Q. What is his business?

A. He is the Cashier of the bank.

Q. Who else lives near there in the same block?

A. Right across it—I can't think of his name but he is a very prominent man,—Mr. Fred. Yeiter.

Q. What is his business?

A. He is a conductor on the railroad.

Q. Does Mr. Nicholson live there?

10 A. Nicholson?

Q. Yes.

A. No, he lives below, as far as I know. It has been two years since I have been there, I don't know whether there have been any changes.

Q. He is down further?

A. Down further, yes, sir.

Q. But on the same street?

A. On the same street.

20 Q. What kind of a property is this homestead? What is the character of the building,—wood or metal or what?

A. It is wood.

Q. And single or double?

A. It is a single house.

Q. And how much frontage?

A. I think the frontage is 127 or about there, 25 or 27, somewheres there.

Q. 125 feet?

A. Somewheres there: yes, sir.

30 Q. Now, at the time of your father's death that property was in good repair?

A. In first rate shape; yes, sir.

Q. And the lawn and the yard was well-kept?

A. Well, it was, considering Pop's age, in pretty good shape; of course, not as nice as it was years before.

Q. But now the house is not in good repair?

A. It is not in—like it should be, no; it needs painting and so on.

Q. And no care has been given to the shrubbery or lawn at all?

A. No; my brother had chickens there, they have done more damage than anything else, they have torn things to pieces.

Q. But the lawn is in bad repair?

A. Yes.

10

Q. It isn't in a desirable state at all?

A. No, sir.

Q. And that was the condition on the day of the sale?

A. Yes, sir.

MR. MCALLISTER: If your Honor please, perhaps some of my questions may seem to be a little bit unusual upon the part of the complainant, but I am in the dual capacity of representing not only Isaac Owen but also a minor, an infant daughter, who was not an executor and who had no part in the general mismanagement of this estate, not only from the date of the sale but up to the date of the sale.

20

MR. LANE: Mr. McAllister insists upon calling Miss Owen a minor, without saying whether she was a minor at the time the suit was brought or at the time of the sale or how many years ago she was a minor. I understand she is in the neighborhood of twenty-eight or thirty years old. How old are you?

30

A VOICE: Twenty-eight years old.

MR. TULLER: And she is a married woman, I understand.

A VOICE: Yes, have been since July.

Q. After the sale, Mr. Owen, was your attention ever directed to the advertisement that was inserted in the papers?

A. Yes, sir.

Q. By your brother, in which he advertised this real estate for sale?

A. Yes, sir.

10 MR. MCALLISTER: If your Honor please, I regret that I haven't a copy of the ad. I had one but it is misplaced. I have a typewritten copy.

MR. TULLER: There is a copy in the bill, isn't there?

MR. MCALLISTER: Yes, sir.

MR. TULLER: There is no objection to that.

MR. MCALLISTER: I think it is admitted in your pleadings.

20 THE VICE CHANCELLOR: If it is it doesn't require any more.

MR. MCALLISTER: Then, in order to have the record complete, may I just read this from the bill?

THE VICE CHANCELLOR: Very well.

30 MR. MCALLISTER: "Executors' sale of valuable real estate. The subscriber, executor under the last will and testament of Isaac A. Owen, Sr., deceased, will offer for sale at public vendue on Wednesday, the 22d day of September, next, at two o'clock in the afternoon, on the premises at number 157 south Second St., City of Millville, New Jersey, all of the real estate that Isaac A. Owen, Sr., died seized of, consisting of a tract of

land having a frontage of 125 feet on south Second street and a frontage of 123 feet on south Third street, also 40 acres bush land situate at Dorchester, Maurice River Township. The property on Second and south Third streets will be sold in lots. The size and dimensions of each will be made known at the time of the sale. Terms and conditions made known at time of sale. Dated August 23d, 1915. Joshua P. Owen, Executor.”

10

Q. Do you know whether or not, Mr. Owen, there was any other advertisement inserted in any of the papers?

A. That is as far as I know.

Q. Do you know whether or not there were any hand bills posted different from this particular ad. that I have just read?

A. I don't know of any; never heard of any.

Q. This advertisement, when it says “all of the real estate that Isaac A. Owen, Sr., died seized of,” refers to the property about which this suit has been commenced?

20

A. Yes, sir.

Q. Along with other property?

A. Yes, sir.

Q. And upon which property there is a single dwelling?

A. Two single—the homestead, yes.

Q. On this one particular property?

A. Yes.

Q. A single dwelling house?

A. Yes.

Q. And on the property of your deceased father there was a second single brick dwelling house?

30

A. Yes, sir.

Q. And no mention of those buildings is made here?

A. No, sir. Then there was a shop and some other out-buildings?

Q. And no mention is made of them?

A. No, sir.

Q. At the time of sale, in September, 1915, what was the true value of the homestead property and lot? I am not including in this question the Third street lots.

A. Well, \$3,000 I think is low for that.

Q. Now, you are taking into consideration the physical condition of the property?

10 A. The condition it is in, yes, sir.

Q. Generally speaking, are you familiar with the real estate values in Millville?

A. No, sir, I am not.

Q. Do you know whether or not the factories are running in Millville on full time?

A. The factories are. It is the most prosperous time Millville ever has seen at the present time.

Q. Was that true in September of 1915?

20 A. Well, that I couldn't tell you, as far as I know everything was very busy.

Q. Do you know the name of the person who wrote the article that appeared in the Millville Republican?

A. No, sir, I do not.

Q. Concerning this sale?

A. No, sir.

Q. Have you attempted to ascertain who did write that article?

A. Yes, sir, I have.

Q. And you were unsuccessful?

30 A. Unsuccessful, yes, sir.

Cross-examination.

By MR. TULLER:

Q. Mr. Owen, you say you are not acquainted with the values of real estate in Millville?

A. Not at the present time; no, sir.

Q. How do you fix the value of \$3,000 for this piece of property?

A. Well, what I hear other people say.

Q. How many rooms are there in the house?

A. There are three down, four on the second floor and two on the third floor.

Q. What was the condition of the dwelling in September, 1915?

A. What was the condition? 10

Q. Yes.

A. It needed painting and papering as far as I know.

Q. And did it need repairing?

A. Might be some little thing—as far as I know.

Q. Were the fences out of order and falling down?

A. The fences?

Q. Yes.

A. Well, they have been that way for sometime, yes.

Q. Was the front porch in a rotting and out of repair condition? 20

A. There was a few boards there that needed repairing, yes, sir.

Q. Wasn't the roof out of repair?

A. Not as far as I know,—had a new roof.

Q. Wasn't the back part of the house out of repair?

A. Not as far as I know.

Q. Wasn't the inside of the house out of repair?

A. Needed papering and painting was all.

Q. Needed papering and painting?

A. Papering and painting, the paper had fell off. 30

Q. Weren't the windows and blinds out of order on the house?

A. I don't know it if they were.

Q. Well, now, its general appearance was that of a shabby, run-down house, wasn't it?

A. On account of painting. You paint it up—

Q. Well, just answer my question.

(Question repeated).

A. Well, it looked bad, I will admit it looked bad, on account of paint, and so on.

Q. The whole premises had an appearance of neglect, didn't it?

A. It had, these chickens and—

10 Q. I mean in September, 1915.

A. It had, on account of his chickens spoiled so much of the property.

Q. Now, the property had no modern improvements in it, had it?

A. No modern improvements?

Q. Yes.

A. No bath-room, nothing like that, had gas and had water.

Q. How many gas jets were there in the house?

20 A. There was two or three when I was there.

Q. No electric light?

A. Oh, no.

Q. No water?

A. Yes, water was there.

Q. Where was the water?

A. In the shed.

Q. Just one spigot out in the shed?

A. Yes.

Q. And that was out back on the porch?

30 A. No, inside, in the shed there where we always had the pump.

Q. Well, now, your father died in 1906?

A. Yes, sir.

Q. When did you take possession of the homestead property?

A. About, I think, two years before I went to Salem, as near as I can remember.

Q. Who had possession of the property prior to your taking possession of it two years before you went to Salem?

A. My brother had the key for most—the biggest part of the year, for a number of years he had the key, he would go and come and do whatever he pleased.

Q. Now, did you take possession of the homestead property two years prior to your going to Salem?

10

A. I think it was two years.

Q. And you lived in it?

A. I lived in it all along, yes.

Q. And did you ever do anything to repair it?

A. To repair it,—no.

Q. You let it go just as it was?

A. Yes.

Q. And you have never done anything to repair it?

A. Just wait a minute. I did repair it.

Q. How much repairs did you put on it?

20

A. I painted the roof there, a tin roof, and built a new grape arbor and fixed up the fences, and I fixed things up around in there, the trees, and so on.

Q. When did you do that, Mr. Owen?

A. While I was living there.

Q. Well, when?

A. Well, it is two years before I went to Salem.

Q. You did that two years before you went to Salem?

A. Well, understand, I lived there two years before I went to Salem. I have been to Salem two years. The first year I went there I done that.

30

Q. The first year you went to the house and took possession of the homestead place you did this little repairing, did you?

A. Yes.

Q. Now, you have never done anything else to it, have you?

A. Why, no.

Q. Nobody else has ever done anything since 1906, have they?

A. I don't know.

Q. Well, you know the property?

A. I don't know what they have done since I have been
10 over in Salem.

Q. You have been in Millville, haven't you, since then?

A. Not very often.

Q. Haven't you ever been down there to see it?

A. I have never seen the property since I left it.

Q. Never have seen the property since you left it?

A. No.

Q. Then you didn't have much interest in whether the property was in order or not?

A. After I was removed I didn't want to see the place.

20 Q. After you were removed from what?

A. From executor.

Q. Now, you didn't make any repairs on the place since 1906 except those you have detailed, did you?

A. No, I didn't think it was necessary, the place was
so—

Q. Now, you had a third interest in this property according to your father's will?

A. Yes, sir.

30 Q. And you were a co-executor with your brother under the will?

A. Yes, sir.

Q. And you and he operated as executors under the will from 1906 until 1915 when you were removed, didn't you?

A. Yes.

Q. You and he never did anything with this property all that time except that that you have spoken of?

A. Well, it wasn't any use. I would plant things in the garden and chickens would come along the next day and tear things to pieces.

Q. And that was the two years that you lived there?

A. Yes, sir.

Q. Well, now, let us see about the contour of this land there. What is the condition of the land, Mr. Owen, so far as topography goes? Are there any peculiar characteristics about it? 10

A. About the terrace, you mean?

Q. No, about the land itself.

A. The land is one of the best gardens in the State of New Jersey.

By THE VICE CHANCELLOR:

Q. Well, now, Mr. Owen, you are stepping on my toes. I think I have the best.

A. Well, the reason I know is from what Pop raised. He raised celery three feet high, and strawberries—such large ones, on account of a stream of water running underneath, and he could raise the water when it got so dry, which is the reason it made it so valuable. 20

By MR. TULLER:

Q. What was the character of the gully that ran through this property?

A. The drain?

Q. Do you call it a drain? 30

A. It was a drain that was put in there, and it is all covered up except a place about two feet in diameter, and when it gets dry weather stop that pipe off—it waters the roots of thing that is planted there.

Q. Now, Mr. Owen, don't you know that there was a

deep gully which ran lown the back of these lots, between the Third street lots and the Second street lots, cut those lots right in two, and ran down the Hartman property, down in the lowland across the road?

A. I don't know nothing about that.

Q. Wasn't there a gully like that?

A. Not as far as I know.

Q. Wasn't there a gully that ran into the Hartman place right next door to this property?

10 A. Not as far as I know.

Q. Wasn't the back end of this lot filled in with tin cans and rubbish, on the Third street end?

A. Yes, I seen tin cans there.

Q. Wasn't it all filled in there on the other side of the gully?

A. Well, what do you mean?

Q. Wasn't there a depression in the land? Didn't it slope down this way (indicating) into a sort of a gully there, then run off up on the other side, on Third street?

20 A. On our side?

Q. Yes, on both sides.

A. Not in there.

Q. Then there was no depression in the land that ran across the end of this lot?

A. There was a low place right where the garden was but no gully there.

Q. And on the other side it was filled up, was it,—on the Third street side?

A. Filled up.

30 Q. And why did they fill it up?

A. Why, that was my brother's own doings, filling that land up; he wanted that side, it was his own proposition to take Third street side so he could do whatever he pleased with it, and he took it, and I was to take the Second street side.

Q. And you took the Second street side?

A. I took the Second street side.

Q. And you lived in the Second street side until you went to Salem?

A. Yes, sir.

Q. And after you were removed as executor you never paid any attention to the property in any form?

A. Not after I was removed, no, sir, because I had no right to attend to it, they told me to get out things I had in there, I moved out and never looked after it after that. 10

Q. You had under the will a third interest, didn't you?

A. Yes, sir.

Q. What interest have you in the estate now?

A. What interest?

Q. Yes.

A. I come in for a third, I suppose.

Q. Is that third encumbered in any way?

A. Encumbered?

Q. Encumbered,—any mortgages or judgments or levies upon it? 20

A. Against the estate?

Q. Against your interest in the estate?

A. I don't know that. My brother got judgment against me, as far as that is concerned.

Q. How much did your brother get judgment against you for?

A. I don't know.

Q. Well, can you approximate how much you owe him? 30

A. No, sir, I cannot, it never was shown to me or nothing.

Q. You were sued?

A. I was sued, yes, sir, I was sued.

Q. And the judgment went against you?

A. Yes, sir.

Q. On these suits?

A. Yes, sir.

Q. How many times were you sued?

A. I don't know whether it is three or not.

Q. And you say you don't know for how much judgments were taken against you on these three suits?

A. No, sir, I couldn't tell you. I know he sold my shop, sold out everything I had.

10 Q. Sold out everything, did he?

A. Yes.

Q. And how much remained of these judgments?

A. I don't know, sir.

Q. He was on your bond when the court put you under an order to pay alimony to your wife, wasn't he?

A. Yes, sir.

Q. And didn't he have to pay a good portion of that alimony?

20 A. He paid part of it, yes.

Q. How much?

A. Somewheres near seven or eight hundred dollars, as near as I know.

Q. Did you ever pay him back that seven hundred or eight hundred dollars?

A. No, sir.

Q. And all he got out of it was what he got on an execution against your shop when he sold it out?

A. He sold my shop and all I had, my real estate and
30 everything.

Q. Now, you owe him a considerable sum of money still, don't you?

A. I don't know how much it is,—no, sir, I don't.

Q. Now, do you owe the estate of Isaac Owen, Sr., anything?

A. Not as far as I know.

Q. Didn't you render an account to the executor, after he demanded a statement from you, of your claim against the estate of Isaac Owen?

A. Claim against the estate?

Q. Yes.

A. Oh, yes, I got a claim against the estate.

Q. And did not the balance of the two accounts show up that you owed the estate of Isaac Owen \$163?

10

A. Me owe the estate?

Q. Yes.

A. No, sir, I never knew that, I never knowed that.

Q. You saw the account in the Surrogate's office, didn't you?

A. I saw the account, yes, sir.

Q. Didn't you find a statement there attached to that account showing your obligation to the estate?

A. Yes.

Q. Well, now, that showed that you owed how much?

20

A. Why, I don't owe anything, they owe me.

Q. Didn't that have your statement in there?

A. It has my statement in there, yes.

Q. Didn't that account that was filed there show or tend to show that you owed \$163.38?

A. Owed the estate?

Q. Didn't that account, I say, pretend to show that you owed \$163.38 to the estate?

A. Well, you don't mean after they pay me what Pop borrowed off of me?

30

Q. The balance on your account between you and your father's estate showed that you finally owed the estate \$163.38?

A. No, I don't finally owe that. When Pop died he owed me one place five hundred, and sometime after that I

paid a mortgage off of over three hundred dollars on property.

Q. Did you ever render to the executor, the remaining executor, a statement of your account?

A. I did, sir.

Q. And did that show just exactly what you claim?

A. What I claim.

Q. And didn't the books of Isaac Owen, Sr., show
10 what he claims against you?

20
30
MR. MCALLISTER: If your Honor please, I think, perhaps, we could arrive at a stipulation that will save us time and be of great benefit. I do not think the witness is grasping Judge Tuller's questions, and if Judge Tuller will assent I will assent to the entry of this stipulation: When the surviving executor, one of the defendants in this suit, filed his account exceptions were taken to that account by Mr. Isaac Owen, who is now on the witness stand, and by Martha T. Owen, and those exceptions are now pending before the Orphans' Court in Cumberland County and have been pending there now nearly seven or eight months. Testimony has been taken, the accountants have gone over the books and made up a statement, and whether or not there is something due finally can only be determined when the Orphans' Court files its opinion. Mr. Owen, as I understand his testimony, does not now say that this account does not show that he owes money but he claims he does not owe the estate money, and that can only be determined when Judge Loder has rendered his decision on the exceptions which have been filed.

THE VICE CHANCELLOR: Are you content with that statement, Judge Tuller?

MR. TULLER: No, I am not content with it. I am simply endeavoring to show by this complainant his knowledge or lack of knowledge of conditions, what amount he owes to the executor personally, the state of his affairs with the executor personally and the state of his affairs with the executor officially.

10

THE VICE CHANCELLOR: What is the purpose of it, Judge Tuller?

MR. TULLER: The purpose is to show that he has no interest in this property whatever, and that whatever interest he did have originally is encumbered with judgments and levies upon it.

THE VICE CHANCELLOR: You may show that if you can, but can that be determined until the adjudication in the Orphans' Court?

20

MR. TULLER: Why, certainly. The only thing that cannot be definitely determined is the item of \$163.38 which the executor claims he owes the estate of Isaac A. Owen, Sr.

MR. LANE: And no exceptions were filed to that.

MR. TULLER: And no exceptions were filed to that.

THE VICE CHANCELLOR: Go ahead, but do not pursue it unless it is of value. In case he does not have any interest the other complainant has, has she not?

30

MR. TULLER: I am going to go into that afterwards and show whether she has or not.

THE VICE CHANCELLOR: Well, if it is a fact that neither complainant has any interest there is no use going any further. Do you contend that neither complainant has any interest?

10 MR. TULLER: I contend exactly that, that they have no interest in the property whatever, unless the contention that they make that this property was sold below its value would give them an added interest not covered by their obligations. That is my purpose exactly. I purpose showing that Buzby Owen had no interest in this estate when he died, and I purpose showing that Isaac A. Owen has lost his interest to his brother, the
20 executor, by reason of the levies—and other things—upon his interest in the property, and that the entire estate as it now stands—I mean was at the time of the sale the property of Joshua P. Owen, and that he sold this property as executor of his father's will and honestly sold it at public sale in accordance with the directions therein contained.

By MR. TULLER:

Q. Mr. Owen, you said in your testimony in chief that you did not know of any encumbrances which were against this property when you looked at the account filed by the executor.

A. I understood that it was sold subject to the encumbrances.

30 Q. And didn't you answer your counsel that you did not see any encumbrances mentioned in this account when you looked at it at the Surrogate's office?

A. Well, what do you mean,—about the taxes?

Q. Did you discover on this account any entries there for taxes and sewer charges?

A. I saw it, yes, sir.

THE VICE CHANCELLOR: I understood him to say that was when he first learned that it was not sold subject to these encumbrances.

MR. TULLER: I understood him to say he hadn't seen that.

THE VICE CHANCELLOR: I understood him to say that he supposed it was the equity that was sold, and when he saw the account he found that it was sold for the amount stated free and clear of encumbrance, leaving the estate to pay the encumbrances. That was my understanding. 10

MR. TULLER: I didn't so understand him.

MR. MCALLISTER: That was his testimony.

Q. But the account shows that the taxes were paid by the executor?

A. The same day, yes, sir. 20

THE VICE CHANCELLOR: He said that he thought the purchaser assumed all those obligations until he saw the accounts.

Q. Well, now, Mr. Owen, you say that you did not know anything about this sale until after the sale?

A. Two days afterwards.

Q. Two days afterwards?

A. Two days afterwards.

Q. You know a man by the name of Mr. William Buck, down in Millville? 30

A. Yes, sir.

Q. Was he in Salem working with you, or when you were?

A. He was working there, not with me.

Q. Did you have any conversation with him regarding this property?

A. About the sale?

Q. About the property.

A. Yes, I always did, whenever I saw Mr. Buck.

Q. You had your conversations before the sale, didn't you?

A. I don't know about that.

10 Q. Didn't Mr. Buck say to you that this property had been advertised by Joshua for sale at Millville?

A. I don't remember it, if he ever did.

Q. Didn't he call your attention to the proposed sale of this property?

A. No.

Q. Tell you it was advertised for sale?

A. No, sir, not as far as I remember. I knowed' about the household goods two days before but the real estate I never knowed until two days afterwards.

20 Q. This was in September, 1915?

A. When Mr. Buck was there?

Q. Yes.

A. I don't know that.

Q. And you say he didn't tell you anything of the kind?

A. If he did I never remember it, because I was very anxious to know when the sale was to come off.

Q. If he told you—if he says he told you do you believe he told you?

30 A. No, that wouldn't make me believe it, because I am positive he didn't tell me.

Q. You weren't present at the sale?

A. No, sir, I didn't know nothing of it.

Q. No body has offered to pay you any amount of money for this property?

A. Me? No, sir.

By MR. McALLISTER:

Q. Who is Percy Owen, Mr. Owen?

A. He is Joshua P. Owen's son.

Q. He is the person who purchased the homestead property?

A. Yes, sir.

Q. And is he a married man?

A. I believe he is.

Q. Where does he live?

10

A. In Bridgeton.

Q. What is his business?

A. I understand he is working in the Ferracute Machine Works.

Q. Did he ever tell you that he intended to purchase this property?

A. He told me that he did not expect that property to go out of the Owen's name, expected to keep it right there in the Owen's name.

Q. When did he make that statement?

20

A. He made that statement the time that my brother sold my shop.

Q. Under this execution that Judge Tuller has been talking about, or one of the executions?

A. Yes, sir.

Q. You and your brother were friendly for a number of years after your father died?

A. Yes, sir. I always wanted him to settle it up but he kept saying "Wait, wait, we are in no hurry."

Q. You testified under cross-examination that your brother was to take the Third street property and you were to take the Second street property?

30

A. He made the proposition to take Third street, as he wanted to fix his side up, so he goes ahead and fills in the lots there to suit himself.

Q. When was that?

A. When was that?

Q. Yes.

A. Well, that is before I went there, before I lived there by myself.

Q. That is several years ago?

A. Yes.

Q. And had you settled the estate then?

A. No, the estate hadn't been settled.

10 Q. You hadn't filed any inventory?

A. No, hadn't filed nothing at that time.

Q. And what was Martha Owen to get,—your brother's daughter?

A. What was she to get?

Q. Yes. What property was she to have for her share?

A. Well, the will said to be divided equally after Buzby's debts was taken out.

Q. And you and your brother agreed between yourselves without consulting her—

20 A. Yes, we never went to her.

Q. —that his debts amounted to enough to eat up the amount that would come to her from her father's share?

A. We went over the bills and there was some notes there we couldn't find out the state of, and we went to Herschel Mulford, the cashier of the bank, and he couldn't say whether it was Buzby's checks—or notes or whether it was Pop's, so it was always a question to me whether it was Buzby's or not.

Q. You don't know now?

30 A. I don't know now, never did know.

Q. What Buzby owed your father?

A. No, I don't know. Pop and Buzby did business together and these notes was taken, people made them take notes out, you see, and Herschel says he couldn't say whether it was Pop's account or Buzby's account.

Q. Now, the account that you charge against Martha is a book account kept by your father?

A. Book account is all, yes.

Q. And exceptions have been taken by us to the charge against her by your brother?

A. Yes, sir.

Q. In the Orphans' Court of Cumberland County?

A. Yes, sir.

Q. And no decision has been rendered by the Orphans' Court in that matter? 10

A. Not as far as I know, no, sir.

Q. Now, was there anything else that was to be charged against her except this book account?

A. Well, whatever the book accounts and notes—whatever Pop had, you know, he said in his will, on each one.

Q. Does she admit that any of these bills are proper charges against her share in this estate?

A. I don't think she knows whether they are or not.

Q. You don't think she knows? 20

A. No.

Q. But so far as you know she does not admit that any of them are proper charges?

A. No, not as far as I know.

Q. And if the court should not allow any of these charges against her father she would then be entitled to one-third of this estate?

A. One third of the property, yes, sir.

By MR. TULLER:

Q. Well, when was Buzby Owen in business with his father? 30

A. When was he?

Q. Yes.

A. I can't tell you the years; for several years they was in business together.

Q. Wasn't that about thirty years ago?

A. I don't know,—it is later than that.

Q. Was that in 1880?

By THE VICE CHANCELLOR:

Q. Was he the father of your niece?

A. Yes, sir.

10 MR. TULLER: Isaac A. Owen, Sr., was the father of Buzby Owen and Buzby Owen was the father of Martha.

THE VICE CHANCELLOR: That is what I mean, the father of the niece you are speaking of.

MR. TULLER: Yes.

By MR. TULLER:

Q. Didn't you know that there was a very large indebtedness owing from Buzby to his father?

20 A. Do I know?

Q. Yes.

A. Not personally, I don't know.

Q. Don't you know from the character of transactions and the information that you got from your father that Buzby was largely indebted to him?

A. Pop always told me that the boys—he says "You boys won't get as much as Buzby will."

Q. "You boys will not get as much as Buzby"?

A. Yes.

30 Q. Now, didn't you and I—

A. That's all I know.

Q. —and all these people go over the accounts to see what Buzby's indebtedness and what your indebtedness was to the estate?

A. Yes.

Q. Didn't Buzby's indebtedness show up to be quite a large sum of money?

A. It showed up, yes.

Q. Yes. Well, now, when you examined this account in the Surrogate's office didn't you find a statement in this account in which Buzby Owen's estate was shown to owe the estate of Isaac A. Owen, Sr., over \$1,800?

A. I don't remember the figures but I think it was something like that.

Q. Which you thought Buzby Owen owed the estate?

A. There is some I never thought he did owe, no.

Q. Didn't you think that he owed your father's estate somewhere in the neighborhood of \$2,000?

A. I couldn't say about that.

Q. But the contention of yourself and your co-executor before you were removed was that Buzby Owen's entire share in this estate had been taken up by his debts?

A. No; after I went to see the cashier of the bank I made up my mind that I couldn't prove it.

Q. Couldn't prove it?

A. The cashier didn't know himself.

Q. Didn't the books show that there was a large indebtedness there—your father's books?

A. Shows on all—all three of us.

Q. Yes, showed that on your part and on your brother's part?

A. Yes.

Q. And didn't it show Buzby was very largely indebted to your father?

A. He was ahead of us, yes.

Q. He owed very much more than either you or your brother?

A. Well, I didn't owe him anything, Pop owed me.

Q. Buzby owed quite a sum of money?

10

20

30

A. Yes, but how much I don't know. I can't believe today that Buzby owed what they said' he did, I can't believe it.

Q. I believe you said, Mr. Owen, that your father told you that Buzby would get a larger amount of his estate than either you or your brother?

A. That is what he told me once, yes. He says "If you are not careful"—that is the words he used—"if you are not careful Buzby will get more than you both get."

10 Q. Oh, if you were not careful?

A. "If you are not careful."

Q. Evidently you were careful?

A. I guess so.

By MR. MCALLISTER:

Q. Didn't the account—didn't your father's account with Buzby Owen, that Judge Tuller refers to, include large sums of money which your mother had advanced to Buzby?

20 A. My mother had advanced?

Q. Yes, to Buzby.

A. Yes, showed that.

THE VICE CHANCELLOR: What is the use of trying out this question of indebtedness here when the Orphans' Court decision is a necessity before it is determined finally?

MR. MCALLISTER: I think you are entirely right, your Honor. I do not see any reason whatever.

30 THE VICE CHANCELLOR: Is there anything more to ask this witness?

By MR. TULLER:

Q. I just wanted to ask him whether his mother didn't die before his father died?

- A. My mother?
Q. Yes, your mother.
A. Yes; died three weeks before.
Q. And your father took whatever there was of her estate, I suppose?
A. That I don't know, I suppose so.
Q. Did the mother leave a will?
A. No.
Q. Died without a will? 10
A. Died without a will.
-

W. FRED. WARE, a witness produced in behalf of the complainants, being duly sworn according to law, on his oath says—

Direct examination.

By MR. McALLISTER: 20

- Q. Mr. Ware, you are a resident of Millville?
A. Yes, sir.
Q. You are one of the City Commissioners there?
A. Yes, sir.
Q. How long have you been a resident of Millville?
A. All my life; since 1882.
Q. What is your business aside from being Commissioner?
A. Real estate.
Q. How long have you been engaged in the real estate business? 30
A. Eight or ten years.
Q. You have offices in Millville?
A. I have.
Q. And you conduct an extensive business there?

A. Yes, sir.

Q. You sell all classes of real estate in and about Millville?

A. I do.

Q. Do you know where the property is that was purchased by Percy W. Owen at the sale conducted by the father, Joshua Owen, on south Second street, in Millville?

A. I don't know who the present owner is personally but I know the Owen homestead property on south Second
10 street which has been referred to here.

Q. On which side of the street is that?

A. It is on the east side of south Second street.

Q. And what is the character of the improvements that are on that lot?

A. It is a dwelling house and a large building lot which was formerly used as a garden.

Q. Single dwelling house?

A. Yes, frame building.

Q. Have you seen that building recently?

A. I saw it yesterday—as soon as I was subpoenaed—
20 from the outside.

Q. Were you familiar with the building in September of 1915 from the outside?

A. From the outside, yes, I pass it on an average—well, a number of times a week every week.

Q. Is there any change in the outward appearance between September 23d and the present time?

A. I wouldn't know of any noticeable change that happened in that time.

30 Q. It has not been painted?

A. It has not.

Q. And is in what condition at present time?

A. Very bad condition.

Q. And the fence?

A. I did not notice the fence particularly.

Q. Do you know whether it had been recently painted?

A. I would say it had not.

Q. What was the value of that property on September 23d, 1915, basing your answer upon your knowledge of property and property values in the city of Millville?

A. I don't know the condition nor the appearance of the ground upon which the dwelling house stands in 1915, but if they were the same in 1915 as they are today the property was worth easily \$2,500.

Q. Now, are you speaking from the standpoint of a person who was purchasing a home or a person who was buying for investment? 10

A. Either; for investment the property would be worth more—would have been worth more at that time from the building lot standpoint.

Q. Then from that do I understand your answer to mean that \$2,500 would be a high price or that it would be a reasonable price?

A. It would be quite a low price.

Q. It would be quite a low price? 20

A. Yes; for a home it would be a fair, honest price.

Q. Is that a desirable neighborhood in which the building is located?

A. It is.

Q. Some of the better class of people of Millville live in that immediate neighborhood?

A. They do.

Q. Something has been said about the property having a gully. Is that any disadvantage for any of the purposes for which it might be used? 30

A. I don't know of any gully, there is a drainage between this property and the adjoining property, apparently is the dividing line.

Q. Some sort of a tile or iron—

A. Yes, a sort of a conduit.

By THE VICE CHANCELLOR:

Q. A what?

A. Surface drainage, I said conduit, surface drainage between this property and the adjoining property on the south of it.

By MR. MCALLISTER:

10 Q. And when you state your ideas as to the value of this property you are taking into consideration the nature of the ground, the depression that is in the lower half of the lot?

A. I am.

Q. And the present condition of the building?

A. I am.

Cross-examination.

By MR. TULLER:

20 Q. Mr. Ware, what has been the increase in values of property in that neighborhood in the last five or six years, —any?

MR. MCALLISTER: Judge Tuller, if I may, I want to take up one other matter on my direct examination.

MR. TULLER: All right.

By MR. MCALLISTER:

30 Q. Mr. Ware, did you hear me read into the record the advertisement that was used by the executor in giving notice of the sale of this property?

A. I did but I didn't follow it particularly closely.

MR. MCALLISTER: I want to ask him if in his opinion as a real estate man—whether or not

that is an advertisement that would be liable to secure the best price for the property.

MR. TULLER: I shall object to that.

THE VICE CHANCELLOR: I think it may be competent,—if the advertisement is not a fair one.

Q. Mr. Ware, will you read that advertisement, please, to yourself (handing paper to witness previously read into the record)? 10

A. (After reading) I should say that there is a very important item that is omitted.

Q. From this advertisement?

A. Yes.

Q. What is that?

A. It does not refer to the home. It refers simply to building lots, tract of land.

Q. Were homes in greater demand in Millville in September of 1915 than building lots? In other words, was it cheaper to buy a house already built than it was to build one outright, in September, 1915? 20

A. A buyer could get more in the shape of a home for his money in buying a second-handed home and lot than he could by buying a new lot and building new.

Q. Basing your answer upon your experience as a real estate man is that an advertisement that would be conducive to securing the best price and the greatest number of possible purchasers at a sale of real estate similar to the sale held here?

A. I should say it was a very poor advertisement. 30

By THE VICE CHANCELLOR:

Q. What?

A. A very poor advertisement if they wanted to get buyers there to sell this to its best advantage.

By MR. McALLISTER:

Q. Were you at the sale, Mr. Ware?

A. I was not.

Q. Did you see this advertisement prior to the sale?

A. I don't recall that I did.

Q. Were you in the market for properties at that time similar to this?

A. No, not particularly.

10

Cross-examination.

By MR. TULLER:

Q. So you think that that is not a proper advertisement?

A. I said there had been something omitted which was very important in advertising a piece of real estate.

Q. It isn't what you would put up?

A. It is not, no, sir.

20

Q. But everybody in Millville knew the Isaac Owen estate down there, didn't they?

A. I couldn't answer that question. I should imagine a small per centage of them only knew it.

Q. You have lived there since 1882?

A. Yes, sir.

Q. A great many other people have lived there since 1882?

A. Yes, sir.

Q. The property had been there since 1882?

30

A. Yes, sir.

Q. And thousands of people going up and down the Schetterville road?

A. Yes, sir.

Q. And if this was advertised people would know what was the Isaac A. Owen estate, wouldn't they?

A. They would know they were selling building lots there, they wouldn't know that you were selling a home.

Q. But the property was so well-known that when it said 157 South Second street it couldn't be anything else than the Isaac Owen property, could it?

A. Persons in Millville not knowing the numbers very well might not realize which house it was, of course, being so many lots there.

Q. How much experience have you had in the sale of Millville real estate? 10

A. Considerable.

Q. Well, how many lots and buildings have you bought and sold inside the city of Millville?

A. I suppose I have sold as much as, if not more, since I have been engaged in the real estate business, than any other real estate man there.

Q. Well, as a real estate man would you give \$2,500 for that property in the condition in which it is?

A. I would.

Q. For the homestead property? 20

A. Yes, sir, including the frontage on Second street of about 125 feet, yes.

Q. Have there been any changes in the value of real estate in that neighborhood in the last five or six years?

A. The normal healthy increase all over Millville.

Q. Well, how much increase would that be in that neighborhood?

A. Possibly ten per cent.

Q. So that there has been a ten per cent. increase in the last five or six years? 30

A. Yes.

Q. What is the value of a lot per foot on that street at that location?

A. I couldn't tell you because I never base my values on dwelling house lots per foot frontage.

Q. Did you ever know of any property being sold in that neighborhood at public or private sale?

A. No, not in recent years.

Q. Within the last four or five or six years?

A. Only the property of, formerly, H. O. Newcomb, president of the Mechanics National Bank. That has been quite a few years back and I don't know what the price obtained there was.

10 Q. You don't know what he paid for that property?

A. No, I don't.

Q. That is over on the west side of the street?

A. Yes.

Q. Do you know what the Hartman property sold for, next door?

A. I do not.

Q. You don't know what the lot brought,—the land, vacant land, brought per foot or as a whole?

A. I do not.

20 Q. But whatever it brought at that time, four or five or six years ago, it has increased ten per cent. since then?

A. I don't think you understood my answer correctly if you understand that I mean property had only increased ten per cent. in four or five years. I thought you were referring to September, 1915, to the present time.

Q. Increase since September, 1915,—I am dealing with September, 1915, to October, 1916.

A. But you said in your question to me that my ten per cent. increase was based on the last five or six years.

30 Q. I asked you if there had been any change in the last five or six years, you told me in your answer that there had been ten per cent.

A. Then I misunderstood you. I beg your pardon. I mean ten per cent. in the past year.

Q. What has been the increase in value for five or six years up to 1915?

A. It is hard to base it on a percentage, but a normal, healthy increase.

Q. Well, would that normal, healthy increase be ten per cent. up to 1915, September, 1915?

A. During the past year I should say so, from 1915 to 1916.

Q. I don't mean this past year, I mean up to 1915, September?

A. Yes, with the exception of the depression we had just prior to September, 1915. 10

Q. Well, now, you never was in this house?

A. Never was, no, sir.

Q. The house sets right down on the ground, on a foundation close to the ground?

A. The average height, I believe.

Q. You don't know whether there are any modern improvements in it?

A. I don't know, never was inside of it.

Q. You don't know the condition of the interior in any particular? 20

A. I don't.

Q. The condition of the exterior is very bad, isn't it?

A. What I saw, as far as paint is concerned.

Q. It is in an apparently dilapidated condition, isn't it?

A. I wouldn't say it is in very poor condition.

Q. Did you go inside to examine that house?

A. No, I did not.

Q. Now, don't you know that this land slopes back into a gully in the rear of this lot and then rises again to Third street? 30

A. I know that it slopes back from Second street towards Third and I think it does rise, the Third street land.

Q. And this depression runs across these lots down on the Hartman property into a culvert which runs across the Schetterville road?

A. There is a culvert there that I mentioned before. I don't know anything about the gully. That would probably be 125 feet back from Second street.

Q. You don't speculate in real estate, buying, do you, personally?

A. Very little.

Q. If you buy you buy for somebody else?

A. I have bought for myself but very little of it.

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ALONZO R. MOORE, a witness produced in behalf of the complainants, being duly sworn according to law, on his oath says—

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Direct examination.

By MR. MCALLISTER:

Q. Where do you live, Mr. Moore?

A. West Main street, Millville, N. J.

Q. How long have you been a resident of Millville?

A. Oh, practically all my life, forty years. ?

Q. Do you hold any official position in the city of Millville?

A. I am the secretary of the Board of Assessors.

Q. And what is your business aside from that?

30 A. Building, contractor and dealer in real estate.

Q. Have you any knowledge as to what the Owen property on Second street, the homestead property, was assessed for in the year 1914 or 1915?

A. It was assessed for \$1,725 in the year 1914 and 1915.

Q. Do you know what is usually considered by the assessors as being the standard of their assessment,—what proportion the assessment bears to the sale value?

A. We try to be well on the safe side, the true value of the property.

Q. And a property assessed at \$1,700 would not necessarily be limited to that exact valuation?

A. Not necessarily so.

Q. That would be low enough—

10

A. That would be.

Q. —if you wanted to purchase?

A. Sure, it should be considerably below the purchase price.

Q. What experience have you had in the real estate business?

A. Oh, I own about sixty houses in Millville, several stores on High street.

Q. Have you seen this property in question recently, Mr. Moore?

20

A. Yes, sir.

Q. Did you see it any time during the year 1915?

A. Oh, I have seen it on an average of two or three times a week for years past.

Q. Is there any material change apparent to the eye between its condition at the present time and its condition in September, 1915?

A. Very little, if any.

Q. In other words, the present owner has not done anything that is noticeable to change or improve it?

30

A. Not a bit, not in the least.

Q. In your opinion what was the value of that property in September, 1915?

A. In my opinion, to buy it as an investment, \$2,000 I think would be cheap; to buy it as a home,—there is some

things in connection with that property that would naturally appeal to an owner for a home and it should be worth more, considerably more than that.

Q. What would be a reasonable price if such a purchaser should desire to buy it?

A. For a home?

Q. Yes.

A. Why, \$2,500 would be a reasonable price.

10 Q. In the carrying on of your business do you ever advertise, using the daily papers as a medium, to disclose the fact that you have some real estate for sale?

A. No, very seldom I advertise.

Cross-examination.

By MR. TULLER:

20 Q. Mr. Moore, how much would it take to put that building in modern shape, repair and fix it up in good shape for a home?

A. Without including anything additional? You mean without including any modern improvement?

Q. I mean to say, take the property as it stands and repair it and put it in shape for modern use?

30 A. Well, to take it and put it in shape so that it would be as good as it would need, without putting any modern improvement in, about two hundred and fifty to three hundred dollars, not to exceed that; \$250 would do it, that would repair what parts there is to the building that are out of repair, and repair the roof and paint it and fix it up inside, put it in good condition.

Q. You think \$250 would repaint the house inside and repaper it and fix the roof and paint the outside and fix up the fences and put the grounds in good shape without the modern improvement?

A. I am not saying anything about the grounds, I am speaking of the building alone.

Q. Well, the building alone, then: Do you think \$250 would do all that to the building?

A. \$250 would put the building in good shape, good condition; the building, of course, is a thoroughly well made building.

Q. Have you been inside to see its condition?

A. I have.

Q. Did you see every room in the house?

10

A. I didn't go in for that purpose but I have been in there.

Q. Have you been over the house lately or did you go over it in 1915?

A. Yes, sir, not necessarily on an inspection tour.

Q. Well, then, with your knowledge of the interior and its condition, your knowledge of the exterior and its condition, you say \$250 will be sufficient to put it in ten-antable shape?

20

A. Yes, sir.

Q. The property is in pretty bad shape from appearance, isn't it?

A. Shows neglect.

Q. And you haven't known of any repairs having been made upon the property for years, have you?

A. I haven't known of any.

Q. Now, you are the secretary of the Board of Assessors, you say?

A. Yes, sir.

Q. Your assessors in the city of Millville, Mr. Moore, assess property, do they not, to the full value of the land in accordance with the directions of the statute?

30

A. We assess property to its full value, as to what under very unfavorable conditions probably a property might bring at a forced sale, of course we aim—

Q. Never mind that. I am asking you if you do not assess the properties at the full, fair value of these properties, regardless of a forced sale, in accordance with the directions of the statute?

A. I don't think we ever over-assess properties.

Q. You don't under-assess, do you?

A. We never over-assess properties.

Q. Do you under-assess properties?

10 A. There might be a big distinction there as to what you would call under-assessing properties and somebody else would call under-assessing.

Q. I am talking about what your assessors would do. Do they ever under-assess properties?

By THE VICE CHANCELLOR:

Q. That is, do they assess it for less than it would bring at a private sale made by a person who desired to sell but was not compelled to—

A. No.

20 Q. —to a person who desired to buy but was not compelled to?

A. Not at a private sale, no.

Q. That is, they do not assess to that full value or they do? I do not understand your answer.

A. We do not assess beyond what it would bring at a private sale.

By MR. TULLER:

30 Q. Wouldn't the prices be fixed by the desire of the person who wanted to buy?

A. I don't just get you.

(Question repeated.)

A. You mean the price of the property would be fixed by that?

Q. Yes.

A. Naturally so.

By MR. McALLISTER:

Q. You have testified that you are the secretary of the Board of Assessors in the city of Millville. Aren't you also one of the assessors?

A. Oh, yes, sir.

Q. And they have selected you as their secretary?

10

A. That is the idea.

Q. You have also testified that you are a builder?

A. Yes, sir.

Q. And that this property is well built?

A. Yes, sir.

Q. Are you building any houses at the present time in the city of Millville?

A. I am.

Q. How many?

A. About twelve under construction at the present time.

20

Q. How many have you built in the past, we will say, ten years in the city of Millville?

A. In the past ten years I have built more than 250 houses.

MARTHA T. SEIFERMAN, one of the complainants, being duly sworn according to law, on her oath says—

30

Direct examination.

By MR. McALLISTER:

Q. Where do you reside?

A. Millville, N. J.

Q. How long have you resided in Millville?

A. Well, I don't know just how long it has been,—right after my father's death, and I was born there, and we went off on different places.

Q. Something has been said this morning in court about your having been married.

A. July 21st, at eight o'clock, in St. Paul's Church.

Q. Of this year?

A. Yes.

10

Q. And to whom were you married?

A. To Albert Seiferman.

Q. Have you a mother living?

A. I have not.

Q. How long has she been dead?

A. About five or six years.

Q. And what did you do to make a living prior to your marriage to Mr. Seiferman?

A. I worked in a hosiery mill and before that I did housework.

20

Q. What were you doing in September, 1915?

A. Of this year?

Q. Just a year ago.

A. I worked in the hosiery mill.

Q. Did you ever ask your uncles, Joshua and Isaac Owen, to account to you for the share of the estate of your grandfather?

A. I have asked them and at times they would laugh at me and always said that I never had no interest in it.

30 Q. Did they ever pay you anything on account of your father's estate?

A. No. They took me to Vineland one time and told me then that my father didn't have any share in it,—before Gray.

Q. Well, that is when you went to Vineland to consult a lawyer?

A. Well, there was no lawyer there, it was just Gray. I don't know whether he was a lawyer or what he was. They was with me.

Q. But you went up to talk about—

A. He told me that I might as well sign, and then my uncle said that I had nothing to do with it, that I wouldn't get anything.

Q. And later did you engage an attorney to see that they filed an account, an inventory of the estate?

10

A. Well, Lawyer Burt came to me one time and asked me about selling, that Dr. Slade wanted to sell, and from this time on up—

Q. Dr. Slade wanted to sell?

A. Yes, that he wanted me to sell, but Lawyer Burt came in his place, and after that we went to him, of course, once or twice, and that was the last of that, we never went no more until we came to you.

Q. And later you engaged me?

A. Yes, sir.

20

Q. To make the necessary application to have the executors file an inventory?

A. Yes.

Q. Now, when you say that they have never paid you anything do you mean that they have never paid you anything at all?

A. Nothing at all.

Q. Interest or personal property or anything else?

A. No.

Q. That belonged to your grand father?

30

A. No.

Q. You saw the account that was filed by Mr. Joshua Owen, which had a statement attached to it which read: "This accountant also prays allowance for amount of the book account due Isaac A. Owen, Sr., from the estate of

Buzby Owen, deceased, as per inventory filed, and to be set off under the terms of the will, namely, \$1,821.29.”— you saw that account?

A. Yes.

Q. And read that statement?

A. Yes.

Q. And did you engage me to file an exception to the allowance of that portion of the account?

A. I did.

10

Q. And so far as you know that matter has not been determined by the judge of the court?

A. No.

Q. Do you know whether or not you do owe, as the heir of your father, any of this \$1,821?

A. I don't know, only what they say.

Q. When did they first present to you this book account?

A. In Bridgeton.

Q. After a suit was started?

20

A. After you showed it to me.

Q. You had' never seen this book account before you saw it in my office?

A. No.

Cross-examination.

By MR. TULLER:

Q. Isaac Owen told you that your father's interest in the estate had all been taken up by his obligations to his
30 father?

A. I don't know. I didn't quite understand it any how.

Q. Eh?

A. I didn't quite understand' it.

Q. Well, they told you—

THE VICE CHANCELLOR: What is the use, Judge Tuller, of going into this matter? I cannot see any necessity for doing it. Supposing she is a devisee under the will and there is a controversy in the Orphans' court as to whether anything is due to her by reason of offsets that are claimed, and those offsets are controverted and are undetermined, is she not a devisee still and as such entitled to file a bill and maintain an action to set aside a sale in the hope of getting more assets so that there will be enough to pay everything and leave a surplus?

10

MR. TULLER: Undoubtedly. That wasn't my purpose in asking the question, but I will withdraw the question.

THE VICE CHANCELLOR: It doesn't seem to me that her status under this bill can be disturbed if the averments of the bill are true, to the effect that this was an improper sale and should be set aside.

20

MR. TULLER: Of course, that is the only question in it. This is simply collateral. I will let the matter pass. That is the only question I care to ask.

THE VICE CHANCELLOR: Can you answer his question? I will let you answer it if you can.

A. I do not fully understand it. I only know what they said, that my father owed his mother.

30

By THE VICE CHANCELLOR:

Q. Mr. Isaac Owen as well as Joshua Owen told you that?

A. That is what they both said.

ALBERT SEIFERMANN, a witness produced in behalf of the complainants, being duly sworn according to law, on his oath says—

Direct examination.

By MR. McALLISTER:

Q. You reside in the city of Millville?

A. I do.

10 Q. You are the husband of Martha T. Owen, who was just on the stand?

A. I am.

Q. And what is your business?

A. Glass-worker.

Q. You are familiar with the property formerly owned by Isaac Owen?

A. I am.

Q. Located on south Second street, Millville?

A. Yes.

20 Q. Did you know that that property was to be sold prior to the sale?

A. I did not.

Q. Did you see the advertisement that was inserted in the paper in the city of Millville?

A. Why, not until we had that meeting in Bridgeton and I saw it then.

Q. You didn't know it until after the sale?

A. No.

30 Q. Did you know that the property was to be sold prior to the sale of the property?

A. No, I did not.

Q. If you had known that that property was to have been sold at public sale and that it would be sold in lots, with the improvements on it, as it was sold, would you have been present and have been a bidder?

A. Why, I would have tried to. I will tell you. So far, everything that she had under way—of course, as a girl she didn't know much about law or I didn't,—

Q. Well, now, I don't know what you are going to say.

A. Well, what I was going to say—

THE VICE CHANCELLOR: Answer the question. Then we will know what you are going to say.

10

A. Well, I would try to have been present there.

Q. (Repeated) If you had known that that property was to have been sold at public sale and that it would be sold in lots, with the improvements on it, as it was sold, would you have been present and have been a bidder?

A. Yes, sir.

Q. And what would you have been prepared to bid for the homestead property that was purchased by Percy W. Owen? Now, that is the homestead and the Second street lot.

20

A. Well, I should say twenty-four or twenty-five hundred dollars would be a reasonable price for that there property.

THE VICE CHANCELLOR: He did not ask you that.

(Question repeated).

A. Well, twenty-five hundred.

By THE VICE CHANCELLOR:

30

Q. You mean by that that if you had known of this sale you would have gone there and would have bid twenty-five hundred?

A. Well, I would have went that high, yes; I think it is worth it.

Q. You wanted the property at that time, did you?

A. Well, I would have took it at that.

By MR. MCALLISTER:

Q. And would you still take it at that price?

A. Yes.

Q. Are you in a position to buy and pay for such a property as that?

10 A. I think so.

No cross-examination.

MR. MCALLISTER: We rest.

20

FERDINAND R. JONES, a witness produced in behalf of the defendants, being duly sworn according to law, on his oath says—

By MR. TULLER:

30 Q. Mr. Jones, where do you live?

A. I live in Millville.

Q. What is your business?

A. Glass-worker.

Q. Did you attend the sale of the Isaac Owen property on south Second street September 22d, 1915?

A. I did.

Q. How did you come to attend it?

A. I went there to purchase the property.

Q. How did you come to go there to purchase the property?

A. I was asked by Percy Owen to buy the property in.

Q. Had you seen the property advertised for sale?

A. I never seen the advertisement?

Q. When did Percy come to you to get you to bid the property in?

A. I think it was about three or four days before the sale, one evening,—in the afternoon, late in the afternoon.

10

Q. Where does he live?

A. What say?

Q. Where does Percy Owen live?

A. In Bridgeton, I think.

Q. And in accordance with his request you went to the sale?

A. I did.

Q. Did you purchase the property?

20

A. I did.

Q. For how much money?

A. For \$1,575.

Q. What statements were made at the sale as to the conditions and things of that character?

A. Well, I can't just exactly remember in detail now, but I know that Mr. Lane, the solicitor in the affair, made a statement—read a statement there in regards to the sale and the conditions but I have forgotten the details.

Q. Could you tell whether the property was to be sold in one piece or a number of pieces?

30

A. It was to be sold in three pieces, there was the front property, where the house was, and there was two lots on the rear end of the property, on Third street.

Q. Where did the sale take place?

A. The sale took place right alongside of the house,

on the south side of the house, about midway of the building, on the walk.

Q. Who was the auctioneer?

A. Mr. Adolph Hess.

Q. Were there any bidders there?

A. There was one bidder beside myself, a Mrs. Fath.

Q. Was there any announcement made as to a delay in the sale for the purpose of letting others come to bid?

10 A. Yes, sir. Mr. Hess held the sale up I imagine from twenty minutes to half an hour, it was quite a bit, I know I was nervous and I walked around there, because I was ready to get the thing off my hands, and it seemed to me to be quite a long time we waited.

Q. How many people were there when the bidding took place?

A. Oh, I imagine there was fifteen or twenty people.

Q. And how many bidders?

A. There was two bidders, Mrs. Fath and myself.

20 Q. Who made the first bid?

A. I couldn't tell you.

Q. How much was the first bid?

A. I think it was a thousand dollars.

Q. And then how was the bidding continued?

A. Well, I made the second bid but I cannot remember the first bid I made was, I couldn't tell that.

Q. Well, did you continue bidding right on down?

A. Yes, sir.

Q. At what figures?

30 A. Well, from ten to five up, the last bid I made was twenty-five.

Q. Well, at what bid did the other parties stop bidding?

A. At the bid of—the last bid that was made was \$1,550.

Q. Then you bid in addition to that \$25?

A. Yes, sir.

Q. That made a total of \$1,575?

A. Yes, sir.

Q. Was it struck down to you immediately?

A. No, sir. I thought that Mr. Hess was never going to let the thing go, he pounded there and cried for a long while for another bid, and finally he said "Has all bid that desire to bid?" He said again that, and then afterwards it was knocked off to me.

10

Q. What did you do after the bidding in of the property regarding it?

A. Well, we went from where the first plot was sold to the back end of the—on Third street, and there the sale was continued, and Mr. Hess stood in the sidewalk and cried the two lot sale.

Q. That is the two lots on Third street?

A. Third street, yes, sir; and I forget now what my first bid was on those lots too, but I know that what I bid for the two lots—lot number 1 was \$214, and lot number 2 was \$213, and those were my bids and it was knocked off to me.

20

Q. So that you got the homestead property on Second street?

A. Yes, sir.

Q. And the two lots back on Third street?

A. Yes, sir.

Q. Was there any bidders against you on the lots on Third street?

A. Yes, sir.

Q. How many?

30

A. Only one, Mr. Fath, the son of the lady that had bid against me at the front, on the Second street property.

Q. Was the brick house on Third street sold also at the same time?

A. It was.

Q. Did you bid on that?

A. No, sir, I didn't.

Q. Why not?

A. Well, I didn't want it myself and I had no request from Mr. Owen to buy that so I let it go. I don't know what the reason was that he didn't want it or anything about it, he didn't ask me.

Q. He didn't ask you and so you didn't bid on it?

10 A. No, sir.

Q. Who bought the brick house?

A. Mrs. Fath.

Q. Do you remember the price that she paid for it?

A. I think it was eight hundred and some dollars, somewhere in that neighborhood; I don't know just exactly, it slipped my memory.

Q. Her son bought it?

A. Yes.

Q. Did you take the deed to the property?

20 A. No, sir.

Q. How came it that you didn't get the deed yourself?

A. As soon as the sale was over I went to Mr. Lane, the solicitor in the matter, and told him that I had bought that property for Percy Owen and to make the transfer papers and I would sign them.

Q. Did you sign the transfer papers?

A. I think I did, yes.

Q. Did you go to Mr. Lane's office to sign them?

A. Yes.

30 Q. Now, what condition was this property in at that time?

A. I should say it was in a very dilapidated condition.

Q. Well, now, describe to the court the condition of the house and the lot as it was at that time, in 1915?

A. At the time of the sale?

Q. Just describe to the court the condition the house was in.

A. I went there and the house was open and I went into the house and I found things all pell mell and all out of order, the house was in a fearful condition inside, and the outside,—the porch was badly dilapidated and out of repair, and in fact all over the house denoted there had been no care or anything kept up on the property at all. The fences were all down, the fences all in a miserable condition, they are that way today. 10

Q. And was the house painted?

A. No, sir,—well, it had been in years gone by.

Q. But it had been a good many years since it had been painted?

A. Yes, sir.

Q. What was the condition of the grounds as to whether it was level or not? Do you recall a depression, anything of that character on the grounds?

A. I could tell you all about that for years, if you would like me to. 20

Q. You have known the property for years?

A. Yes, I have known it since my boyhood days.

Q. Describe it so the court—

A. Can I go back to what was formerly there?

Q. Yes.

A. In my early days, when I was a boy, and I played with these boys, there was a gully or ditch there, it run through the property and it went down in through the Hartman property, then across the road and went over into the meadow property that is across the way, and it has been somewhat improved, Mr. Owen improved it and put greens in there so that he could garden that place. I have been into his place—in fact, he has given me strawberries,—I was very friendly with Mr. Owen, and he used to take me around— 30

Q. That was the old man, the father?

A. Yes, sir; but as far as the property is concerned now it has been changed from those early days and there has been a drain put in there, and the gully—the original gully—that has been some filled in and leveled up there, but then it has a great big hollow place in there now.

Q. It runs clear across—

A. Yes.

10 Q. —down into the Hartman place?

A. It ran clear up to where the brick house was when I was a boy.

Q. That has been all filled in?

A. Yes, sir, been all filled in, that has been made ground.

Q. Now, are you acquainted with values of real estate in Millville?

A. I think a little bit, I have got three—I am the owner of four houses and my brother and I own sixteen building lots in Millville.

20 Q. You have been engaged during your lifetime in the purchase and sale of real estate?

A. Yes, sir.

Q. Do you know the values of property down in the neighborhood of this property?

A. Yes.

Q. In 1915, at the time of the sale, what was the value of this homestead property?

30 A. Well, up to that time there had been very little improvement in that end of the town or in that neighborhood. I can't recollect of any improvement save when Mr. Esibill bought the Hartman property and he had rebuilt—

Q. That is just south of it?

A. Yes, and I think that he built a house—I am not positive now but I think he did—he had built a double house just below the old Hartman property, and they filled

in with refuse matter throughout Millville, making a dumping ground there, that place that was on the Hartman side.

Q. Well, now, what was the value of this homestead property of the Owens at the time of the sale in your judgment?

A. Well, in my judgment—I wouldn't have paid a dollar more than I did pay had I had to pay it myself, I think I give the full value at that time.

Q. At the time that you paid \$1,575 for the property how much more would you have gone had there been a further contest? 10

A. I don't think I should have went very much further as far as I was concerned.

Q. What was the announcement made at the time of the sale as to encumbrances which were on the property?

A. Mr. Lane stated that the property was clear of encumbrance.

Q. And was it sold so?

A. Yes, sir.

Q. Did he specify any taxes or any other liens that might be upon the property, to your recollection? 20

A. I couldn't say.

Q. What about the year 1915? Did he say anything about that

A. No, I don't think there was any mention made of any taxes at all against the property, I have no recollection—at that time.

Cross-examination.

30

By MR. McALLISTER:

Q. You wouldn't state tha you were a real estate agent in any way, Mr. Jones?

A. No, I just simply bought on common sense judgment.

Q. I mean that that isn't a part of your business, engaging in the purchase and sale of real estate?

A. Oh, I buy and sell a little once in a while.

Q. For yourself?

A. Yes, sure.

Q. But not for others?

A. No, I never buy for others.

Q. Your business is, as you have stated, a glass-
10 worker?

A. Yes.

Q. Who engaged you to make this purchase?

A. Who did it?

Q. Yes.

A. Percy Owens did, he came to me, to my house.

Q. Was he the first one that spoke to you about it?

A. Yes.

Q. How much did he pay you for your work?

A. Not a penny.

20 Q. How long have you known him?

A. Ever since he was a baby.

Q. And were you surprised when he came and asked you to make this purchase for him?

A. No, I was not.

Q. Had his father ever spoken to you about it?

A. What say?

Q. Had his father ever spoken to you about this matter of purchase?

A. No.

30 Q. How much did he authorize you to pay for this property?

A. I haven't any recollection that he authorized me anything, if I understand the conditions as it is in my mind today, there was no stated amount, he just simply wanted me to take my own judgment in the matter.

Q. Now, are you testifying that that is your recollection or that that is a fact?

A. Well, to my mind it is a fact.

Q. That he simply said to you—just repeat the words that he used in engaging you to purchase this property?

A. I couldn't do it, I didn't charge my mind with that, I couldn't do that.

Q. And you don't know whether he limited you or not?

10

A. I know he did not.

Q. You know he did not?

A. Yes.

By THE VICE CHANCELLOR:

Q. What limit did he make?

A. What say?

Q. What limit?

A. Well, I suppose he thought that I had had experience in buying.

20

Q. What I want to know is whether he limited you, said how much—

A. No, he didn't tell me how much.

Q. —how far he would authorize you to go, how high?

A. I supposed he wanted me to take my own judgment in the matter, and that is what I used, my own judgment.

Q. Oh, you were to buy without any limit on price?

A. Yes, sir; that is the way I understood it.

30

Q. Well, supposing it ran up higher than you thought it was worth?

A. Well, then I should have been in a position—the fact he wasn't there and I had to take my own judgment in the matter and—I couldn't have done anything else but

bought, if it had went higher I would have to bid higher, the way I understood.

Q. No matter how high it had gone?

A. Well, it would make no difference—in reason, of course, I should have simply quit and I would let the other bidder have the sale before I would have went out of reason or judgment in the matter.

Q. Well, how high would you have gone before you would have let the property go?

10 A. Well, I think the property—that when I made the last bid—

Q. I mean the homestead property now, that you bid \$1,575 for. How high would you have gone?

A. I think that is virtually as high as I ought to have went.

Q. What?

A. I shouldn't have wanted to make any higher than fifteen—I wouldn't have went no higher than \$1,600.

Q. And if your adversary had bid sixteen hundred

20 you would not have bid any more?

A. I don't think I would.

By MR. MCALLISTER:

Q. How many persons did you say were at the sale?

A. What say?

Q. How many persons attended the sale?

A. How many purchasers?

Q. Not purchasers, persons. How many people were present at the sale?

30 A. Well, I think there must have been fifteen or twenty people there.

Q. Men or women or both?

A. Well, there was only one woman there that I remember seeing.

Q. And that was Mrs. Fath?

A. Yes.

Q. And were there any children there at the sale?

A. I couldn't tell you about that, I didn't look around for young ones, I looked around for the buying men.

Q. Were there any real estate men there?

A. Yes, there was one man there I remember, and there was one man on the outside of the fence, Mr. Henry was there and a Mr. — he lives on Third street.

Q. Well, he is a real estate man?

10

A. Yes, sir, he is a contractor and builder.

Q. Well, did they bid on this property?

A. No, sir.

Q. What happened between the auctioneer and Mrs. Fath when she asked that the sale be held up until she should get her son?

A. I think—I don't—I can't just remember the full details, but I think she requested that they hold off the sale for a bit, that he was coming, and Mr. Hess did hold the sale off the period that I told you about.

20

Q. But Mr. Fath wasn't there when this homestead property was sold?

A. No, he came afterwards.

Q. He came afterwards and bid against you at the next sale?

A. He came afterwards and bid against me at the rear, on Third street.

Q. And did you hear her say to Mr. Hess "Why did you knock that property down so soon?"?

A. No; she had all the opportunity in the world to bid against me. He cried there for quite a bit and waited and waited and waited before he knocked the property off.

30

By THE VICE CHANCELLOR:

Q. The homstead, you mean?

A. Yes, sir.

Q. I thought you said that was sold before she came?

A. No, she was there and bid on it.

MR. MCALLISTER: He said before the son came.

A. (Continuing) Before the son came. She was the one did the bidding against me on the homestead.

By MR. MCALLISTER:

10

Q. Did you say to a reporter for the Millville Daily Republican that you had purchased this property for \$1,575 subject to liens against the property amounting to \$400?

A. I never spoke to a reporter.

Q. Then you don't know where that information came from?

A. No, sir, I don't know any more about it than you do.

20

Q. Did you see the article in the Millville News on the day following that stated that you had purchased this property for Mr. Isaac Owen?

A. No, sir, I don't know anything about those notices in the paper. I have had nothing to do with the property or the handling of it or doing anything with it after I made the statement to Mr. Lane as to who the property was to go to, when I went there and signed that paper in his office, —I don't know anything about it.

By MR. TULLER:

30

Q. This was sold free and clear of all liens, wasn't it?

A. Yes, sir.

Q. I believe I asked you that before.

A. Yes, sir, you asked me that before.

ALBERT W. HENRY, a witness produced in behalf of the defendants, being duly sworn according to law, on his oath says—

Direct examination.

By MR. TULLER:

Q. Mr. Henry, you live in Millville?

A. Yes, sir.

Q. How long have you lived there?

10

A. Forty-seven years.

Q. What is your business?

A. Real estate.

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

A. Thirty-five years.

Q. Have you bought and sold large quantities of real estate in Millville?

A. Quite a considerable.

Q. Yourself and for others?

A. Myself and others.

Q. Do you know the values of real estate in that city?

20

A. Somewhat, yes, sir. I keep posted.

Q. Do you know the values?

A. Yes.

Q. Do you know the value of real estate on south Second street in the neighborhood of the Owen property?

A. Yes.

Q. Were you present at the sale of the Owen property?

A. I was.

Q. Do you attend public sales?

30

A. Usually do.

Q. For what purpose?

A. Buying.

Q. Why did you go down to the Owen sale?

A. With the idea of buying if it should be sold cheap enough.

Q. Did you buy?

A. No, sir.

Q. Why not?

A. It brought all that I thought it was worth.

Q. How much did the property bring at that sale?
That is, homestead property, I mean.

A. I think it was somewhere about sixteen hundred dollars.

10 By THE VICE CHANCELLOR:

Q. About what?

A. About \$1,600.

Q. \$1,575 it brought.

A. Yes.

By MR. TULLER:

Q. Did you consider \$1,575 the fair value for that property?

A. Well, it was—I consider it was about a fair value
20 for to buy at a public sale for investment.

Q. A fair investment value?

A. Yes.

Q. What was the condition of the property, the buildings and of the land surrounding?

A. The buildings were very much run down, the land is very much dilapidated.

Q. Did you go through the house?

A. Yes.

Q. What was the condition of the interior?

A. Very dilapidated all through.
30

Q. And the exterior?

A. The exterior very much dilapidated, very much run-down from years of neglect.

Q. Did you hear the announcements at the sale?

A. I did.

Q. Can you state to the court what announcements were made at that time by the auctioneer or by any person?

A. Made by Mr. Lane, solicitor in the matter.

Q. What did he say?

A. He said the properties would be sold clear of all encumbrance except the taxes for 1915.

Q. How was the property sold,—in parcels or in a lump?

A. The Second street property was the first sale made. 10

Q. Who was the purchaser of that?

A. Mr. Jones, I believe, bid the property off.

Q. Any other bidders besides Mr. Jones?

A. Mrs. Fath was a bidder.

Q. Do you recall her last bid?

A. I don't recall the last bid.

Q. Do you recall the amount that he bid last?

A. I don't, the exact amount.

Q. Was the sale adjourned or continued for any reason? Was there a delay in starting the sale, in other words? 20

A. There was quite a hesitancy in starting the sale for some reason, I didn't know why, I waited myself there for quite sometime.

Q. And how many people were there there?

A. I couldn't just say. There was quite a bunch of people around, inside and out.

Q. Men or women?

A. Yes.

Q. Men or women? 30

A. Well, mostly men.

Q. Do you recall the condition of the land there as to depressions or gulleys or anything else of that character which was upon it?

A. Yes.

Q. Just state to the court what your recollection of that is?

A. The land on the north side is—where the house is, is comparatively high, but it slopes off as it goes south, there is quite an incline, several feet, and about midway of the incline there is a gully runs through it, a culvert put in the sewer pipe, I think, or something of the kind, a culvert that had been constructed there to let the waer off from this yard, to keep it from over-flowing, it runs through the
10 Hartman tract to the street over in the meadows.

Q. It divided the tract cross-wise, didn't it?

A. Yes, sir.

Q. Was that an advantage or disadvantage to the salable value of this property?

A. Well, to me that was a disadvantage.

Q. How was it a disadvantage in the salable value of this property? Can you estimate it?

A. Well, to me it would have been a very considerable
20 disadvantage. I couldn't have used that lot for building purposes unless I had it filled, and that would be quite expensive.

Q. It would have destroyed one part of the property?

A. Yes.

Q. How much would that have destroyed for building purposes?

A. I presume that would have destroyed at least half of the frontage of the property.

Q. The property on Third street, in the rear,—

30 THE VICE CHANCELLOR: I understand the bill does not attack that.

Q. Was this gully filled in? Had it been filled in on any portion of it?

A. Not on the Second street property, no.

Q. It was back on the other property in the rear that the filling had been done?

A. Yes, sir.

Q. But the gully remains on the Second street property?

A. Yes, still remains.

Cross-examination.

By MR. McALLISTER:

10

Q. You say that you are familiar with real estate values on Second street in Millville. What does land sell for per front foot?

A. I am offering 40 foot lots there for \$350, 40 foot front and 130 feet deep.

Q. Where are they located?

A. Just south of that property.

Q. There is a deep ravine there, is there not?

A. Had been before the filling took place.

20

Q. Well, isn't it now?

A. No, sir.

Q. Isn't it lower there than any other part of the street?

A. Not very much now, it has been filled in.

Q. Below the entire tract is below the sidewalk, is it not?

A. Just a little below the sidewalk, yes.

Q. And what little there is there has been filled in?

A. Yes, sir.

Q. You wouldn't say that your lots were in any way equal to the lot upon which Owen had his home? 30

A. I shouldn't consider it very much difference now because my lots are filled in now solid.

Q. You wouldn't think there was much difference as your lots are, now?

A. No, sir.

Q. Then would you consider that if your property, your lots are worth—that is about \$9 a foot?

A. About that.

Q. \$350 for 40 feet.

THE VICE CHANCELLOR: How much did you say?

10 A. 40 by 130 I am offering to sell for \$350.

Q. And you say that your lots are almost as valuable as the Owen lot?

A. I think they are at the present time.

Q. Then would you consider that the Owen lot was worth \$10 a front foot on the same basis?

A. About that I should think.

Q. Then if there are 125 feet the land would have a value of \$1,250, would it not?

A. There isn't 125 feet there.

20 Q. How much is there there?

A. 123 feet.

Q. All right, 123 feet would have a value of \$1,230, wouldn't it?

A. Yes, sir.

Q. Now, what is the value of that house?

A. To me it wouldn't be worth more than \$500.

Q. That would make a value of \$1,730 on your own figures, wouldn't it?

A. About that.

30 Q. Well, if a man wanted to buy a house and had use for a house and the location suited him all right wouldn't that house have a greater value than \$500?

A. It wouldn't to me, I have had the experience in re-building.

Q. You heard Mr. Moore testify that he is a builder?

A. I did.

Q. He is correct about that, is he? He is a builder of some experience?

A. Yes, sir.

Q. And you heard him say that it could be put in proper repair, without making repairs to the land, that is, improving the land, and without putting any modern improvements in, but that the other necessary materials could be furnished and the work done for the sum—not to exceed \$250?

A. I heard him say that, yes, sir.

Q. If he is correct about that—

A. He is not, in my opinion.

Q. If he is correct about that then would you consider that this house had a greater value than \$500?

A. No.

Q. Eh?

A. No, because I am positive that he is not correct.

By MR. TULLER:

Q. You can't put these repairs in there, in your judgment, and make that property tenantable for \$250?

A. Not in my judgment.

Q. Now, the estimated value which you put on here is about the assessed value, isn't it?

A. I don't just recollect the assessed value.

Q. \$1,730 you put on it?

A. I think that was it.

Q. And the assessed value is \$1,750?

THE VICE CHANCELLOR: \$1,725.

Q. When you speak of your lots on the Hartman property, south, being worth \$350, you speak of them after they are filled up to level?

A. Yes, sir.

Q. And you say that one-half of this property would have to be filled up, one-half of the frontage, in order to make it properly marketable on the market?

A. Yes, sir.

Q. Well, that land as it stands or did stand at the time of the sale would not be worth \$1,230, would it, with that gully in there?

A. No.

10 Q. Well, what would you estimate the value to have been or to be now with that gully in there unfilled?

A. On the Owen estate?

Q. On the Owen estate. What would be the difference, in other words,—what would be the cost of filling that up so it could be sold for \$350?

A. It would cost \$250 to fill those lots.

Q. So that it would be reduced from \$350 just the amount of the cost for filling in?

A. Yes, sir.

20

CHARLES ESIBILL, a witness produced in behalf of the defendants, being duly sworn according to law, on his oath says—

Direct examination.

By MR. TULLER:

30 Q. Mr. Esibill, you are a resident of Millville?

A. Yes, sir.

Q. How long have you lived there?

A. Nearly sixteen years.

Q. What is your business?

A. Lumber business.

Q. Are you in the real estate business as well?

A. Some, yes, sir.

Q. Do you buy and sell real estate?

A. Yes, sir.

Q. How much do you buy and sell real estate?

A. Well, I have bought quite a few properties and sell them.

Q. Do you own any property down in the neighborhood of the Owen place on south Second street?

10

A. Yes, sir.

Q. Where do you own property there, and how close to it?

A. I own three lots just below Mr. Owen, adjoins Mr. Owen's property.

Q. On the south?

A. Yes, sir.

Q. How long have you owned them?

A. About five or six years,—four lots.

Q. What is the value of these lots that you own there, apiece?

20

A. All the lots that I have got there have got houses on with the exception of one.

Q. What is the one lot worth?

A. I ask \$500 for that, that is filled up to grade.

Q. You have closed the gully?

A. Yes, sir, filled it up to grade.

Q. Was there a gully there on this lot that you own?

A. Yes, sir.

Q. How much did you pay for that lot when you bought it?

30

A. If I remember exactly \$200.

Q. How long have you owned it?

A. About five years.

Q. How much has vacant property increased in that neighborhood naturally since you purchased this lot?

A. Well, not such a great sight until the last year, I think it has advanced ten or fifteen per cent. during the last year.

Q. Prior to this past year, and prior to the sale of 1915, the property didn't advance there?

A. I don't think so, very little.

Q. You know the Owen property, of course, the homestead property?

A. Yes, sir.

10

Q. What is its condition?

A. It is in a bad, dilapidated condition.

Q. Have you ever been through the house?

A. Yes, sir.

Q. Lately?

A. About two years ago, I think, I went through the house.

Q. That was about a year before the sale?

A. Yes, sir.

Q. What was its condition then?

20

A. Well, it needed painting bad, and needed papering, and the windows were broken, if I remember correctly.

Q. How about the shutters or blinds? Did it have any shutters?

A. Yes, I think so.

Q. In what condition of repair was it?

A. Well, bad.

Q. Fences down?

A. Yes, sir.

30 Q. In September, 1915, what do you consider was the value of the homestead property, 125 feet front by—how much depth?

A. I should have thought sixteen or seventeen hundred, \$1,750 was a fair price at that time.

Q. Is there any depression in the land which reduces its value?

A. Yes, sir.

Q. Where does that extend and from what point?

A. It is on the east side of the lower lot, if I remember correctly; the lot the house stands on or the lot back of the house is in pretty fair condition, but the southeast end slopes down to a gully.

Q. Slopes down very distinctly, doesn't it?

A. Yes, sir.

Q. How much of the 123 feet frontage would that depreciate? 10

A. How much would it depreciate?

Q. The value.

A. One-third.

Q. Fully a third of the entire frontage?

A. Yes, sir.

Q. What would you have been willing in September, 1915, or be willing now to give for the Owen homestead property as it stands and stood in 1915 on south Second street?

A. I wouldn't want to give over seventeen hundred or seventeen hundred and fifty for it at that time. It is worth more than that now. 20

Q. It is worth more than that now?

A. Yes.

Q. But in 1915 you wouldn't have wanted to give more than that?

A. I would not.

Q. What would be its value now, considering the rise in property in that neighborhood?

A. About nineteen hundred or two thousand. 30

Cross-examination.

By MR. McALLISTER:

Q. You are a dealer in lumber and building materials in Millville?

A. Yes, sir.

Q. And you build and sell houses for your own account?

10 A. Yes, sir.

Q. Are your operations all confined to the suburban part of Millville or do you also build and sell in Millville proper?

A. Mostly in Millville, some on the outskirts.

Q. You own houses at the present time which are for sale?

A. Yes, sir.

Q. And you did own houses that you held for sale in September, 1915?

20 A. Yes, sir.

Q. So that when you say that you wouldn't want to bid over seventeen hundred or seventeen hundred and fifty for that property you mean that that is what you would want to buy it for because you would want to sell it again,—is that right?

A. Yes, sir.

Q. But that property really had a greater value for a person who desired to buy?

30 A. Well, if a man wanted it for a home, buying it for a home, of course it was worth a little bit more money to him, might have been.

Q. When you testified that it had a value of \$1,750, and later, when counsel asked you how much the low land or depression depreciated the value, you did not mean to say that that would take something off of the \$1,750?

A. I meant one-third of the value of the lots, not the property.

Q. When you fixed that value you had taken into consideration the entire property, including the depression?

A. One-third of the value of the property if there had been no buildings on it.

Q. Not having any reference to your value of \$1,750?

A. No.

10

By THE VICE CHANCELLOR:

Q. What would you say would be a fair price to a purchaser who wanted that property for a home?

A. Today?

Q. No, at that time, October, 1915.

A. Well, I should have thought that he paid a pretty good price if he paid nineteen hundred or two thousand for it even for a home.

By MR. McALLISTER:

20

Q. It is in a good neighborhood, is it not?

A. Yes, pretty fair.

Q. Good character of houses and people in that neighborhood?

A. Yes, sir.

Q. On a trolley line?

A. Yes, sir.

Q. And how far is it from the center of the city?

A. About three squares.

Q. Three squares?

30

A. Yes.

Q. And it is how far from one of Millville's largest industries?

A. I think about three or four squares, three squares, probably.

Q. You would consider the location, then, desirable, would you not?

A. Well, that is not as good a location as some of the others, on account of the fact that the whole of that property there is on the incline, low, you know.

Q. No, but I mean because of its physical location relative to the busiest center and manufacturing center that there are a number of people who could use such a property, either employed in the business center or employed in the
10 large factory?

A. Yes, sir.

Q. From that situation it would have a desirable aspect?

A. Yes, sir.

By MR. TULLER:

Q. The improvements that have been made in that neighborhood have been made within the last year largely,
20 haven't they?

A. Well, there have been a few houses built since the Hartman property and have been sold in the last four or five years on Third street, there practically hasn't been much improvement on Second street until the last year.

Q. Prior to that the improvements were over on the other street?

A. Yes, sir.

Q. What would it cost, in your judgment, to put this property in tenantable repair without modern improve-
30 ments?

A. Well, I think it would cost three hundred or three hundred and fifty. I think Mr. Moore had that pretty low, but then his judgment is probably better than mine in that, because he does more of that work. I think he got it pretty low, though.

Q. You think he would be disappointed when he came to fix it up?

A. He ought to know. His judgment is better than mine; he is doing more of it.

ADOLF HESS, a witness produced in behalf of the defendants, being duly sworn according to law, on his oath says— 10

Direct examination.

By MR. TULLER:

Q. Mr. Hess, you live in Millville?

A. I do.

Q. What is your business?

A. My business is wholesale and retail produce merchant; I am also an auctioneer and real estate salesman. 20

Q. You have considerable business to do in the way of auctioning off real estate?

A. I have.

Q. Do you buy and sell real estate?

A. Occasionally.

Q. Did you auction off this property in question? I mean the Owen property.

A. I did, sir.

Q. Just state what transpired at the sale, as to conditions read and the bidders, and so on. 30

A. I was hired by the heirs to cry at the sale, and there was some bills handed to me to post through the city of Millville, and one was posted by the Millville Manufacturing Company stores and another one at my store, which is the largest store on the main street facing the depot.

The sale was advertised, and on the day of the sale I went there a half an hour before time of the sale and waited nearly twenty minutes after the time that the sale should take place. The sale was advertised for two o'clock, and I didn't make any motion towards selling until twenty minutes after. Mr. Lane, the attorney in the case, he read off the conditions, and when he was through I stated to the audience if there was any further questions to be asked to ask them now to avoid any mistake. Then something arose
 10 about a taxation of some kind, and they agreed to sell the property clear of all encumbrance, and I proceeded with the sale. The first property we offered was the homestead. In the midst of the sale this lady mentioned, Mrs. Fath, she came and she wanted me to wait for her son. Well, it isn't customary in crying public sales to wait for somebody that isn't there, it is customary for those to be there that wants to buy.

THE VICE CHANCELLOR: Go on and tell
 20 what happened.

A. (Continuing) So then we waited, I should judge, for twenty minutes or so. Then we started again, and the only bidders for that was Mr. Jones and Mrs. Fath.

Q. Who bought the property?

A. Mr. Jones.

Q. What was the figure?

A. \$1,575.

Q. Were the conditions of the sale fully stated?

A. They were fully stated and explained more than
 30 once, at any request.

Q. Then after the property was sold on Second street you went back on Third street?

A. After the sale of the house on Second street we told them that we would go back on Third street and sell there and the audience followed.

Q. You need not go into that, Mr. Hess. Are you acquainted with the values of real estate in the city of Millville?

A. Yes, sir.

Q. Are you acquainted with the values of real estate in this neighborhood?

A. Yes, sir.

Q. How frequently have you dealt in pieces of real estate?

A. Sometimes I am called upon once a week or twice a week, and then again it passes months before I get a call.

Q. In your judgment what is the value of this homestead property of the Owens?

A. Under the conditions at the time, and the conditions of the property and the conditions of the land surrounding that property, it brought every cent it was worth.

Q. You think, then, that \$1,575 was the full value of that property?

A. Was the full value of that property.

Q. You were a purchaser of one of the pieces at this sale?

A. I was, for the lots at Dorchester, bought it in for my wife.

Q. Would you have been willing to have purchased this property at a larger figure than it brought at the sale?

A. The Owens property,—the old homestead?

Q. Yes, the old homestead.

A. No, sir.

Cross-examination.

By MR. McALLISTER:

Q. You are in the retail and wholesale fruit business in Millville?

A. Yes, sir.

Q. Do you ever advertise in the papers?

A. Very seldom.

Q. If you did advertise would you tell the people in the advertisement what you had for sale?

A. Well, I surely would if I advertised.

Q. Did you prepare this advertisement?

A. No, sir.

Q. You read the advertisement?

10 A. I did, sir.

Q. And did you notice that it didn't say that there were any buildings on this property?

A. This bill of advertisement—

Q. Now, just answer the question.

A. Answer what question?

Q. (Repeated) And did you notice that it didn't say that there were any buildings on this property?

A. No, I didn't take particular notice of that. I read the bill over twice and I saw—

20 Q. Do you write any advertisements for persons for whom you conduct sales?

A. Sometimes.

Q. Is it your practice if you want to get the most possible out of the property to include in the advertisement the details of the property to be sold?

A. Yes, sir.

PERCY W. OWEN, one of the defendants, being
30 duly sworn according to law, on his oath says—

Direct examination.

By MR. TULLER:

Q. Mr. Owen, where do you live at the present time?

A. Bridgeton, N. J.

Q. How long have you lived there?

A. About eleven years.

Q. Prior to that time where did you live?

A. Millville.

Q. Were you the purchaser of the Owen homestead in the city of Millville, at the sale conducted on the 22d of September, 1915?

A. Through my agent, Mr. Jones.

Q. Just state to the court who you employed to represent you there and when you employed him? 10

A. I employed Mr. Jones to represent me at this sale, and I visited his home I would say about Saturday afternoon, late in the afternoon, just about supper time, and asked him to purchase this property for me.

Q. Mr. Jones went there and purchased the property for you, did he?

A. He did.

Q. At what figure? 20

A. \$1,575 for the homestead lots—or for the homestead, and for lot number 1, on the Third street side, \$214, and lot number 2 \$213.

Q. The deed has been made out to you, has it?

A. It has.

Q. In your conversation with him what did you say to him about his powers to bid, the limit of his powers to bid? Did you say anything to him at all?

A. Yes. If I recall correctly, I stated to Mr. Jones that I was willing to give about \$2,000 for the homestead and the lots, that is my recollection of the matter, and that I wanted him to use his own judgment, and as he was a man whom I knew from the time I knew any one I had implicit faith in his ability and I thought that he would do by me the right thing. 30

Q. Was there any other reason why you got Mr. Jones to bid?

A. Yes. I had favored Mr. Jones about a year prior to this time, probably a little longer, and I felt that he—as I had at that time received no compensation for my services, and he was a man—as I have already stated—he was a man whom I considered a friend of not only my grandparents and my father and me but he was a man who I
10 always liked, and I felt that at that time he was in a position to return the favor.

Q. Why didn't you attend the sale yourself?

A. Just at that time I had been employed by the Ferracute Machine Company, in their office, I had only just accepted the position there in the early part of September, I was off on September 20th, and I didn't feel that as I just came to this place I should ask for another day right after taking off the day, Monday.

Q. For that reason you got Mr. Jones?

20 A. I got Mr. Jones to act as I did not care to lose the time.

Q. Do you know the value of the property there? Have you any conception of the values of property down on that street?

A. I have heard stated some time back, the values of some of the properties there.

Q. What would you have been satisfied to have given for the property, Mr. Owen?

30 A. Well, my limit on the homestead and the two lots was about \$2,000.

Q. That is as much as you felt you ought to pay?

A. As much as I felt that I wanted to pay for it, yes, sir.

Q. Had you seen the property shortly before that?

A. Yes, once during the summer, I was only in Millville once during the summer.

Q. What was the condition?

A. The condition of the property at that time was a very dilapidated condition.

Q. Had you said anything to your father regarding your intention to purchase this property?

A. Not a word.

Q. Did he know that you were purchasing it?

10

A. My father did not.

Q. Who was the only person you spoke to about it?

A. Mr. Jones.

Cross-examination.

By MR. MCALLISTER:

Q. Your father lives in Millville?

A. Yes.

Q. How frequently do you visit him?

A. Not very frequently.

20

Q. When did you arrange with Mr. Jones to make this purchase for you?

A. About three or four days prior to the sale, I think it was a Saturday afternoon, late in the afternoon, about supper time, if I recall; we went up to the sitting-room, they were eating supper.

Q. You are sure it was on a Saturday?

A. I think it was Saturday, yes, sir.

Q. Well, then, when you testified that you had only recently taken the position, and had been off one day, namely, September 20th, and thought that you didn't want to ask for another day off—

30

A. Yes.

Q. You are mistaken regarding the reason that you did not bid on it, are you not?

A. Mistaken in the reason I did not bid on it?

Q. Yes, the reason you give for not bidding on it yourself?

A. I asked Mr. Jones because I didn't care to lose the day.

Q. But if you were over there on the Saturday preceding the sale you were over there on the 18th or 19th, were you not? It was a day or two prior to the day you had taken off?

10 A. Yes, Saturday afternoon, which we do not work.

Q. No, but you said you had taken off September 20th?

A. September 20th.

Q. Yes, that is the day I understood, but that doesn't mean Saturday, it means that you had taken off a day for your own purposes?

A. Yes.

Q. That your employers had given you that day?

20 A. Yes, sir.

Q. And that has nothing whatever to do with the Saturday that you took off?

A. I didn't take the Saturday off.

Q. Because that was a half-holiday that you were entitled to?

A. Yes.

Q. Now, what was your reason for your not bidding on this property, Mr. Owen?

30 A. Because I didn't want to lose the day; I didn't feel it was consistent, after taking a position, only being in it for three weeks, or only two weeks, to ask for another day right on top of being off on Monday.

Q. Now, you are not a large dealer in real estate at all?

A. No, sir.

Q. Wasn't this quite a large transaction for you?

A. It was a place that I desired to own.

Q. Wasn't this the largest transaction that you ever engaged in on your own behalf?

A. On my own behalf, yes.

Q. And yet you did not feel that it was of enough importance for you to go and attend to it?

A. I did feel that I didn't care to lose the day, and that Mr. Jones was a man who knew the value of property in Millville, that he also was a man that I had great faith in, and I knew that he would do the right thing by me. 10

Q. And on this occasion that you went to Millville did you go and see your father?

A. I went right down to my sister's home and right back on the next car.

Q. Didn't stop in to see your father at all that day?

A. No, I haven't seen father—

Q. Didn't consult him as to what the value of the property was? 20

A. No, sir, not in any way, shape or form.

Q. And did I understand you to say that you did tell Mr. Jones how much to bid for this property?

A. My recollection was I told Mr. Jones that I didn't care to go over \$2,000 for the properties.

Q. Well, then, when he says that you did not give him any instructions as to limit he is mistaken?

A. I think he does not recollect, and I also instructed him to use his own judgment, to buy that property just the same as if he were buying it for himself, and I knew that that was what he would do. 30

Q. Well, now, did you afterwards pay for these properties?

A. I paid, yes.

Q. How much cash did you pay?

A. I paid by note.

Q. You paid by note?

A. Yes.

Q. And you gave your note to whom?

A. To my father.

Q. And you haven't yet taken up that note?

A. No.

By MR. TULLER:

10 Q. Why haven't you taken up the note?

A. The reason I haven't taken up the note is because the note was given to you, and I felt that, after this property had been in litigation, it was not necessary just at this time and I didn't care to take up the note until the estate was settled.

Q. Did you have any correspondence with your father after the sale about this matter?

A. My father wrote me a letter immediately, within a few days after the sale, enclosing this note and saying
20 that his attorney or counsel had demanded the ten per cent. and that it would be necessary to sign this note, providing that I would raise the money either by building association or loans and would pay it off when he made the demand. The note wasn't a time note, it was a note on demand.

Q. And then under that arrangement you gave a note, expecting to mortgage the place and raise the money?

A. I did.

Q. Subsequently, when your father should demand it of you?

30 A. Yes, sir.

Q. Has there been litigation over the estate between him and his brother since that time?

A. Yes, sir.

Q. Is that the only reason why you haven't paid the money?

A. I felt that I didn't want to put any improvements on the property until matters were settled up.

Q. Until your right to improve the property was settled by a settlement of their suit?

A. That is the idea.

Q. But you are obligated to pay the money and will pay the money whenever the title to the property is properly vested in you?

A. Yes, sir.

10

Q. Without any cloud,—is that right?

A. That is the idea.

By MR. MCALLISTER:

Q. What were the conditions of sale under which you purchased this property?

A. What were the conditions of sale?

Q. Yes, what were the conditions of sale or terms of settlement, as stated by the auctioneer the day of the sale?

20

MR. TULLER: He doesn't know anything about that, he wasn't there.

MR. MCALLISTER: Now, just let him answer.

A. I wasn't there at the sale.

MR. MCALLISTER: He is an intelligent man.

Q. How did you expect to pay for this property at the time you made the bid on it?

30

A. My intentions of paying for the property were that I would raise all I could by building association loans and that I would get a second mortgage, and if the house was placed so that it could be rented, in condition so that it could be rented, with the rental from the house and the

selling of the lots on Third street it would be in such condition that I would be able to handle it.

Q. And how much money did you give Mr. Jones when you instructed him to purchase this property?

A. I didn't give Mr. Jones a penny.

Q. How did you know that a ten per cent. cash payment wouldn't be demanded?

A. I didn't know at that time.

10 Q. And you know that sales of that kind usually require a ten per cent. payment, and in the absence of such payment that the property shall be immediately put up again and re-sold and the purchaser held liable for the difference, do you not?

A. No, I don't know that.

20 Q. Then when you consulted Mr. Jones you didn't think it was necessary to see the man that was going to sell the property, namely, your father, although you were in the same town and he was the executor and the sale was to be held very soon, and didn't think it was necessary to go see him and talk it over with him?

A. I had no conversation with my father in any way; in fact, I had no time to go see him if I had so desired at that time.

30 MR. McALLISTER: I call upon the attorney for the other side at this time for the production of the terms of sale, conditions of sale, under which this property was sold. (After consultation with counsel) Mr. Lane states that the usual conditions of ten per cent. cash and the balance in thirty days upon delivery of the deed governed.

Q. Have you made that ten per cent. cash payment?

A. I have.

Q. In cash?

A. By note.

Q. But not in cash?

A. Well, the note covered the ten per cent.

Q. And then have you made the payment of the balance, ninety per cent.?

A. Yes.

MR. LANE: It is all in one note.

Q. It is all in one note?

A. Yes.

10

By THE VICE CHANCELLOR:

Q. Mr. Owen, I understand at the time you authorized Mr. Jones to buy this property you did not have any money on hand at all to pay for it?

A. Just at that time, no.

Q. Didn't you know that in order to buy property at a public sale of this kind it was necessary to pay something down?

A. I was ignorant of that fact. My intention was to take care of the matter right away.

20

Q. But how did you expect to bid for a property all that it was worth without anything to pay for it with?

A. I expected to sell the lots on Third street, to realize what I could on them, get all I could out of the building association and take a second mortgage. May I make an explanation?

Q. What do you mean by "take a second mortgage"?

A. Well, have a second mortgage.

Q. You didn't suppose anybody would lend on the property all that it was worth, did you?

30

A. I was sure through my father that probably I could get a second mortgage, he always has been good to assist me.

Q. You thought you could buy a property for \$2,000 and get \$2,000 on it, did you?

A. I expected to do it with the assistance of my father, —what was lacking.

Q. Isn't it the truth that you expected your father to furnish the necessary money to buy this property?

A. I expected to get all I could out of the building association and that father would assist me in some manner.

Q. Had you asked him whether he would assist you?

10 A. Not prior to this time.

Q. Well, then, what right had you to expect that he would help you finance the proposition?

A. I was quite sure that he would.

Q. Why were you sure that he would?

A. Why was I sure?

Q. Why were you sure that he would if you hadn't spoken to him about it?

A. Because I know he never has failed me yet.

20 Q. I understand this was the first transaction of this kind that you ever had?

A. Well, I have never bought any property but I have had accommodations from father by note prior to this time.

Q. You said you wanted to make an explanation. You can make it.

30 A. If your Honor will allow it. My reason for purchasing this property is more probably of sentiment than any other reason. That was my home and I felt that if there was any way possible that I could buy that property that I should do so, and try my utmost and sacrifice all that I could in order to buy it, and that was my reason for doing it. My grandparents—I went with them when I was about two years or two and a half years old, I remember my boyhood days there, and I didn't want to see it get away.

WILLIAM BUCK, a witness produced in behalf of the defendants, being duly sworn according to law, on his oath says—

Direct examination.

By MR. TULLER:

Q. Mr. Buck, where do you live?

A. Millville. 10

Q. How long have you lived in Millville?

A. Seventy years.

Q. Have you known Isaac Owen, Jr.?

A. Well, I have been acquainted with him for a good many years.

Q. In September, 1915, were you working in Salem?

A. Well, I couldn't tell you when it was but I was working in Salem.

Q. Well, about the time of this sale and before the sale of the Owen property down on Second street were 20 you working there?

A. Somewheres about that time.

Q. At that time did you have a conversation with Isaac Owen regarding the sale?

A. Well, yes, we had a little conversation.

Q. Did that take place in Salem?

A. Sir?

Q. Did that take place in Salem?

A. Yes, I believe so.

Q. What was the conversation which you had with 30 Isaac Owen there about the sale of this property?

A. I couldn't repeat it because I didn't pay any attention. I did say this: I said to him, says I, "I believe your property is advertised for sale." I don't know whether it was after the sale or before the sale that I told him this.

Q. But you did tell him in Salem that the property was advertised for sale?

A. Yes.

Q. What did he say to you in response to that?

A. I couldn't tell you now.

Q. You don't recall what he said?

A. No, I couldn't tell you.

Q. Did you afterward's see him in Millville? Did he
10 visit you in Millville after the sale?

A. No, not any more than one day he came along in his automobile and he and I went up the street, up where I was working. We had no conversation **about it**.

Q. But he was in Millville after the sale, was he?

A. Well, I am not positive about that; must have been after the sale, I don't know.

Q. Or was it before?

A. I am not positive.

Q. Before the sale?

20 A. I couldn't say.

No Cross-examination.

JOSHUA P. OWEN, one of the defendants, being duly sworn according to law, on his oath says—

Direct examination.

30 By MR. TULLER:

Q. Mr. Owen, do you live in Millville?

A. I do.

Q. You are the remaining executor of the estate of Isaac Owen, Sr.?

A. I am the only one.

Q. How long have you been the only remaining executor?

A. Going on two years, about two years or a little over.

Q. Now, your brother was removed?

A. He was removed in June, I think, two years ago, in June, I think, he was removed.

Q. Is your brother indebted to you?

A. He is.

Q. How much was the indebtedness, do you recall?

A. I think all together was somewheres around twelve hundred, maybe thirteen hundred, or somewheres around there perhaps.

Q. Has some of it been paid?

A. Some of it has.

MR. MCALLISTER: I object, if your Honor please. I do not see that this has any bearing whatever upon the facts that are in issue at this time.

MR. TULLER: Well, counsel himself brought out the interest of these people in the estate and I want to briefly present this to the court. If it is admitted I shall not go into it.

MR. MCALLISTER: I will admit that there is litigation pending.

MR. TULLER: No, obligations that he owes, judgments.

THE VICE CHANCELLOR: Well, go ahead.

MR. MCALLISTER: We will admit that he owes judgments.

MR. TULLER: For about \$800?

MR. MCALLISTER: I will admit that.

MR. TULLER: It is admitted that there is about \$800 due Mr. Joshua Owen from Isaac Owen, Jr.

THE VICE CHANCELLOR: On judgments.

MR. TULLER: On judgments.

10 THE VICE CHANCELLOR: All reduced to judgment?

MR. TULLER: All reduced to judgment and levies made under the judgment.

MR. MCALLISTER: Yes, and levies made on this particular interest.

MR. TULLER: Yes.

20 Q. Now, briefly state, Mr. Owen, what was the condition of the estate of Buzby Owen as related to the estate of Isaac Owen, Sr.?

A. According to father's books Buzby was indebted about eighteen hundred, I think somewheres around there, according to my father's books.

Q. And the will disposes of that indebtedness, does it not?

A. It says there when we get as much as Buzby has then Martha comes in for her third but not until that.

Q. That is expressed in the will?

30 A. Yes.

Q. Now, you advertised this property of the Isaac Owen estate for sale in Millville, did you?

A. I did.

Q. What was your purpose in advertising it?

A. To sell to the highest bidder.

Q. Why did you want to sell the estate?

A. To settle up the estate.

Q. How long had this estate been unsettled in your hands?

A. In my hands? You mean both of us?

Q. No, I mean all together.

A. Somewheres around ten years.

Q. What was the condition of this property down there on Second street and on Third street?

10

A. When father died or—

Q. When you sold it?

A. When I sold' it?

Q. Yes.

A. It was in very bad condition.

THE VICE CHANCELLOR: Don't you think that is pretty well established?

MR. TULLER: Yes, but I want to show his reasons for not taking this step before, it being essential, I thought.

20

THE VICE CHANCELLOR: I do not suppose anybody doubts the condition of it. The witnesses on both sides have all agreed.

Q. You sold the property at that time?

A. I sold the property.

Q. Were you present at the sale?

A. Yes, I was present.

Q. Just state what took place at the sale and who bought the property?

30

A. We waited there I suppose twenty minutes or half an hour after the time advertised. I think it was advertised for two o'clock. And Mr. Lane read the conditions off clear of everything, and somebody started it up at

\$1,000, I don't know who it was, and it kept on going until it got twelve hundred, I think, then it stood a little while, and HESSIE—he tried his best to get more, and Mrs. FATH—she started in again and run it up to fifteen fifty when JONES—he bid that twenty-five, which made it fifteen seventy-five, she said she wouldn't give no more for it.

Q. And to whom was it knocked down?

A. Knocked off to JONES.

10 Q. Did you know at that time for whom JONES was bidding?

A. JONES never told me or I never asked him, at that time I didn't know.

Q. When did you first hear that JONES was not bidding for himself?

A. When did I find out?

Q. Yes.

A. My attorney, Mr. LANE, sent for me to come to his office to sign the deeds, three deeds, and he told me that
20 JONES had purchased that property for PERCY, and also said that he would have to have the ten per cent. on it. So I made a note out,—he advised me to make a note out and send it to PERCY, and I made it out for the full amount, \$2,002 for what he had purchased, with the understanding that if he—when the estate was settled up that he would get the money, get all he could on the building association, then sell those lots and I would take the second mortgage, if he would do that and sign that note I would pay MARTIN his ten per cent., so he signed the note and sent it back to
30 me.

Q. Did you account for the entire amount in your account?

A. I did, for the full amount.

Q. Do you hold that note of his?

A. I still hold the note.

Q. And is the note a personal note or otherwise?

A. Personal note.

Q. Made to you personally?

A. Yes.

Q. Have you executed the deed to your son?

A. Yes, executed the three at the same time.

By THE VICE CHANCELLOR:

Q. And delivered them so that they have been re- 10
corded?

A. They have been recorded. Mr. Fath—he wanted
his right away, so Martin told me afterward, a day or two
afterwards.

By MR. TULLER:

Q. The other people paid cash?

A. Oh, yes, they paid cash.

Q. And you made a deed to Hess and Fath?

A. Yes. 20

Q. And one to Percy?

A. Yes.

No cross-examination.

MR. TULLER: We rest.

JOSHUA P. OWEN, recalled. 30

By THE VICE CHANCELLOR:

Q. Mr. Owen, didn't you know that your son thought
of buying this property?

A. Did I?

Q. Yes.

A. No, not at that time. He had said after he left home that sometime he would like to get it if he could, but he never opened his mouth to me about buying it, neither did Jones. I have told him before if ever he wanted to buy a home I would help him, but not on this deal here,—he never came to my house.

Q. When this bid was made you did not even suspect
10 that it was in his interest?

A. I did not even ask.

Q. Well, did you suspect that it was in his interest?

A. Well, I didn't know, Judge.

Q. I did not ask you if you knew. I asked you if when this bid was made you suspected that it was made in your son's interest.

A. It is this way: The only thing I suspected was what he had asked me several years ago, after father died, if the place was ever sold he would like to get it if there was any
20 way at all.

Q. Well, then, when this bid was made you—

A. Not when the bid was made, I didn't know Percy had purchased it until Martin—

Q. No, but I asked you if when the bid was made you suspected that this bid was made for Percy?

A. I can't say, Judge, that I did.

Q. Well, why can't you say that you did?

A. Because I don't think that I did.

Q. Don't you know whether you did or not?

30 A. No, I never asked Jones a thing about it.

Q. No, I am not asking about that, I am asking whether you thought at the time you saw Jones bidding he was probably bidding for your son?

A. No; I can say honestly it never entered my mind, I can say that honestly, Judge, it never did.

Q. You hadn't talked it over with your son at all?

A. No, hadn't talked it over.

Q. Had you told him the place was going to be sold, that it was already advertised for sale?

A. No, I hadn't even told him that, and whether he ever saw it in the papers or not I don't know.

Q. You didn't know that he knew it was advertised for sale?

A. I didn't know that he knew it was advertised.

10

Q. Had you never told him that you would like to have it?

A. Never told him,—

Q. That you would like—

A. —because I have got other property.

Q. Had you ever told him you would like to keep it in the family?

A. No, I never told him that. You see, brother and I at first, when we talked about it, we were to cut it in two and I keep one-half and he the other, but after all this racket then I didn't care what became of it, I wanted it sold.

20

By MR. McALLISTER:

Q. I would like to ask Mr. Owen one question: When you sold under your execution the shop of your brother didn't you have Mr. Jones bid that for you?

A. Did I? The shop?

Q. Yes.

A. No, I bid that myself.

30

By THE VICE CHANCELLOR:

Q. Did Mr. Jones ever bid anything in for you?

A. For me? No, never bid anything for me.

Q. Or for your son before?

A. No. You see, I had bid in for him the machinery in the shop and Ferd told him if he ever wanted him to do anything for him he would do it. No, he never done anything for me or the boy either.

BOTH SIDES REST.

CONCLUSIONS

LEAMING, V. C. (Orally):

There are several grounds upon which a court of equity is justified in setting aside a transaction of this kind, if the evidence warrants the charges which are made. A sale at a price grossly inadequate will be set aside by a court of equity. The testimony in this case, however, does not support the claim that the property was sold at a grossly inadequate price. The mere fact that it may have been sold for less than it was probably worth will not justify a decree setting aside the sale. To justify such a decree the proofs must establish as a fact that it was sold at a grossly inadequate price, and a grossly inadequate price has been variously defined by the courts. Perhaps the most popular definition is a price so inadequate as to shock the conscience of the court. That, of course, is a figurative expression of a standard which conveys no very definite idea in percentages.

At one time I had occasion to determine for my own benefit about what percentage of value was regarded as a grossly inadequate price by examination of the various authorities where sales had been set aside by the courts upon that ground and where they had not been, and I examined what I think was every New Jersey decision upon the subject and ascertained from the cases just what the figures were which were involved in the proofs, and I found, taking all the cases together and adopting that method with a view of ascertaining a possible basis of mathematical standard, that anything in excess of fifty per cent. of the real value had not been ordinarily regarded by the courts as a grossly inadequate amount. I do not mean to say by that that cases cannot be found in this State where

sales were set aside upon the ground of grossly inadequate price where the selling price had been more than fifty per cent. of the value, for some cases involve other circumstances more or less potent when considered in connection with the selling price, but an examination of all the authorities will lead, I am quite convinced, to the conclusion that the selling price must not much exceed fifty per cent. of the value if that branch of the court's jurisdiction is to be
10 invoked solely on that ground.

It necessarily follows that the values testified to in this case would not justify a decree setting aside the sale on the sole claim of gross inadequacy. In fact, the testimony of the real estate agents and others who have placed valuations upon this property varies little more than they usually do in cases of this kind. I find that there are two classes of real estate experts, and in most every transaction that is investigated they will be found dividing themselves
20 up into one or the other of the two groups, one being the group of low valuations and the other of high. I think counsel now before me have no doubt been engaged in many cases where it was necessary to have values placed upon land by a great number of real estate agents on either side, such as condemnation suits, and cases of that nature, and my observation has been, and I doubt not that counsel's observations have been, that almost invariably the witnesses will line themselves up into the high and the low class, respectively. Juries sometimes take the total and divide it
30 by two, and I am not sure that they do not get pretty nearly the right result by that method, and I apprehend if we take the maximum valuation here of \$2,500 and the minimum of \$1,575, add them together and divide them by two, we will not get far from the value of this property at the time it was sold.

But, in any event, the proofs do not clearly enough

disclose any gross inadequacy of price to justify the exercise of the jurisdiction of this court to set aside these sales upon that single ground.

Another ground upon which a sale of this kind might be set aside would be an inadequate advertisement or any other proceeding that was had preliminarily to the sale which was calculated to violate the essential principles that properly enter into a public sale,—proceedings that were calculated to or that did in fact result in a sale which was unfair,—a sale which had not been advertised in such manner as to meet the inherent requirements of the law which contemplate that all public sales of this nature shall be advertised in such manner as will properly exhaust the field of bidders which can be reasonably procured by a proper advertisement. I think, however, that the proofs fail in that respect. It might in this case have been advantageous to have included in this advertisement the circumstance of the existence of a house on the lot to be sold, or that this property was suitable for residential purposes, that it contained a building that could be used as a residence and therefore was not the sale of vacant property which could only be purchased to advantage for purpose of speculation or anticipated building; but it is impossible to say that the elimination of that element in the advertisement was operative to lead to an unfair sale. I cannot believe that the rights of a bona-fide purchaser at such a sale could be disturbed, after a purchase had been made by such a purchaser, by reason of the omission in the notice of sale of that valuable element touching the nature of the property to be sold.

The next question, and I think the more serious question, is the one that takes into account both of the elements which have been already suggested, namely, the claim that this property was not purchased in good faith by the person in whose name the title was taken, but that it was in fact

purchased in the interest of the executor. The fact that the advertisement did not specify clearly the inherent quality of the property is referred to as a circumstance showing a desire to have the property sold at an inadequate price, or, at least, sold cheaply in the hope that it could be acquired in the interest of the executor or in the interest of the executor's family. The circumstance that it did sell at a low price can also be considered in ascertaining, if possible, whether this was a bona-fide sale to the person who made the purchase. But the more imposing and the more vital elements of the testimony upon that subject is the additional circumstance, which is, to say the least, a curious circumstance, that the son of the executor should buy this property with no present means of paying even the usual and customary ten per cent. that is required in cases of purchases of this kind. It is unquestionably true that what transpired suggests and reasonably suggests the gravest doubts as to whether this property was not in fact purchased in a manner essentially different from the way claimed by defendants. The circumstance that this son instead of bidding for himself sent some one to bid for him, and entrusted his agent to exercise his judgment, without specific instructions, to such an extent that he was compelled to segregate the values of the homestead property and of the vacant lots in the rear in such manner that the total purchase should come within the limit which had been given him, if indeed a limit was given him, and of that there seems to be some doubt, is extraordinary. In other words, if the limit of \$2,000 had been given to this purchasing agent how could he tell in paying \$1,575 for the homestead property that he would be able to purchase the other two lots, separately sold, which lots appropriately went with the property, for the remaining portion of the \$2,000? It appears he did do so. It came out that way, but it is a

peculiar and unusual and difficult position to place a friend in who is to go to a sale to accommodate a purchaser.

But the more extraordinary feature of the transaction as it impresses my mind is that the son would send a man on an errand of that kind without money, without a deposit, without any really definite instructions and without money or substantial credit of his own. Those are suspicious circumstances that cannot help but more or less stagger the mind and invite doubts, but they are not conclusive. While I confess I have doubts on the subject I am obliged to say that I do not feel privileged to conclude that these three men have deliberately perjured themselves upon the subject. This purchasing agent, Mr. Jones, has positively sworn, and with apparent truthfulness, to his part of the transaction. It would be going far to conclude that he has deliberately sworn falsely when corroborated by the executor and the executor's son. The son has told the same story, essentially the same, and though I confess the story is a strange one I am unable to believe that I can be justified in disregarding it. The father, who is the executor, swears that he knew nothing about the intention of the son to buy this property and did not know that it was being bought in his son's behalf. The peculiar and remarkable circumstance of the son relying upon his father to assist him to finance this transaction is not altogether impossible in its conception, because with a father able to do so, and with the relations of the father and son of such a nature that the son could well rely on the father, it is not impossible that he might have realized that he could buy this property and depend upon his father, who was the executor, to help him finance it. If that is so, and this purchase was in no sense in the interest of the father, and they both swear positively that it was not, the circumstance that he did help him finance

it afterwards cannot be regarded as operative to set aside the sale.

If the transaction was a bonafide one throughout, from beginning to end, there is no reason why the father should not advance the necessary money to help the son through in this purchase, and I am compelled to conclude that that was the situation.

10 The son wanted the property for sentimental reasons, and had good reason to believe that his father would help him out in the purchase and therefore bought the property on his own account. That is the conclusion that I am obliged to reach under the recognized methods of reaching conclusions that are essential and necessary in cases of this kind. The suspicious circumstances to which I refer are not, in my judgment, adequate to justify the court in disregarding the testimony of these men who appear to tell the truth and who I am compelled to believe.

20 I will therefore be obliged to advise a decree dismissing the bill.

IN CHANCERY OF NEW JERSEY.

Between

ISAAC A. OWEN, JR., ET AL,

Complainants,

AND

JOSHUA P. OWEN, ET AL,

Defendants.

ON BILL FOR RELIEF
DECREE DISMISSING BILL

10

Filed November 9, 1916

This cause coming on to be heard in the presence of Albert R. McAllister, of counsel with the complainants, and Martin W. Lane, of counsel with Joshua P. Owen, and Royal P. Tuller, of counsel with Percy W. Owen, the defendants, and the pleadings and proofs having been read and the arguments of the respective counsel having been heard and considered, and the court having duly considered the said pleadings, proofs and arguments, and it appearing to the court that the complainants are not entitled to the relief sought and prayed for by them in their bill of complaint:

20

It is, on this eighth day of November, nineteen hundred and sixteen, by Edwin Robert Walker, Chancellor of the State of New Jersey, ordered, adjudged and decreed, that the complainants' bill be, and the same is hereby dismissed with costs.

30

E. R. WALKER,

Respectfully advised,

C.

E. B. LEAMING, V. C.

IN CHANCERY OF NEW JERSEY

Between

ISAAC A. OWEN, JR., ET AL.,

Complainants,

AND

JOSHUA P. OWEN, EXECUTOR,

ET AL.,

*Defendants.*ON BILL, &C.,
NOTICE OF APPEAL

10

 Filed March 3, 1917

Isaac A. Owen, Jr., and Martha T. Owen, (Seifer-
mann), hereby appeal from the final decree made in this
matter on the eighth day of November, nineteen hundred and
sixteen, and from the whole and every part thereof, to the
20 Court of Errors and Appeals in the last resort in all causes.

Dated January 30th, 1917.

ALBERT R. McALLISTER,
Solicitor and of Counsel with Appellants.

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

ALBERT R. McALLISTER,
Of Counsel with Appellant.

30 Service of the within notice is hereby acknowledged
this 1st day of March, A. D. 1917.

ROYAL P. TULLER,
Solicitor for Respondent Percy W. Owen.
MARTIN W. LANE,
Solicitor for Respondent Joshua Owen.

NEW JERSEY COURT OF ERRORS AND APPEALS

Between,

ISAAC A. OWEN, JR., ET AL.,

Complainants,

AND

JOSHUA P. OWEN, EXECUTOR,

ET AL.,

Defendants.

ON BILL, &C.

PETITION OF APPEAL

10

Filed Feb. 23, 1917

TO THE HONORABLE THE COURT OF ERRORS AND APPEALS IN THE LAST RESORT IN ALL CAUSES:— 20

The petition of Isaac A. Owen, Jr., and Martha T. Owen, the appellants in the above stated matter, respectfully show that your petitioners find themselves aggrieved by a final decree made in the Court of Chancery by his Honor, Edwin Robert Walker, Chancellor of the State of New Jersey, bearing date the ninth day of November, nineteen hundred and sixteen, in this respect, to wit:—

That the said decree adjudges that the complainants were not entitled to the relief sought and prayed for by them in their bill of complaint and that the same be dismissed with costs; whereas the said decree should have adjudged that the complainants were entitled to have the relief prayed for, namely, a decree setting aside the sale of certain 30

real estate made by Joshua P. Owen, as executor of the estate of Isaac A. Owen, deceased, which said property was purchased by defendant, Percy W. Owen.

And your petitioners humbly appeal from the whole of the said decree of the Chancellor upon the grounds:

1. That the same is erroneous, for that the said sale was not properly advertised by the said Joshua P. Owen, executor.

10 2. That the property was sold at a grossly inadequate price.

3. That the purchase was made by the defendant Percy W. Owen, as the agent of Joshua P. Owen, who was the Executor making the sale.

ALBERT R. McALLISTER,
Solicitor for and of Counsel with Appellants.

Service of a copy of the within petition of appeal is hereby acknowledged this 23d day of February, A. D., 1917.

20

ROYAL P. TULLER,
Solicitor for Respondent Percy W. Owen.

MARTIN W. LANE,
Solicitor for Respondent Joshua Owen.

NEW JERSEY COURT OF ERRORS AND APPEALS

Between

ISAAC A. OWEN, JR., ET AL.,
Appellants.

AND

JOSHUA P. OWEN, EXECUTOR,
ET. AL.,
Respondents.

ON PETITION OF APPEAL
ANSWER OF PERCY W
OWEN.

10

Filed March 5, 1917

The answer of Percy W. Owen, one of the above
named respondents, to the petition of appeal of the above
named appellant. 20

This respondent, not acknowledging all or any of the
matters which in the said petition of appeal are contained
to be true, for answer thereto, nevertheless, says and admits,
that a decree was, on the 9th day of November, 1916, made
and entered in the Court of Chancery in the cause for that
purpose mentioned in said petition, as is therein stated, but
as to the substance and form thereof, this respondent prays
to refer thereto when the same shall be produced.

And this respondent is advised and believes that the
said decree is agreeable to equity, and he prays that the
same may be examined, with costs to be adjudged to this
respondent. 30

ROYAL P. TULLER,
Solicitor for and of Counsel with Percy W. Owen.

NEW JERSEY COURT OF ERRORS AND APPEALS

Between

ISAAC A. OWEN, JR., ET ALS.,

Appellants,

AND

10

JOSHUA P. OWEN, EXECUTOR,
ET ALS.,*Respondents.*

ON BILL, &c.,

ANSWER OF JOSHUA P.
OWEN, EXECUTOR, &c.,*Respondent.*

The answer of Joshua P. Owen, executor, &c., one of the above named respondents to the petition of appeal of the appellant.

20 This respondent not acknowledging all or any of the matters which in the said petition of appeal are contained to be true, for answer thereto, nevertheless, says and admits, that a decree was, on the 9th day of November, 1916, made and entered in the Court of Chancery in the cause for that purpose mentioned in said petition, as is therein stated, but as to the substance and form thereof, this respondent prays to refer thereto, when the same shall be produced.

30 And this respondent is advised and believes that the said decree is agreeable to equity, and he prays that the same may be affirmed with costs to be adjudged to this respondent.

MARTIN W. LANE,

Solicitor for respondent Joshua P. Owen, executor, &c.,

ROYAL P. TULLER,

Of Counsel

121

Bryjo

New Jersey Court of Errors and Appeals

Between

ISAAC A. OWEN, JR., ET AL.,

Appellants,

AND

JOSHUA P. OWEN, ET AL.,

Respondents.

ON BILL FOR RELIEF
ON PETITION OF APPEAL

BRIEF FOR APPELLANTS

ALBERT R. McALLISTER,

Solicitor for Appellants.

No. , June Term, 1917.

HISTORY

Isaac A. Owen, Sr., died testate at Millville, New Jersey, in 1906, leaving two sons, Joshua P., and Isaac A., Jr., and a granddaughter, Martha T. Owen, surviving him. Martha was the child of a deceased son. These three were the sole devisees and legatees under the will. The two sons, Joshua P., and Isaac A., Jr., were executors.

The father of Martha T. Owen, predeceased Isaac A. Owen, Sr., and her mother died in 1910 or 1911.

At the time of Isaac A. Owen, Sr's., death, he owned certain real estate situate in the City of Millville, together with other lands in Maurice River, N. J. The real estate in Millville comprised a single house and adjoining lot, on South Second Street, and immediately in the rear thereof, a brick house and two lots, situate on South Third Street.

The executors did not make any inventory and appraisalment of their father's estate until the Summer of 1914. It was made at that time pursuant to order of the Orphans' Court of Cumberland County, upon application of Martha T. Owen.

In June, 1915, Isaac A. Owen, Jr., one of the co-executors, was removed by an order of the Orphans' Court of Cumberland County for failure to perform his duties as executor.

On August 23, 1915, the surviving executor, Joshua P. Owen, advertised the real estate of Isaac A. Owen, Sr., deceased, for sale, at public auction to be held September 22, 1915.

On the last aforementioned day, the said real estate of the decedent was sold. The single dwelling and lot on South Second Street, Millville, was purchased by Ferdinand R. Jones, in the name of Percy W. Owen.

Percy W. Owen has been a resident of Bridgeton, New Jersey, for the past eleven years, and his father Joshua P. Owen, has been a resident of Millville during that period. The suit in question concerned the sale of the Second Street property which comprised single dwelling and curtilage and lot adjacent thereto.

CLAIMS OF APPELLANTS

1. That the advertisement of the sale of said real estate did not sufficiently describe the same.
2. That the sale was conducted in such a manner as to prevent competitive bidding.
3. That the sum realized was grossly inadequate.
4. That the South Second Street property was purchased by Johua P. Owen, the executor, conducting the sale, through the agency of Ferdinand R. Jones and Percy W. Owen, his son.

TESTIMONY SUPPORTING APPELLANTS'
CLAIMS.

AS TO CLAIM 1

The following is a copy of the executor's advertisement of sale:

"Executor's sale of valuable real estate. The subscriber, executor under the last will and testament of Isaac A. Owen, Sr., deceased, will offer for sale at public vendue on Wednesday, the 22d day of September, next, at two o'clock in the afternoon, on the premises at number 157 south Second St., City of Millville, New Jersey, all of the real estate that Isaac A. Owen, Sr., died siezed of, consisting of a tract of land having a frontage of 125 feet on south Second street and a frontage of 123 feet on south Third street, also 40 acres bush land situate at Dorchester, Maurice River Township. The property on Second and south Third streets will be sold in lots. The size and dimensions of each will be made known at the time of the sale. Terms and conditions made known at time of sale.

Dated August 23d, 1915.

Joshua P. Owen, Executor."

No mention was made of any improvement upon the land, although they consisted of two dwellings, one a large single dwelling, and the other a small brick dwelling.

AS TO CLAIM 2

The above advertisement read in part as follows:

“The property on Second and south Third streets will be sold in lots. The size and dimensions of each will be made known at the time of the sale. Terms and conditions made known at time of sale.”

AS TO CLAIM 3

The single dwelling and lot adjacent on South Second Street sold for \$1575.00. (State of Case page 29). This property was assessed that year at \$1725.00. (State of Case page 101). The actual value of the property at that time was from \$2500.00 to \$4,000.00. (State of Case, pages 35, 63, 67, 72, 81).

AS TO CLAIM 4.

The testimony of Joshua P. Owen, Executor and father of Percy W. Owen, on page 128 of State of Case, is as follows:

“Q. And to whom was it knocked down?

A. Knocked off to Jones.

Q. Did you know at that time for whom Jones was bidding?

A. Jones never told me or I never asked him, at that time I didn't know.

Q. When did you first hear that Jones was not bidding for himself?

A. When did I find out?

Q. Yes.

A. My attorney, Mr. Lane, sent for me to come to his office to sign the deeds, three deeds, and he told me that Jones had purchased that property for Percy, and also said that he would have to have the ten per cent. on it. So I made a note out,—he advised me to make a note out and send it to Percy, and I made it out for the full amount, \$2,002 for what he had purchased, with the understanding that if he—when the estate was settled up that he would get the money, get all he could on the building association, then sell those lots and I would take the second mortgage, if he would do that and sign that note I would pay Martin his ten per cent., so he signed the note and sent it back to me.

Q. Did you account for the entire amount in your account?

A. I did, for the full amount.

Q. Do you hold that note of his?

A. I still hold the note.

Q. And is the note a personal note or otherwise?

A. Personal note.

Q. Made to you personally?

A. Yes.

Q. Have you executed the deed to your son?

A. Yes, executed the three at the same time." ..

And the testimony of Percy W. Owen, State of Case, page 121, which is as follows:

“BY THE VICE CHANCELLOR:

Q. Mr. Owen, I understand at the time you authorized Mr. Jones to buy this property you did not have any money on hand at all to pay for it?

A. Just at that time, no.”

ARGUMENT

If the Executor had desired to make a sale of his decedent's property to the best advantage of the estate he would have fully described the property to be sold. No material fact was stated in the advertisement which would convey to the most careful reader that two single dwellings were to be sold. These dwellings represented a greater valuation than the land. No intending purchaser could arrange for a mortgage because of the lack of knowledge of the dimensions of the lots to be sold or the terms of sale. This undoubtedly eliminated many bidders.

"If the sale is so managed as to discourage bidders and to result in a considerable sacrifice, that circumstance would justify the court in refusing to confirm the sale, even though the purchaser had nothing to do with such mismanagement."

Kochers N. J. Probate Law, Vol. I, p. 511.

Ryan v. Wilson, 64 N. J. Equity, 797-806.

Kochers Chancery Practice, p. 627.

Neither his brother, Isaac A. Owen, Jr., living in Salem, New Jersey, eighteen miles distant, nor Martha T. Owen, his niece, living in Millville, was notified of the date of the sale, and they did not know that such sale was to be made until two days after it occurred. State of Case, pages 53, 124.

"Notice of the proposed sale is commonly required to be given to interested persons, and in some jurisdictions a sale of real property without the required notice is held void."

18 Cyc, page 760.

The South Second Street property sold for \$1575. It was assessed for \$1725. and Alonzo R. Moore, a member of the Board of Assessors, testified in answer to the question,—

“Q. What proportion the assessment bears to the sale value?

A. We try to be well on the sale side, the true value of the property.

Q. And a property assessed at \$1,700. would not necessarily be limited to that exact valuation?

A. Not necessarily so.

Q. That would be low enough if you wanted to purchase?

A. Sure, it should be considerably below the purchase price.”

Mr. Moore further testified that he owned about sixty houses in Millville and several stores and that he was building twelve at that time and had probably bought more than 250 there in the past ten years. He testified in answer to a question of counsel as to what would be a reasonable price of this property for a home, that \$2500. would be a reasonable price. Surely no more competent witness could have been called. A similar price was placed upon the property by W. Fred Ware, one of the City Commissioners of Millville and a real estate dealer there. He testified that \$2500. would be quite a low price for the property on South Second Street.

“Inadequacy of price is an element proper for consideration when a sale is attacked on other grounds.”

18 Cyc, 790.

The purchase of the property by Percy W. Owen, son of the Executor, who at the time, had no means with which

to pay for the same, is submitted as one of the elements tending to show that he was not acting for himself, but as the agent of another.

“The fact that a purchaser at an administrator’s sale was a man of no means, and that on the same day he reconveyed it to the administrator, is sufficient proof, without any explanation of the transaction, that the purchase was made for the benefit of the administrator.”

Obert v. Obert, 12 N. J. Equity, p. 423.

No sane and intelligent man would bid at a public auction, if ten per cent. of the purchase price was required when the property was bid off, and the balance in thirty days, unless he was acting as the agent for another, or had some means of obtaining the necessary funds. Percy W. Owen did this very thing. He did more than this, he instructed his friend, Ferdinand R. Jones, to purchase the property for him and did not even limit him as to what he should pay for the South Second Street property, nor did he give him any money to make a deposit to cover the ten per cent. required, or otherwise instruct him regarding the same. He testifies that he came to Millville two days before the sale and engaged Jones to attend to the transaction, but that on no occasion did he betray the fact to his father that he intended to be a bidder at the auction. The father testifies that his first knowledge that this South Second Street property had been purchased by his son, was when he had been called into the office of his attorney to sign a deed for the property. That thereupon, without being requested so to do, by the son, he made out a note for \$2,002. and sent it to Percy, the son, for his signature. This note

was made payable on demand to the father, not as Executor, but to him personally. The son has never made any payment on account of the note, nor has he arranged in any way to take care of same, although the sale was held September 22d, 1915, and the bill of appellants was not filed in the Court of Chancery until March 20, 1916. The delay on the part of the appellants was due to the fact that a news article published in the Millville Daily Republican, under date September 23, 1915, was read by the appellants, and this article stated that the property had been sold for \$1575. subject to encumbrances of \$400. and over. When the account of the Executor was filed in the Surrogate's Office some months later, it was found that the property had not been sold subject to the encumbrance as stated in the newspaper article, but had been sold clear of encumbrances and that the encumbrances of \$400. were charged against the estate. Although more than six months had elapsed between the date of the sale and the filing of the bill for relief, and notwithstanding the fact that this property is in one of the best sections of the city, no attempt has been made by the purchaser to repair, tenant or otherwise take possession of the same.

It has been claimed by the appellee, Joshua P. Owen, that neither of the appellants have any interest in the estate of their father. That, he, Joshua, holds judgments against his brother for a sum sufficiently great to absorb whatever sum may be shown to be due him, and that Martha T. Seiferman, nee Owen, has no interest in the estate, because of a debt alleged to be due the estate from her deceased father and which he claims is chargeable against her

under the will of her grandfather. Exceptions have been filed by her to the account filed by the said Joshua P. Owen, Executor, and particularly against the charges alleged to be due the estate from her deceased father. These exceptions have not been decided by the Judge of the Orphans' Court. If the exceptions taken by her are allowed, then she has no interest in the estate of her said grandfather.

It is submitted that taking into consideration all the elements entering into the sale of this property that appellants are entitled to the relief sought. The advertising which failed to mention the improvements, the terms of sale, and failed to inform prospective bidders whether the property would be sold in parcels or in its entirety as one parcel, was not such notice as is required by the statute. The fact that no attempt to notify the two relatives jointly interested with the executor in the estate, and the inadequate consideration, all tend to show that the sale was not properly conducted.

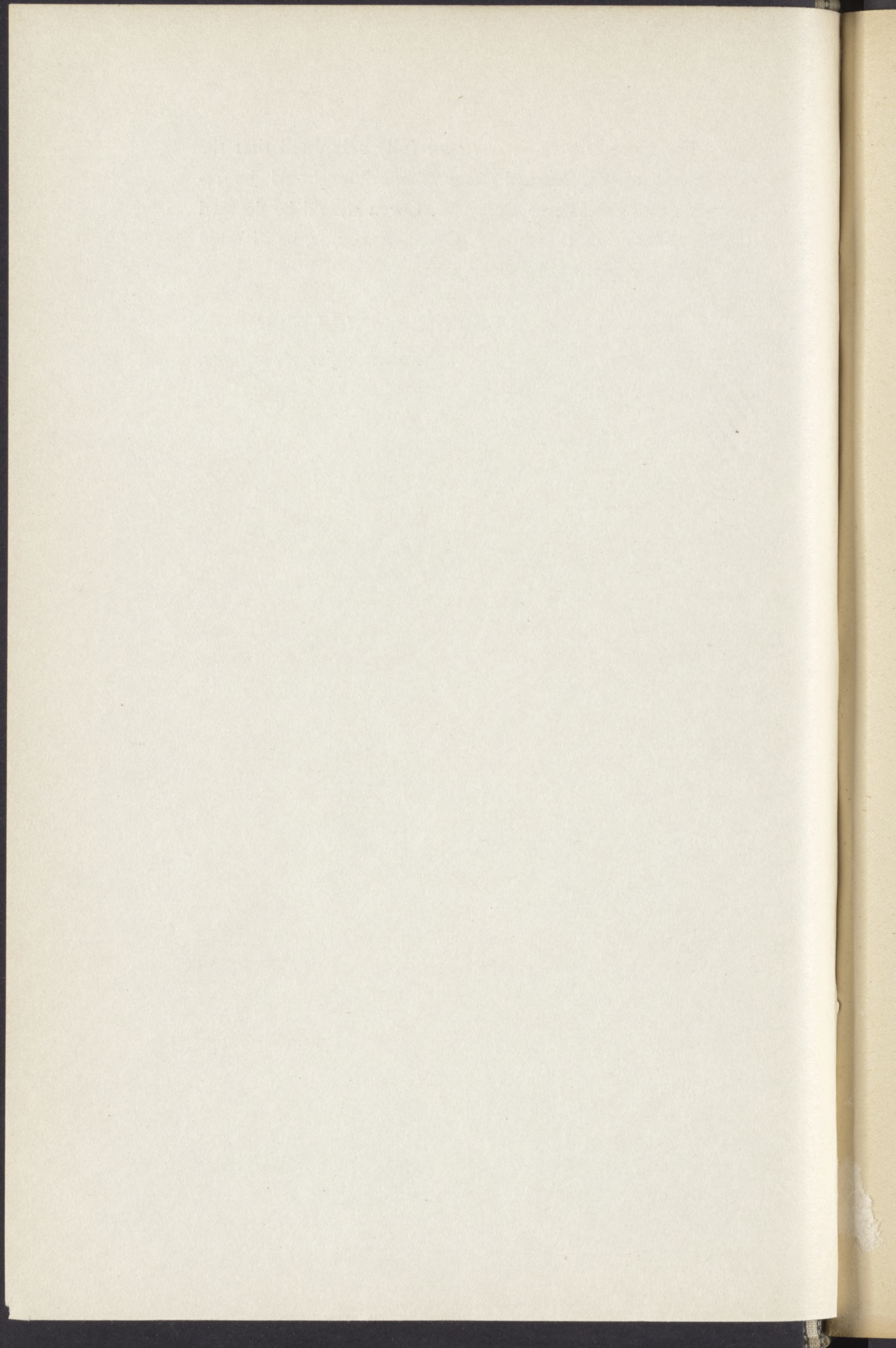
SUMMARY

1. The advertisement was insufficient in description.
2. The parties defendant had no notice or knowledge of the sale.
3. The selling price was grossly inadequate; less than 60 per cent. of the amount of standing offer of Albert Seiferman.
4. The South Second Street property was purchased by the Executor making the sale.

For these reasons it is respectfully submitted that the judgment of the learned Vice Chancellor should be reversed; that the sale to Percy W. Owen should be decreed to be void and that Joshua P. Owen, Executor, be directed to recall the aforesaid property.

ALBERT R. McALLISTER,
Solicitor for Appellants.

June Term, 1917.



was accordingly sold on September 22, 1915. After the sale the remaining executor, Joshua P. Owen, filed his final account in the Orphans' Court in the County of Cumberland, to which exceptions were filed by the appellants. After filing the exceptions the appellants filed their bill to vacate and set aside the sale of the piece of property on South Second Street, in the City of Millville, known as the Owen Homestead alleging four reasons therefor:

FIRST: INADEQUATE ADVERTISEMENT.

SECOND: THAT THE SALE WAS CONDUCTED IN A WAY TO DISCOURAGE COMPETITIVE BIDDING.

THIRD: INADEQUATE PRICE.

FOURTH: THAT PERCY W. OWEN PURCHASED THE PROPERTY THROUGH FERDINAND R. JONES, FOR HIS FATHER, THE RESPONDENT, JOSHUA P. OWEN.

ARGUMENT

Each of these points may be briefly considered.

FIRST: INADEQUATE ADVERTISEMENT.

An examination of the advertisement as it appears in the Bill of Complaint (*page 8 of the statement of the case*) does not disclose any real inadequacy. It is true that it does not in words speak of the improvements or names of buildings on the property, but I do not apprehend that this is, in fact required. All that seems necessary is to so describe the property to be sold, as to give effectual notice to the public and to those interested.

The advertisement complained of states the time when, the place where, and describes in general terms the property to be sold, and then adds in a general statement that the property on South Second and South Third Streets would be sold in lots, the size and dimensions to be made known at the time of the sale, together with the terms of the sale. All of the necessary essentials to such an advertisement seem therefore to be present in this advertisement. The only criticism which may properly be made is that each piece was not particularly described and set forth and the words "with the appurtenances," used therein. This omission cannot be deemed fatal in a legal sense, however inadvisable; nor can it be claimed that because of this omission due notice was not given to the public and to those concerned. It is not seriously claimed, I think, that the notice lacked in sufficiency so far as apprising the public of the fact of the sale is concerned, although the appellants make a feeble attempt to show that they did not know of the sale until after it had taken place. They show, however, in their evidence and admit in their bill, that it was advertised in the Millville Daily Republican, the only daily newspaper in Millville, and in the "Bridgeton Evening News", having a large circulation in the City of Millville, and it is shown in the testimony for the respondents that notices were posted about the City of Millville and two of them in conspicuous public places in the City. (*Testimony of Hess, page 109, 110.*)

It is not contended by the appellants, that the advertisement did not comply with the statute regulating

the public sale of land, or that the notices were not posted, and the publication thereof was not made in accordance with the provisions of the statute.

SECOND: THAT THE SALE WAS CONDUCTED IN A WAY TO DISCOURAGE COMPETITIVE BIDDING.

Counsel for appellant does not urge this contention with such vigor as to warrant an extended answer to it. It is so evidently without foundation that it is unnecessary to more than refer to the evidence of those witnesses who were present or who conducted the sale. On *page 110* the auctioneer who cried and conducted the sale says:

“The sale was advertised and on the day of the sale I went there one half hour before the time of the sale and waited nearly twenty minutes after the time that the sale should take place—Mr Lane the Attorney in the case, read off the conditions and when he was through I stated to the audience if there was any further questions to be asked to ask them now, to avoid any mistake. Then something arose about a taxation of some kind and they agreed to sell the property clear of all incumbrances, and I proceeded with the sale. The first property we offered was the Homestead. In the midst of the sale this lady mentioned, Mrs. Fath, she came and she wanted me to wait for her son,—so then we waited; I should judge for twenty minutes or so, then we started again, and the only bidders for that was

Mr. Jones and Mrs. Fath, (page 110.)”

This testimony is corroborated by that of *Ferdinand R. Jones* at pages 83, 84, 85; That of *Mr. Henry* on page 97, and of *Joshua P. Owen* on page 127.

We think that all the evidence in this case clearly shows that nothing was done which could be construed in any form as discouraging to the bidding or attempting to divert any bidders from competing. The evidence on the contrary seems to be very strongly in the opposite direction. All those present at the sale testify to the fairness of the proceeding and the effort of the auctioneer to get the highest possible price for the property.

THIRD: INADEQUATE PRICE.

The contention of the appellant in this respect goes only to the property on South Second Street.

The inadequacy of price necessary to avoid a sale must be such as to shock the conscience of the court. It must be so gross as to raise a presumption of fraud.

18 Cyc. 791.

Ryan v. Wilson 64 Equity 797 at page 802.

“Mere inadequacy of price is no ground for setting aside a sale made regularly and without fraud, where no accident or mistake has intervened to prevent fair competition, the policy of our law respecting official sales not admitting the notion that such sales must be opened because a greater sum can be obtained for the property.”

Morrise v. Inglis,

46 Equity 306.

The assessed value of the homestead property was \$1725.00 (page 70, lines 35, etc.) and the purchase price

was \$1575.00, (page 83, line 22.) The appellant called several witnesses to prove the value of this property and their testimony tended to show that the value of the property was about \$2500.00. That was their opinion. The respondents called other witnesses whose testimony tended to show that the amount paid for the property in its then delapidated condition, approximated its true value. The evidence of all of the witnesses was to the effect that the property was very badly out of repair and that the physical feature of the land, at least on the lower part of the homestead property, seriously affected its value, but as it stood, the evidence of the respondents witnesses showed that the property even for a home was not worth more than \$2000.00. The testimony of the Assessor, Mr. Moore, called by the appellant, was to the effect that the property was worth \$2500.00, but that the assessment was in accordance with the requirement of the statute and was the true value of the property, although he modified this statement by saying the assessors kept on the safe side in making their assessments. Which ever of these witnesses may be nearer the mark has but little to do with the question, because it is perfectly certain that the sum of \$1575.00 was all that could be obtained for the property at the sale. It is the testimony of all the witnesses present that every opportunity was given for others to bid and that the auctioneer held the bid in abeyance for an increased price, until he was forced to let it go at the final figure bid by Ferdinand R. Jones. See testimony of Jones, page 85, 93; testimony of Hess, page 110; testimony of Henry, page 97 and of Joshua P. Owen, page 127, 128.

There has been no evidence in this case of any tricks to discourage bidding, or any jockeying at the sale in any way. All of the evidence goes to prove that the sale so far as its procedure is concerned was conducted in an honest and clean manner without taint of fraud, and unless it has been shown that there was collusion between the father and the son, we submit that the sale should be maintained. This brings us to the last objection of the appellant.

FOURTH: WAS THE RESPONDENT PERCY W. OWEN, PURCHASING THE PROPERTY THROUGH FERDINAND R. JONES, FOR HIS FATHER THE RESPONDENT, JOSHUA P. OWEN?

If this fact has been established in the evidence, then the sale cannot stand. The Vice Chancellor, however, after hearing all of the witnesses and arguments of counsel, has found the fact to be to the contrary, and this appeal is to reverse his finding of fact.

Where there was legal evidence before the court below, upon which its findings of fact may be supported, this court will not reverse its determination.

State, McAdams, Pros. v Block,

63 N. J. L. 508.

Is there any evidence supporting the bona fides of this transaction? Ferdinand R. Jones, says that he attended the sale for this property at the special request of Percy Owen, who desired him to bid it in for him at the sale. (page 82-83); that when Percy Owen came to him, he did not limit him in the amount that he should bid but that he used his own judgment in the bidding, as he

supposed was required of him. (*page 91*). He continued to bid on the property until \$1575.00 was bid and it was knocked down to him. He testified in answer to the question of the Vice Chancellor, that he thought he should not have exceeded \$1600.00 for the property. Although he presumed that his authority might have warranted him in going higher. That there had been a purpose in the mind of Percy Owen, for a long time which had in view the purchase of this property, and its retention in the Owen family, is testified to by the appellant, Isaac A. Owen, who says that his nephew, the respondent had so told him. The Uncle testified as follows:

Q. Did he ever tell you that he intended to purchase this property?

A. He told me that he did not expect that property to go out of the Owen's name, expected to keep it right there in the owner's name. (*page 55*).

And Percy Owen testifies to a like effect, in answer to a question from the Vice Chancellor.

Q. You said you wanted to make an explanation. You can make it.

A. If your Honor will allow it. My reason for purchasing this property is more probably of sentiment than any other reason. That was my home and I felt that if there was any way possible that I could buy that property that I should do so, and try my utmost and sacrifice all that I could in order to buy it, and that was my reason for doing it. My Grandparents—I went with them when I was about two years and a half old. I remember my

boyhood days there, and I did not want to see it get away. (*Page 122*).

Is not this a good and sufficient reason for the action of Percy W. Owen in his effort to purchase this Homestead property? He says he asked Jones to bid the property in for him (*page 113*), and this without saying any thing to his father (*page 115*). And while he had no money then he was sure he could arrange for the payments with the Building Association and after selling the lots, get a second mortgage for the balance. (*pages 119, 120*). He counted on his father to help him get the second mortgage, (*page 121*). The appellant seems to think that no sane and intelligent man would bid at a public auction under circumstances such as the respondent, Percy W. Owen did, unless he was acting as the agent for another, or had some means of obtaining the necessary funds. We cannot subscribe to the theory of counsel on this point for the reason that these things are frequently done and are in the experience of every practicing lawyer, that men go to sales, make their bids without money and then have to raise the money with which to carry out their bids, and then often times they fail to consummate their arrangements and the properties are then put again upon the market, and the first bidder is sometimes held for the deficiency. The circumstances in this case all tended to allay any fear in the mind of the bidder that undue strictness would be used against him. His father was the one selling the property and his son was the one purchasing. It was natural for the son to assume that the father would extend to him sufficient time

to make his arrangements if he were not already prepared. In our view the circumstances are not sufficient to warrant an assumption of collusion between the father and the son although this circumstance would be taken into consideration with other circumstances, in pursuit of the inquiry as to the bona fides of the transaction.

The respondent, Joshua P. Owen corroborates his son in the fact that his son said nothing to him about buying the property and further testifies that Mr. Jones said nothing to him about it (*page 130, 131*); and that he never said anything to his son about it (*page 131*); nor did he know for whom Mr. Jones was bidding (*page 128*). The first he knew of it was when his Attorney told him his son was the purchaser and that the money must be paid by the son. He said he then sent a note to his son telling him to get the money from the Building Association, sell the lots, and then he could settle with the estate and on receipt of the note, he would pay to the Attorney Mr. Lane the ten per cent. (*page 128*). The note he says is a personal note, held by him against his son and that he accounted for all of the money in his account to the Orphans' Court (*page 129*).

If it therefore be true that the father knew nothing of the son's plans before the purchasing of the property, could there have been any impropriety in his knowing and assisting his son after the fact? It is certain both the father and the son had clean hands before the sale. Could the fact that the father aided the son after the sale taint the action of either, and be construed as an evidence of fraud? The father had an undoubted right to loan the money if the transaction was straight and we submit that

the evidence in this case shows such to have been the fact, and all of which tended to establish the good faith in the transaction, rather than the taint of bad faith. The sale should be sustained.

Respectfully submitted,
MARTIN W. LANE,
Solicitor for Joshua P. Owen.
ROYAL P. TULLER,
Solicitor for Percy W. Owen.

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