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THE W. S. SHARP PRINTING CO., 23 & 25 N. Warren St., Trenton, N. J.

COURT OF ERRORS  APPEALS.

Between

EDWARD DUDLEY,

Appellee,

and

LEVI O. RUDDEROW ET AL.,

Appellants.

Appeal from
Vice Chancellor
Bird, &c.

Thomas H. Dudley's Brief.

A bill was filed in the Court of Chancery to partition a house and lot in the city of Camden, and seventy-six acres of land in Delaware township, the property of Jerusha I. Rudderow, deceased. John F. Harned, solicitor.

The property was ordered to be sold by Marmaduke B. Taylor, Esq., a special master.

The master advertised the property, according to law, and made the sale at the court house, in Camden, on the 13th of June, 1885. See his report of sale, page 35. Extra posters were got out by Harned. See testimony, page 14. Sale very largely attended and every effort made to effect a good sale. See Woster testimony, page 15.

John J. Logan purchased the house and lot and Edward Dudley purchased the seventy-six acres of land in Dela-

ware township for \$30 per acre. Amos Rudderow first bidding \$25 and Edward Dudley bidding \$30. Page 25.

June 15th, 1885, Mr. Taylor, the master, reported the sales to the Court of Chancery. See report, page 35.

June 23d, 1885, the court confirmed the sale of the house and lot to Logan, and the master executed a deed to him for the same.

Levi O. Rudderow, one of the heirs, the man who put up the advertisements of sale in Delaware township, refusing to make an affidavit, on the ground property sold for too little. Page 12.

Five hand-bills of the sale had been put up in the county by John F. Harned on the 13th of April, 1885. See Harned's testimony, page 33. *12 v 13*

July 6th, 1885, the court made an order that all parties in interest show cause before the court on the 21st of July, why said sale to Edward Dudley should not be confirmed.

There was no question about the property being properly advertised in the newspaper, or any charge as to irregularity in the sale or the proceedings of the master.

The sole and only objection against confirming the sale was that a hand-bill had not been put up in Delaware township, where the land was situate, in time—two months before the day of sale.

This was the only question then, and is the only question now before this court. Two were put up on the premises. Were they put up, or one of them, two months before the day of sale? There is no other question involved about this sale except this. Harned's testimony, page 14.

On the 21st of July, the day fixed by the court for the parties to show cause why the sale should not be confirmed, the parties in person and by their counsel appeared before Vice-Chancellor Bird, and he proceeded to hear the case.

After the formal proof of advertising in the papers had been made, the Vice-Chancellor proceeded to inquire into the main and only question in the case, whether the prop-

erty had been advertised by hand-bill two months before the sale, in Delaware township.

Levi O. Rudderow, the man who put up the hand-bills in said township, was sworn and examined. John F. Harned, the complainant's solicitor, was also sworn and examined, and the two affidavits of Edward Burrough, who is now clerk of Camden county, were read, and Edward Burrough was called and put upon the stand for cross-examination, &c. See Vice-Chancellor's certificate, page 38.

After a most careful investigation and inquiry, the Vice-Chancellor was entirely satisfied that the property had been properly and legally advertised according to law; the court made an order confirming the sale, and directed the master to execute the deed, &c. The order confirming sale was made July 21st, 1885. See order, page 42.

July 23d, 1885, the deed from the master to Edward Dudley, the purchaser, was executed and delivered, and the whole of the purchase money paid to the master. See page 43.

The decree of confirmation was thus made by the court and carried into execution by the master, who made and delivered the deed under it to the purchaser. The purchase money was paid, and the property became vested in the purchaser. The decree was thus consummated and executed, and the rights of all the parties fixed under it.

This decree of the court could not be attacked or reviewed by petition, except for fraud or mistake. The party conceiving himself aggrieved by it could have appealed from it, or possibly had it reviewed by a bill of review, if sufficient reasons could be shown for such a proceeding; without this, it stands and is binding upon all the parties.

On the 1st of August, 1885, eleven days after the sale had been confirmed, and nine days after the deed had been made and delivered, and the purchase money paid, Levi O. Rudderow filed a petition, charging fraud in the sale

by the solicitor for the complainant, and that the property had not been legally advertised by hand-bills, &c., and prayed for an order to show cause why sale should not be set aside, &c., and that the master be restrained from executing deed, &c.; that sale should be set aside as fraudulent and void, and any deed made before service of injunction be delivered up and canceled, &c. Page 1.

I say Levi O. Rudderow filed this petition. It is true that he has used the names of some of the other heirs, but no one of the heirs but himself has sworn to the petition, or ever appeared as active actors in it. It is Levi O. Rudderow and him alone who is prosecuting this appeal—the man through whose neglect, if there was any, that the wrong was done—the man who knew that the bill had not been put up in time, and who stood by and permitted the property to be sold without question, notice or remonstrance, and then, after the deed had been executed to the innocent purchaser and the purchase money paid in good faith, turns around and for the first time discloses the fraud which he has perpetrated on the master who sells and the purchaser who buys, and attempts to take advantage of his own wrong.

A man who will so demean himself is not entitled to much consideration from the court.

It must be noted here that the petition of the appellant does not set out the decree of confirmation or refer to it in any way. ^{except once incidentally} There is no prayer to open or set it aside. The rule to show cause is incidentally referred to, but no reference is made to the decree, or statement that any has ever been made. See page 4.

The petition charges fraud against the solicitor, Mr. Harned, and against the purchaser of the land. This was a new factor brought into the contest. And though the Vice-Chancellor regarded the question of setting up the advertisements as fully settled and proved, and refused to open it, or allow any evidence upon it or discussion of the question, except as far as it might come up incidentally

in considering the question of the fraud, he felt it to be his duty to grant a rule, so as to investigate the question of fraud which had been charged in the petition. See opinion of Vice-Chancellor, page 44.

On the 1st of September, 1885, the Vice-Chancellor heard the charge of fraud in the petition alleged, examined the witnesses in the case, and being satisfied that the charge of fraud was not made out, dismissed the petition, with costs. The Vice-Chancellor's opinion, on page 44 of their book, gives his reasons for dismissing this petition, and shows that nothing was considered but the question of fraud; that no other evidence was permitted and that the question of advertising the property was not discussed or at that time considered; that it was regarded by him as settled at the hearing when the sale was confirmed, on the 21st of July, 1885; that it was the fraud only that was inquired into.

In so deciding, he was right. The decree could not be opened on petition except for fraud or mistake. It could be appealed from, but not attacked by petition. See authorities of Voorhees.

They then, from this ruling on the question of fraud, appealed to this court and attempted to set aside the decree of the Court of Chancery, made on the 21st day of July, confirming the sale, &c., without even bringing the order into the court, the Vice-Chancellor's opinion, the evidence which he had before him at the time he made the order of confirmation, or even the Vice-Chancellor's opinion given on the hearing of the petition; all these matters were studiously left out of their printed book or case, as they presented it to this court, and this, too, when they had not prayed for it in their petition, or even set out or made any reference to the decree in their petition. It was the play of Hamlet with the character of Hamlet left entirely out. When the court saw how they had been imposed upon, a rehearing was granted.

On the 6th day of October, 1885, after the appeal had

been taken to this court, and while said appeal was pending here in this court, an order was taken by the complainant in the original suit for the distribution of the proceeds of the sale made by Mr. Taylor, the master, including the money paid for this very property. See order, page 45. Levi O. Rudderow and the other petitioners here before the court not only sat by and permitted this order to be made, but have actually taken and received their full share of this money from the master who holds their vouchers for the same. See page 50, and Taylor's affidavit, page 30.

So the case to-day stands in this way: the property was sold to the highest bidder for the best price that could possibly be obtained after the greatest efforts had been made on the part of the solicitor and master to make it bring more. The sale was confirmed after great deliberation and a full inquiry and examination into all the facts relating to it. The deeds were made and delivered to the purchaser, and the full amount of the purchase money paid, and the purchase money ordered by the court to be distributed and paid over to the parties interested, including the petitioners now before the court, and actually paid over to them by the master, who holds their vouchers for the same.

After this is all done, this court is now asked to set aside this order confirming the sale, and the sale itself, on the ground that the advertisement was not set up two months in Delaware township before the time of selling, by and at the instance of the very man whose duty it was to put it up and who, knowing this defect in the proceeding, if any there was, stood by and saw the property wrongfully sold to an innocent purchaser, and has taken and now has his share of the purchase money which was paid, in his pocket.

And this is to be done in the face of the Vice-Chancellor's opinion, which states that at the meeting on the 21st of July every person had the fullest opportunity to be

heard * * * and the production of all the proofs that seemed possible, &c., after the argument of counsel, I thought the notices had been posted according to law and advised a confirmation of the sale. Page 45.

And in his certificate, on page 39, the Vice-Chancellor further states, with regard to the hearing on the 21st of July, when the confirmation was made, that "from the testimony produced at this hearing it was fully proved to my entire satisfaction that the property in question had been properly and legally advertised by giving notice by public advertisements and set up at five or more public places in the county, one whereof was on the property in question, at least two months next before the time so appointed for the sale, and likewise was published in two of the newspapers printed and published nearest to the place in the county in which the lands are situate, at least four weeks successively, once a week, next preceding the time appointed for selling the same, and at the time and place so appointed, between the hours of twelve and five in the afternoon, the special master, Marmaduke B. Taylor, sold the same to Edward Dudley, he being the highest bidder for the same, and therefore I confirmed the sale."

The sale was thus confirmed on the 21st day of July, and all the parties, even Mr. Wartman himself, having had an opportunity to be heard, as the Vice-Chancellor states in his opinion. See page 45. At the hearing, September 1st, on the petition, the Vice-Chancellor refused to go into the question of the advertising the property, and confined this hearing entirely to the question of fraud set up in the petition.

The Vice-Chancellor says, on page 45: "Although I allowed the petition to be filed, and also the affidavit disclosing other matters, I distinctly stated that so far as I was concerned, the inquiry should be limited to one point. And when the case came on to be heard, an effort was made to introduce testimony upon the points formerly agitated respecting the notices, which I rejected upon the ground

that that branch of the case had been acted upon by this court." And on page 46 he says: "As above stated, I only admitted testimony on the question of corruption, and considered nothing else. The sufficiency of the notice had been previously considered."

The court thus sees that the question of putting up the notices of the sale was heard and determined by the court at the hearing of July 21st, when the order confirming this sale was made. That a rule was made July 6th, requiring all parties to show cause on the 21st, and that at this hearing the parties were there in person and by counsel, and all fully heard, and that upon the evidence adduced before the court, the court was entirely satisfied that the notices had been put up and the property properly advertised and sold—he confirmed the sale, and that at the hearing of September 1st, on the petition filed, the Vice-Chancellor refused to go into the matter of putting up the notices, and would not permit evidence upon this question, but confined himself entirely to the question of fraud set up in the petition. All the evidence taken at this last hearing was intended to apply to fraud and it alone, and it was considered by the court as applying to this point and it alone.

If this was so, and it most clearly appears by the Vice-Chancellor's opinion and certificate to have been, then it would be most unjust and unequitable to set aside this confirmation upon the evidence taken at the hearing on the 1st of September, when the evidence at this hearing, as the Vice-Chancellor tells you, was confined and limited to the fraud, and did not extend to or embrace the subject of putting up the notices of sale and the confirmation, under which, as he tells you, he would not permit any evidence as to the notices to be given. We were excluded and not permitted to introduce evidence as to the notices.

We submit that if we are wrong about this decree of confirmation being binding and conclusive between the parties, and that it cannot be attacked upon petition except for fraud or mistake, and the Vice-Chancellor erred in not

going again into the whole question on the 1st of September, the most that this court will now do is to remit the case to him, with instructions to open the case and extend the inquiry into the question of putting up the notices as well as the fraud charged. Inasmuch as he excluded all evidence on the question of putting up the notices, justice to the party required that he should have the opportunity to offer this evidence. But I submit that this court will not do this when the Vice-Chancellor tells you, as he does in the most explicit and positive manner, that he has already done this ; that all the parties have been heard or had an opportunity to be heard, and that the evidence adduced proved to his entire satisfaction that the notices had been properly put up ; in a word, that he has already exhausted the subject.

We think the court, under the circumstances, would not interfere with this sale and decree of confirmation, even for a party who stood before it with clean hands, without wrong or blame attached ; much less do we think will they do it for a party whose hands are not clean, but who has by his own neglect or wrong made or caused the trouble about which he complains, and then stands by and permits the property to be sold, without giving notice of the pretended defect in the advertising, and permits an innocent person to purchase and pay for the property, and who comes here into court with his share of this purchase-money in his pocket, and complains and seeks to take advantage of his own wrong.

But if the court should be of the opinion that we are wrong in the law and our conclusions, as above stated, we think there is enough evidence here in the case, as it now stands before the court, to show that the notice of sale was put up in time in Delaware township.

It must be remembered that this man, Levi O. Rudderow, was before the Vice-Chancellor on the 21st of July, and sworn and examined in the case when the order of confirmation was made.

The Vice-Chancellor thus had all he knew about putting up these notices at the time, and while the matter was fresh in his mind, when his recollection was as likely to be correct as it is now.

After the sale, Mr. Harned, the solicitor, prepared an affidavit for him to swear to; that the property had been legally advertised, &c. He refused to take it, not because it was untrue, but because the property had been sold too low, and if he took the affidavit it would confirm the sale. This was the sole reason given, and he would not make the affidavit. He did not object because the time when the notices were put up, April 13th, was not correct; he stated that he had no doubt but what the time was stated correctly, thus admitting to Harned that they were put up in time. See Harned's testimony, page 12.

And this is confirmed by Edward Burrough, the clerk of the county of Camden. Mr. Rudderow admitted to him that the notices had been put up in time. See Burrough's testimony, page 40. And Burrough himself says that he saw two of the notices up on the premises on the 13th day of April, and John F. Harned swears to putting up five more of these notices on the 13th of April. See his affidavit, page 33.

We submit, without the confirmation of the court, even if there has been no inquiry and adjudication of the case, as the matter now stands before this court there is sufficient evidence to confirm this sale—most certainly enough to show that the decree of confirmation made by the Vice-Chancellor in the manner as has been stated should not be disturbed.

THOMAS H. DUDLEY,
Of Counsel with E. Dudley.

At the hearing before the Vice Chancellor on the petition, September 1, 1885, Laura Rudderow, the daughter, and Sarah J. Rudderow, the wife, of Levi O. Rudderow, were examined. They both swore that Mr. Harned called at Levi's house on a Monday evening, but they do not name the date when it was; he had some bills, but did not leave them. Sarah says that Mr. Harned called the next morning and left them with her husband.

Walter Rudderow swears, in the affidavit annexed to the petition, that Levi O. Rudderow gave him three posters on the 17th of April, which he put up the same evening.

Now we do not deny or even question the above evidence. It is consistent with our own.

Mr. Harned got out one hundred extra bills of this property, (see testimony on page 14) and some of these bills were left with Levi O. Rudderow to be put up. On page 15 he says, "when I left the notices the second time my recollection is that I gave them to him. * * * I might have left notices there on a Tuesday morning as well as Monday; quite possible that I left them on both occasions."

Mr. Harned swears that he left with Levi O. Rudderow, on the morning of April 13, two notices to be put up in Delaware township—not five notices, but two. He is positive it was on the 13th, and in the morning of that day when he left the two. See testimony, page 14 and 15.

Now who questions or denies this? No one except Levi O. Rudderow. There is not a particle of evidence disputing this outside of Levi O. Rudderow's affidavit annexed to his petition, made two days after he had been examined before the Vice Chancellor. He stands uncorroborated.

Which is most likely to tell the truth, Harned, who has no interest in the suit, and no object in misrepresent-

interest

ing, or Rudderow, who has an ~~intent~~ and possibly an object?

It will be noted that Levi O. Rudderow's affidavit is confined to the five notices placed in his hands on Tuesday, three of which his nephew Walter put up, and does not mention the two which Harned swears he placed in his hands on the morning of April 13. Is Harned correct or is Rudderow?

Edward Burrough, Clerk of the county of Camden, 10 an entirely disinterested witness, swears that he saw two of these posters up on the premises in question on the 13th of April. He states this particularly, emphatically and positively. See his testimony, p. 39 and 40.

Mr. Burrough also states that Rudderow "admitted to this affirmant within the last few days, and since the 13th day of June, when the sale took place, that there was no doubt about the posters having been put up in time."—page 40.

Rudderow also admitted to Harned that notices were 20 put up in time. See Harned's testimony, p. 12. He declined to take affidavit, on the ground that property did not sell for enough. This was the sole reason given at first for not making affidavit.

We therefore submit that even if there had been no adjudication and decree of confirmation in this case, as the matter now stands here before this court, there is sufficient evidence to prove that two of the hand bills were put up in Delaware township, and five others in the county, two months before the sale.

30 This being so, surely this court would not open this decree of confirmation, even if the proceedings in this case were regular and of a character to warrant them to do so; much less would they set aside a sale which had been consummated and perfected under the decree.

THOMAS H. DUDLEY,
Of Counsel with Respondent.

No 9

New Jersey Court of Errors and Appeals.

THOMAS S. RUDDEROW, ET ALS.,
 Complainants,
 and
 EDWARD DUDLEY, ET ALS.,
 Defendants. } ON APPEAL.

This was a bill for partition of lands described in the bill of complaint, consisting of a house and lot in the city of Camden, and a tract of about seventy-six acres in the township of Delaware, in the county of Camden. The case was so proceeded in that a sale was ordered by the Court, to be made by Marmaduke B. Taylor, one of the Special Masters in this Court, and was advertised for sale on the 18th day of June, 1885, by being duly published in the *West Jersey Press*, (See affidavit of William H. Moses, p. 32), and in the *Camden Daily Post*, (See affidavit of Joseph M. Engard, p. 34), and by hand bills put up at five and more places in the county, one of which was in the First ward of the city of Camden, and one of which was put up in the township of Delaware, two months before the time advertised for sale.—See affidavits of J. F. Harned, p. 33, and Edward Burrough, p. 39 and 40.

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After the sale was made M. B. Taylor, the Special Master, who made the same, on June 15, 1885, reported it to the Court.—See report, p. 35. The sale of the lot in the city of Camden to John J. Logan was confirmed by the Court June 20, 1885.—See p. 36.

July 6, 1885, on motion of solicitor of complainants, a rule was granted ordering all parties in interest to show cause July 21, 1885, why the sale should not be confirmed.—See p. 37. At the hearing of this rule July 21, 10 1885, the affidavit of Edward Burrough, in addition to the affidavit of J. F. Harned, William H. Moses and Joseph M. Engard, annexed to the Master's Report of sale, was used.—See affidavit of Edward Burrough, p. 39 and 40. Edward Burrough was produced as a witness for cross-examination, and such examination was waived by the counsel of the appellants. John F. Harned and Levi O. Rudderow, one of the appellants, were examined orally before the Vice Chancellor (See Grey book, p. 9) and the substance of their testimony is shown by the 20 certificate of Vice Chancellor Bird.—See p. 38; Grey book, p. 9. After the hearing Vice Chancellor Bird advised a decree confirming the sale and directing the Master to execute the deed to Edward Dudley.—See decree, p. 42; Grey book, p. 11. The deed was executed by the Master and delivered to Edward Dudley, July 23, 1885, he then paying the purchase money to M. B. Taylor, the Special Master.

August 11, 1885, order by the Court of Chancery that 30 the Special Master pay out of the proceeds of said sale a mortgage encumbrance on the premises of \$1,348.50, which was done.

October 6, 1885, the Court made a decree directing the Master to make distribution of the proceeds of the sale after the payment of the mortgage and \$28.96 paid to the said Master, by a receiver of said premises, by the

order of the Court.—See order of distribution, p. 47; Grey book, 15. Under the order the Master proceeded and paid to a number of the parties, or their solicitors, their shares of the proceeds of said sales. (See affidavit of M. B. Taylor, page 29 and 30,) the appellant being among the persons so paid.

August 1st, 1885, the appellants presented a petition to the Court of Chancery setting out, among other things, that the sale of said land was not duly advertised; that the lands in Delaware township were sold at an inadequate price; that Edward Dudley fraudulently conspired with John F. Harned to prevent competition in bidding; that Edward Dudley was the only bidder at the sale; that J. F. Harned urged Levi O. Rudderow to make an improper affidavit, stating that there was \$100 in it for him, Harned, and praying for a rule to show cause why the sale to Edward Dudley should not be set aside as fraudulent and void, and that the advertisement by posters was irregular and illegal.—See petition and affidavit, page 1—8.

On filing this petition August 1st, 1885, a rule was granted ordering Edward Dudley to show cause why the deed made to him, and order of confirmation and the sale in said petition named, should not be set aside and a new sale ordered, on the 18th day of August, A. D. 1885, in the city of Trenton, when oral testimony would be heard and the cause determined thereon.—See rule to show cause, page 9. The hearing of the cause was adjourned from August 18th, 1885, to September 1st, 1885, when Laura Rudderow and Sarah J. Rudderow were examined on the part of the petitioners and John F. Harned, Charles I. Wooster and Edward Dudley were examined on the part of the said Edward Dudley.—See testimony, page 11—15.

It is stated in the book, page 10, that the petition and

affidavits were read at this hearing. Upon this hearing, September 1st, 1885, the Vice Chancellor advised an order or decree discharging the said rule to show cause, granted August 1st, 1885.—See decree, page 16, &c. The reasons of the Vice Chancellor for this decree are given.—See page 44, &c. Grey book, page 12.

From this decree ordering the rule to show cause, granted August 1st, 1885, to be discharged, the appellants gave notice of appeal.—See notice of appeal, page 18; and see
10 petition of appeal, page 19.

This appeal is from an order discharging the rule to show cause, made August 1st, 1885 (see p. 9) upon a petition then filed, but sworn to July 23rd, 1885, after the sale had been duly confirmed by the Court.—See decree confirming sale, dated July 21st, 1885, page 42. The deed was delivered by the Master and the money paid the day the petition was sworn to.—See page 43; Grey book 11, 12. It was known to the appellants at the time
20 of the granting of the rule to show cause, that the sale had been confirmed, and that the deed had been duly delivered to Edward Dudley, for the rule is to show cause why the deed made to him, and order of confirmation of sale, and sale, should not be set aside.—See page 9.

At the time of the granting of the rule to show cause, the discharge of which is appealed from in this cause, there had been a final decree in the cause confirming the sale, and the parties acting under the decree had carried it out and executed it by the delivery of the deed to Edward Dudley, and the payment of the purchase money by him. The title had been fully vested and
30 was complete and perfect in him and unimpeachable except by showing the decree was obtained by fraud or mistake. In proving title under a deed made by virtue of an order or judgment of a Court, if it appear that the Court had jurisdiction of the subject matter, it

*This decree was never
appealed from*

is sufficient to prove the order or judgment which authorizes the deed to be made, and it is not necessary to prove the regularity of the proceedings previous to the order or judgment.

Obert vs. Hammell, 3 Harr., 73.

Runyon vs. Newark Rubber Co., 4 Zab., 467, 475, &c.

Shepherd vs. Hedden, 5 Dutch., 334.

Stokes vs. Middleton, 4 Dutch., 32.

Rover on Jud. Sales, Sections 79, 127, 133.

The decree in this cause under the circumstances 10 could only be opened or set aside for fraud or mistake upon petition of parties, or by bill of review, or supplemental bill in nature of a bill of review.

1 Barb. Prac., 355, 362, 366.

Whittemore v. Coster, 3 Gr. Ch., 438.

Robertson v. Miller, 2 Gr. Ch., 451.

Downing v. Emery, 2 Beas., 59.

Carpenter v. Muchmore, 2 McCar., 123.

In this case the appellants' petition, on which the rule to show cause was granted, and for the dismissal of which 20 this appeal was taken, is based upon the ground of fraud. It charges, on page 3, that the seventy-six acre tract was sold at the grossly inadequate price of \$30 per acre; that it was worth \$75 per acre; on page 4, that Edward Dudley, the Special Master who reported the rights of the parties in the premises, and that the same could not be partitioned but should be sold, was the purchaser; that he, Edward Dudley, fraudulently conspired with 30 John F. Harned, the solicitor of the complainants, to prevent competition in bidding at the sale; that Edward Dudley was the only bidder at the sale; that John F. Harned, the solicitor of the complainants, after the sale tried to procure an affidavit of Levi O. Rudderow to the putting up of the notices of the sale, saying that there was \$100 in it for him.

The petition did not state the facts that five of said hand bills had been put up in the county by John F. Harned, as appears by his affidavit returned with the Master's report of sale.—See page 33.

10 The fraud charged in this petition was that of Edward Dudley, the purchaser of the real estate, and John F. Harned, the solicitor, neither of them parties to the suit, but Edward Dudley claimed title under the sale of the land ordered and confirmed by the Court, and deed executed and delivered in accordance with the decree in the suit, and he had a right to be heard on the charges of fraud in the petition. The rule to show cause, granted on the filing of the petition, could only have been based on the charges of fraud contained in the petition.

20 That it was so is apparent from the reasons for the decree dismissing the rule to show cause given by Vice Chancellor Bird.—See page 44, &c. He states: "There being nothing new presented to prompt the Court to action, except the question of fraud on the part of the counsel of the petitioner, ^{indeed} I conclude the order to show cause was only allowed upon the ground that a grave charge was made against an honorable member of the bar, which by intimation might possibly extend to the purchaser. The Court could not hesitate to inquire into the merits of such charges. But I refused to proceed upon any other grounds, &c."

30 Upon the hearing of this rule to show cause, there was no evidence whatever to sustain any of the charges of fraud in the petition. The testimony taken at the hearing appears in the case.—See page 11—15. The petitioner examined only Laura Rudderow and Sarah J. Rudderow, (neither of whom testified as to the matters of fraud charged in the petition) and declared their case rested.—See page 12.

The testimony on the part of Edward Dudley dis-

proves all the charges of fraud in the petition. That there was a fraudulent agreement between Dudley and John F. Harned to prevent competition in bidding is disproved by testimony of Harned, (See page 15, line 33, &c.,) when he says "he never entered into any arrangement with Mr. Dudley to have this sale confirmed, and never knew he was going to bid until he bid. His whole testimony shows he bid all he could to get a fair sale." 10
Edward Dudley, page 25, line 23, &c., says, "I never had any conversation with John F. Harned about this property, or the sale of it, until after the sale. I did not know it was for sale until I got there that day, &c."

The charge that Edward Dudley was the only bidder at the sale is disproved by testimony of Mr. Harned; on page 14, line 15, &c., he says, "There were two bids; there was no objection to its being struck off." By Mr. Wooster, page 15, line 14, &c. "There were two bids— one \$25, the second \$30, * * The property was a 20 long time dwelt upon. Mr. Wooster was the auctioneer in making the sale." By Edward Dudley, page 14, line 27, &c. "Amos Rudderow bid \$25, and then Mr. *Bergen* said to me, you are foolish not to buy it; then he asked Isaac and John Rudderow why they did not buy it, and they said they did not want it. I then bid \$30 per acre and it was struck down to me."

The charge that Harned offered any inducement to Levi O. Rudderow to sign the affidavit of putting up the advertisements, or said there was \$100 in it for him, is 30 denied by Mr. Harned. On page 12, line 22, &c., he says: "I offered the affidavit to Levi Rudderow to be sworn to; he objected on the ground that the property sold for too little, and that taking this affidavit would confirm the sale; he did not object because the affidavit did not state the time correctly. He stated he had no doubt but that it was true.

Page 13, line 25, etc., he says, "I never made any inducement to Levi Rudderow to sign that affidavit." On page 15, line 6, etc., he says, "the charge in the petition that I said that there was a \$100 in it for me if he would sign the affidavit is absolutely false."

Mr. Rudderow did not attempt to sustain the charges in the petition. He had been examined before the Vice Chancellor on the hearing of the rule, on the 21st of July, A. D. 1885, and thought it best not to put himself upon the witness stand before the Vice Chancellor a second time. *There was no evidence to prove the value of the land.*

The statements in the petition and the affidavits annexed to it are not evidence of the facts stated therein. In hearings of this kind the petition and affidavits are not evidence of the facts stated therein. They must all be proved *aliunde*.

Cox v. Halstead, 1 Gr. Ch., 311.

Crane v. Bingham, 3 Stock., 29.

McPherson v. Housel, 2 Beas., 35 and 36.

Carpenter v. Muchmore, 2 McCar., 123.

Dinsmore v. Westcoat, 10 C. E. Gr., 305.

The rule granted in this case on the 1st of August, 1885, requiring Edward Dudley to show cause why the deed made to him and order of confirmation and sale in the petition named should not be set aside, being granted and heard only on the charges of fraud set out in the petition, and the petitioner having failed to sustain any of said charges of fraud by evidence, the order of the Vice Chancellor discharging the rule to show cause was not erroneous and that order appealed from in this cause ought to be affirmed.

PETER L. VOORHEES,
Of Counsel with Edward Dudley.

In Chancery of New Jersey.

Between

Thomas S. Rudderow, Barzillai A.
Rudderow, Lemuel H. Rudderow,
Levi O. Rudderow, Sarah A.
Rudderow, Mary A. Groves, An-
nie Rudderow, Allen Rudderow,
Benjamin Rudderow, Mary Ann
Epley, Nancy Rowan, Sarah Ella
Watson, Benjamin R. Epley,

Complainants,

and

Edward Dudley, William S. Rud-
derow, *et al.*,

Defendants.

On Bill for Parti-
tion, &c.

Petition for Rule
to Show Cause
why Sale should be
not be set aside.

*To the Honorable Theodore Runyon, Chancellor of the
State of New Jersey:*

Your petitioners, Thomas S. Rudderow, Barzillai A. Rudderow, Lemuel H. Rudderow, Levi O. Rudderow, Sarah A. Rudderow, Mary A. Gross, Annie Rudderow, Allen Rudderow, Benjamin Rudderow, Mary Anna Epley, Nancy Rowan, Sarah Ella

Watson and Benjamin R. Epley, respectfully show unto your honor that they were complainants, and parties interested as next of kin in a bill of partition, lately filed in this honorable court, in which William S. Rudderow and others were defendants. That the sheriff returning on the writ that a number of the defendants in said writ named were not to be found in his county, and on diligent inquiry he was informed that they lived out of the State. Two several orders of publication were made, noticing the defendants in each to appear and plead, answer or demur
10 before the twenty-fourth day of November, A. D. 1884, in one, and on the thirteenth day of December, of the same year, in the other. That an interlocutory decree was taken on said bill against the said defendants, and the matter referred to Edward Dudley, Esq., a Special Master, to report on the same. That his report advised a sale of the premises mentioned in said bill, and that an order was made that the property be sold, and appointing Marmaduke Taylor, Esq., a Special Master of this court, to be present, and that said sale should be made under his direction.

20 And your petitioners further show that the said Marmaduke Taylor, Esquire, as said Special Master, did undertake to advertise and sell the property in said bill mentioned, according to law, under the said order. The advertisement was inserted for four weeks and upwards in the "Daily Post" and "West Jersey Press," two papers published in the county.

And your petitioners further show that the said Master having fixed the thirteenth day of June, 1885, as the day for the sale of the said premises, notice of the sale should have been set up in five or more public places in the county at least two months before the day fixed for said sale. But your petitioners aver the
30 truth to be that said notices, nor either of them, were set up two months before the day fixed for said sale, but declare the truth to be that John F. Harned, Esq., solicitor of complainants on Bill for Partition, came to the residence of Levi O. Rudderow, one of your petitioners, in his absence on the evening of the thirteenth day of April, A. D. 1885, with a roll of papers re-

sembling the five posters to be put up by him. That said Harned did not leave said posters, but told the daughter of Levi O. Rudderow that he wanted to see her father, and that he came to the house of said Levi O. Rudderow on the morning of April 14th, and left said posters to be put up by him. That said Levi O. Rudderow was not informed by his counsel, or any other person, as to when said advertising posters should be set up. That said Levi O. Rudderow was not out of the city of Camden until Wednesday, the fifteenth day of April, A. D. 1885, when he went to his house then under process of construction at Merchantville, taking the said five posters with him. That the land upon which two of the posters were subsequently set up was about a mile distant from the site of his said house; and that the said Levi O. Rudderow did not find it convenient to set up the said five posters until the afternoon of the Friday following. That on the said Friday, the 17th day of April, A. D. 1885, he the said Levi O. Rudderow, set up two of the said posters on the premises, consisting of seventy-six acres of land to be sold on the said 13th day of June following, and that the said Levi O. Rudderow gave the other three posters to one Walter Rudderow on the said 17th of April, to be set up by him at the places designated by Levi O. Rudderow. And that when the affidavit of proof of advertisement of sale by posters was presented by John F. Harned, Esq., to be sworn to by Levi O. Rudderow, he, the said Levi O. Rudderow, refused to swear to the same, for the reason that the date of putting up the posters was false.

And your petitioner further shows that the said seventy-six acres of land sold for but thirty dollars per acre, a grossly inadequate consideration, and that the same was and is worth at the lowest price at least seventy-five dollars per acre; and that your petitioners, or any of them, are willing to guarantee to this honorable court a first bid of forty-five dollars per acre, and give bonds to this court for the performance of the same, although none of your petitioners want the said property, but desire the same to be again put upon the market for the benefit of all the

parties interested in the same, and for that reason are willing to secure the estate from loss by guaranteeing said first bid for forty-five dollars per acre ; and that other persons stand ready and anxious to purchase said property at a very much higher price per acre than the said sum offered by your petitioners as a first bid. And your petitioners further show unto your honor that the said Edward Dudley, the Special Master to report to this court the right, title and interest of the respective parties, and also to report whether partition could be made of the premises or not, was the purchaser at the said sale, and that he fraudulently conspired with John F. Harned, Esquire, solicitor of complainants, to prevent competition in bidding; and that said Dudley was the only bidder ; and that after said sale and before the same was confirmed, and for the purpose of obtaining a confirmation by this court, said Harned presented an affidavit of proof of setting up posters of advertisement of sale, and that Levi O. Rudderow refused to make said affidavit for the reason that the date of setting up said posters was absolutely false ; that afterwards the said John F. Harned importuned and insisted on the said Levi O. Rudderow to sign said affidavit without making the correction in the date to correspond with the fact, urging that the sale would not be confirmed unless said fact was established ; that when said Harned discovered that urging was of no avail, he then said that Levi O. Rudderow must sign it as there was a hundred dollars in it for him (Harned) ; he then told him, the said Levi O. Rudderow, that if he would sign it he would get more out of Dudley for doing so than he would receive as his proportion of the advance on a re-sale of the premises. And your petitioners further say that when they were informed that a hearing was to be had on Tuesday, the twenty-first day of July, instant, on a Rule to Show Cause why said sale should not be confirmed, your petitioners urged on their solicitor the importance of having Walter Rudderow as a witness, he having put up three of said advertising posters ; that he was fully prepared and qualified to swear that said three posters were not given him to put up

until the seventeenth day of April, A. D. 1885, and four days too late under the law for the setting of said posters.

And your petitioners show that Laura Rudderow, a daughter of Levi O. Rudderow, was home and responded to the bell on Monday evening, April the thirteenth, 1885, and that John F. Harned was at the door with a roll of papers in his hand, resembling posters, but did not leave them; that he asked for Levi O. Rudderow and was informed that he was not in; that he left and on the following day, on her return from work, Laura Rudderow asked her father if the lawyer had been there, 10 and he responded that he had, and that he left the posters; that said posters were not printed or turned over from the printers, Mr. Sinnickson Chew, until the thirteenth day of April, A. D., 1885.

And your petitioners further say that their solicitor, the said John F. Harned, informed them that said proof was not necessary in order to set aside said sale or prevent its confirmation by this honorable court. And your petitioners charge the truth to be that said Harned gave such advice for the sole and exclusive purpose of securing the confirmation of said sale in the interest of the purchaser, Edward Dudley, in pursuance of agree- 20 ments existing, as your petitioners believe, between their said solicitor and Edward Dudley.

Your petitioners therefore pray that a Rule to Show Cause why the said sale should not be set aside be granted, and that the Special Master be restrained from executing a deed to the purchaser, Edward Dudley; that the purchasers, their servants and agents, may be restrained from entering upon or taking possession of any part of the premises struck off to him, and from exercising any act of ownership over the same; that the 30 sale may be set aside as fraudulent and void, and that the advertisement by posters was irregular and illegal; that any or every deed made under color of said sale before the service of the injunction may be delivered up to be cancelled, and the purchasers or purchaser to whom such deeds or deed have been delivered may be decreed to release their interest in the prem-

ises acquired under the sale with covenants of warrants against their own acts, and that your petitioners may have such other and further relief as the circumstances of the case may require.

And your petitioners may ever pray, &c.

LEMUEL J. POTTS AND
JOHN W. WARTMAN,

Solicitors and of Counsel with Petitioners.

State of New Jersey, }
Camden County, } ss

Levi O. Rudderow, of full age, being duly sworn according to law, on his oath deposeth and saith: That he is one of the petitioners named in the foregoing petition; that he is one of the next of kin and interested in the premises referred to in the above petition, and desires to see said property bring a fair price; that he has heard the above petition read, and knows the contents thereof, and that the petition, so far as relates to his own
10 acts and doings, are true, and so far as relates to the acts and doings of others he believes them to be true; and especially is it true that the said advertising posters of the sale of said properties to be set up in the county two months at least before the day of said sale, was not up two months; that said posters were received by him on the fourteenth day of April, A. D. eighteen hundred and eighty-five; that he was not informed by any one or by any means whatever when said posters should be set up; that deponent did not set up any of said posters until Friday, the seventeenth day of April, A. D. eighteen hundred and
20 eighty-five, four days too late under the law, on which day he set up two of said posters on the premises to be sold, consisting of seventy-six acres of land; that deponent on the same day, Friday, gave the balance of the five posters, three, to Walter Rudderow, a nephew, directing the places at which said posters should be set up. And deponent further says that it is true that John Harned, Esq., urged him to swear to the affidavit containing the false date of setting up said posters, and that deponent refused to do so; that thereupon the said John F.

Harned declared that the deponent must sign said affidavit ; that there was one hundred dollars in it for him if he had said sale confirmed ; and that deponent still refusing, said Harned assured deponent that he would receive more from Dudley by having the sale confirmed than his proportion of the advance on a re-sale would amount to. And that deponent believes that John F. Harned fraudulently conspired with the said Edward Dudley to defeat the interests of your petitioners by a sale of the property at a grossly inadequate price, and by falsely attempting to have said sale confirmed. And your petitioner, the deponent, further says that he is willing to give forty-five dollars per acre as a first bid for said land ; and that he will give and secure to this Court the said sum per acre as this Court may direct for said first bid ; and that there are other persons anxious and ready to purchase said land at a price much in advance of the forty-five dollars offered as a first bid by this deponent. 10

Sworn and subscribed before
me, this 23d day of July, } LEVI O. RUDDEROW. 20
A. D. 1885. }

F. T. BOARDMAN.

State of New Jersey, }
Camden County, } ss.

Walter Rudderow, of full age, being duly sworn according to law, upon his oath, says that he has heard the above petition read, and that he knows the contents thereof. That the facts, as far as they relate to his own acts and doings, are true, and that as far as relates to the acts and doings of others, he believes them to be true. And especially is it true that the said three posters were given to this deponent on Friday, the seventeenth day of April, A. D., 1875, by his uncle, Levi O. Rudderow, with directions as to where said posters should be set up, and that this deponent set up the three notices given him, in the places designated by Levi O. Rudderow, on the evening 30

of the seventeenth day of April, and several days less than two months before the premises described in said posters were sold.

Sworn and subscribed before }
me, this 23d day of July, } WALTER RUDDEROW.
1885.

10 Merchantville. Personally ap- }
peared before me, the sub- }
20 scriber, Walter Rudderow, }
and made oath that the }
above petition is true and }
correct to the best of his }
knowledge and belief. }

E. L. SHINN, *Justice.*

20 *State of New Jersey,* } ss.
Camden County, }

Sinnickson Chew, of full age, being duly sworn according to law, upon his oath deposeth and saith that he is the editor and publisher of the "West Jersey Press; that in connection with said business he does job printing; that he received the order of John F. Harned for the printing the posters of the advertisement of the sale of the estate of Jerusha I. Rudderow, to take place on the thirteenth day of June, 1885, and that the copy hereto annexed is a true copy of the posters as printed by him; that the said posters were printed on the thirteenth
30 day of April, 1885.

Sworn and subscribed before }
me this 23d day of July, } SINNICKSON CHEW.
1885.

SAMUEL P. JONES,
M. C. C.

In Chancery of New Jersey.

Between

THOMAS S. RUDDEROW, *et al.*,

Complainants,

and

EDWARD DUDLEY, WILLIAM S. RUD-

DEROW, *et al.*,

Defendants.

On Petition, &c.

Rule to Show Cause,
and Injunction.

10

20

Upon reading the petition in the above cause, and the affidavits thereto annexed, and on motion of Lemuel J. Potts and John W. Wartman, counsel with petitioners, and for good cause shown to the satisfaction of the court.

It is, on this first day of August, A. D. eighteen hundred and eighty-five, ordered that the said Edward Dudley do show cause (why the deed made to him and order of confirmation, and the sale in said petition named, should not be set aside and a new sale ordered) on Tuesday, the eighteenth day of August, instant, at the State House in the city of Trenton, at which time and place, oral testimony shall be heard and the case determined thereon.

And it is further ordered, that the said Edward Dudley, in the meantime, and until the further order of this Court, be re-

strained from disposing of the premises, or any part thereof, or from in any wise encumbering the same.

And it is further ordered that a copy of this order, and the petition on which it is granted, be served on Edward Dudley within five days from the date of this order.

THEODORE RUNYON.

Respectfully advised.

10

JOHN T. BIRD,

V. C.

20 The cause coming on to be heard before Vice Chancellor Bird, on the first day of September, A. D. 1885. Petitioners' counsel read the petition and the affidavits of Levi O. Rudderow, Walter Rudderow and Sinnickson Chew to said petition annexed; petitioners' counsel then offered to produce the said Levi O. Rudderow, Walter Rudderow and Sinnickson Chew as witnesses (they then being present in court) and orally repeat the affidavits annexed to the bill, the Court then declared that unnecessary on part of petitioners, but suggested to the counsel of defendants that they might call them for cross-examination which they declined to do. The following is a copy from the notes of the vice-chancellor of the testimony taken before him and upon which, together with the affidavits annexed to the petition, the finding of the Court was had.

THOMAS S. RUDDEROW, et al.,

and

WILLIAM RUDDEROW, et al.

ON PETITION.

Examination of witnesses in open Court, in the above stated cause, before JOHN T. BIRD, Vice-Chancellor.

Laura Rudderow, having first being duly sworn according to law, upon her oath says: I reside at 606 South Seventh street, Camden, New Jersey, with Mr. Chapin. In April last I resided with my father. I know John F. Harned; he called at my father's house on Monday evening about a quarter of eight o'clock; I responded to the door bell; Mr. Harned told me he had some bills for my father; he did not leave them; he came next morning; father was not there that night; the next night I asked father if John Harned had been there; and he said he had; I asked him because when I told him that John Harned had been there, he said he ought to have left them. I went to the rink that night, and I never went any night but Saturday night except that once; and mother was washing that day.

And being cross-examined says: I heard father talk about putting up the notice; I heard him talk about putting up posters on Monday; I heard him say they should be put up on Monday.

And being again examined in chief says: I can't tell exactly what he said.

Sarah J. Rudderow, being duly sworn, on her oath says: I am the wife of Levi O. Rudderow; I lived in Camden April last; John F. Harned called at our house on a Monday evening; I knew Mr. Harned; I fix it as Monday evening because we had been washing, and we were folding clothes; Mr. Harned

left without leaving anything. He called about eight o'clock the next morning; he then left the posters; my husband was there; he left poster like the one now shown me. My husband was home all that day, Tuesday, the day he received the posters.

And being cross-examined says: I examined the posters when Mr. Harned left them; he gave them to my husband Levi; he laid them on the table; they had their talk about it at the door. I saw Mr. Harned at the door. I first saw the posters when Mr. Rudderow brought them in the room.

10

Whereupon the petitioner declares his case is rested.

Thereupon the following witnesses are produced for and on behalf of Edward Dudley.

John F. Harned, being duly sworn according to law, on his oath saith: I was the solicitor of the complainant in this cause; I put up five notices in the city of Camden. All that was wanting was put up; I put none up in the township; to do that I trusted to Levi Rudderow. I prepared an affidavit for him to sign in relation to him putting up the notices; shown a paper; he says, that is the affidavit I prepared; it states that Levi Rudderow set up the notice on the 13th day of April, and then I understood and believed that he had put up the notices on the 13th; I offered that affidavit to him to be sworn to; he objected on the ground that the property sold for too little, and that taking this affidavit would confirm the sale; he did not object because the affidavit did not state the time correctly; he stated to me that he had no doubt but that it was true, but that I wanted it to confirm the sale, and that he wouldn't sign it for that reason; I told him if true it was his duty to sign it, and if the property was improperly sold as to price the court would hear him on that subject. I told him to go to the neighborhood and learn the best advance he could obtain for the property, and he came back a day or two afterwards with one Brown, who offered five dollars an acre more for the land. I told him I did not think that was sufficient to

set aside the sale. But that he had better make the affidavit, and I would present the matter to the court. He again refused on the ground that the price was not sufficient. Two or three days afterwards I learned from his brother Thomas that there was some question as to when he put up the notices; I sent for Levi and asked him when he put them up, and he said he could not remember the date, but that it was three or four days after I gave them to him. This was the first time that it was suggested to me that the notices were not put up in time. I told him that if the statements were true the Court would not confirm the sale, and that I would submit the matter to the Court. I then in his presence tore the affidavit which I had prepared for him to sign, in half, just as it is here, and threw it in the paper basket. He was never again asked to sign that affidavit, or any other. Then, as his solicitor, I presented the matter to the Court; it was presented twice to the Court; but Mr. Stanger represented him at the second hearing. I never heard of the two witnesses presented here to-day. He said that Walter Rudderow saw him putting up the notices; I told him he was a material witness, but afterwards he said he had forgotten. I remember distinctly putting up the notices in Camden on the 13th of April, because I was here in Trenton arguing a cause on the 14th, and I am sure the notices were put up before that. Mr. Rudderow was often at my office; I really can't say that I went to his house on the 14th, before I came here to Trenton. I was often at his house; I am certain that he got his posters on the morning of the 13th. I never made any inducement to Levi Rudderow to sign that affidavit; I think that I have stated all that passed; except when Brown came and offered five dollars per acre more, and then I figured up what he would make by that, and told him that he would lose more by that, because of his complication of other matters, than he would gain by the advance in price. Mr. Brown was at the sale. I never entered into any arrangement with Mr. Dudley to have this sale confirmed, and never knew that he was going to bid until he bid. I never suggested to Levi O. Rudderow that the proof he suggest-

ed would not be needed, only in the case of Walter Rudderow, and as to that I said his testimony was not material. I did everything in my power to make this property bring a good price at the sale. I caused one hundred posters to be printed and posted in various places and in the neighborhood of the land, putting them up myself in conspicuous places, and wrote to a number of persons who I thought would bid. I urged upon the heirs-at-law, the tenants in common, the ones named in this petition, and others, to do all they could to prevent a sacrifice of the land. A week before the sale I hired a horse and carriage to go and see them, and to consider the best method of selling the land; I was at Levi's house, and it was agreed to sell the land as it was afterwards sold. At the sale I urged those present to bid, and requested the crier to go slowly and give them every opportunity. The sale was well attended; there were two bids; there were no objections to its being struck off. Mr. Worcester, our deputy sheriff, cried the sale.

And being cross-examined, says: The first posters I put up in the county were in the latter part of April; I am sure I put them up in the city on the 13th; I have a memorandum in my diary; I think there must be a mistake in it, for that entry was on the preceding Friday, the 10th of April; that memorandum was used by me on a former occasion in this cause, and I then said to the best of my recollection I put them up on that day. I am sure that I put them up the day previous to the argument of *Dunn vs. Dunn* in Trenton. I got these posters some time in the morning, and my recollection is that I put them all up in the morning. I gave him, Levi, two to put up on the premises; remember distinctly that I gave Levi S. Rudderow those two on the same day that I put up the notices in the city, and the day before I argued *Dunn vs. Dunn* in Trenton; I handed them to him at his own house; it was all done at the time I put up the notices in the city; all done at once, and it was done in the morning. I don't remember that I was at his house in the evening of Saturday; I was there afterwards. I don't remember that his daughter answered the door bell. I gave the notices to

him and in the morning, and when I left the notices the second time my recollection is that I gave them to him. Miss Rudderow responded at the door some times when I called. I might have left notices there on a Tuesday morning as well as Monday; quite possible that I left them on both occasions.

The charge in the petition that I said that there was a hundred dollars in it for me if he would sign the affidavit, is absolutely false.

Charles J. Woosten, a witness produced on behalf of Edward Dudley, being duly sworn according to law, on his oath saith: I am in and about the Sheriff's office in Camden, and have to do a good deal with the Sheriff's business. I remember this sale; the attendance was one of the largest we ever had. There were two bids; one twenty-five dollars and the second thirty. I took care to effect a good sale; it was only stated that the property was worth more than the bid; I heard a conversation between Mr. Bergen and Mr. Dudley about the property, and it was open and public. Mr. Dudley suggested that they buy it together, and Mr. Bergen said he was not prepared. The property was a long time dwelt upon. 10

Edward Dudley, a witness produced on his own behalf, being duly sworn according to law, on his oath saith: I never had any conversation with John F. Harned about this property, or the sale of it until after the sale. I did not know it was for sale until I got there that day. Amos Rudderow bid twenty-five dollars, and then Mr. Bergen said to me, you are foolish not to buy it, and then he asked Isaac and John Rudderow why they didn't buy it, and they said they didn't want it. I then bid thirty dollars an acre, and it was struck down to me. I never offered Mr. Harned anything in any way; I have had conversations with him about confirming the sale. 30

In Chancery of New Jersey.

Between

Thomas Rudderow, Barzillai A.
 Rudderow, Lemuel H. Rudderow,
 Levi O. Rudderow, Sarah A.
 Rudderow, Mary A. Groves, An-
 nie Rudderow, Allen Rudderow,
 Benjamin Rudderow, Mary Ann
 Epley, Nancy Rowan, Sarah
 Watson and Benjamin R. Epley,
Complainants,

10

and

Edward Dudley, and others,

Defendants.

On Bill for Partition.

Order Dismissing
 Order to Show
 Cause, &c.

The Order to Show Cause why the deed made to Edward
 Dudley and the order of confirmation of the sale to him should
 20 not be set aside and a new sale ordered in the above stated
 cause coming on to be heard at Trenton before the Chancellor,
 on the first day of September, eighteen hundred and eighty-
 five, in the presence of Potts and Wartman, counsel of peti-
 tioners, and David J. Pancoast, counsel of defendant, Edward
 Dudley, and the parties having been fully heard by their wit-
 nesses and counsel, and the Chancellor being of the opinion

that the petitioners are not entitled to the relief prayed for in their said petition, it is hereby ordered, adjudged and decreed that the Order to Show Cause be and the same is hereby discharged, with costs to the said defendant, Edward Dudley.

THEODORE RUNYON, C.

Respectfully advised.

JOHN T. BIRD, V. C.

On Petition, &c.
Notice of Appeal.

Complainants,

and

EDWARD DUDLEY,

Defendant.

The complainants hereby appeal from so much of the final decree made in this case in the above stated cause as adjudges that the petitioners are not entitled to the relief prayed for in their petition, and that the Order to Show Cause be discharged with costs to defendant.

To the Court of Appeals in the last term in all cases of law.
LESLIE J. FORTS and
JOHN W. WARTMAN,
Attorneys for the Complainants.
We conceive there is good cause for appeal in the above stated cause.
LESLIE J. FORTS and
JOHN W. WARTMAN,
Attorneys for the Defendant.

In Chancery of New Jersey.

Between

THOMAS S. RUDDEROW, *et al.*,

Complainants,

and

EDWARD DUDLEY,

Defendant.

On Petition, &c.

Notice of Appeal.

10

The complainants hereby appeal from so much of the final decree made in this Court in the above stated cause as adjudges that the petitioners are not entitled to the relief prayed for in their petition, and that the Order to Show Cause be discharged with costs to defendant.

To the Court of Appeals in the last resort in all causes of law.

20

LEMUEL J. POTTS and
JOHN W. WARTMAN,

Solicitor for and of Counsel with Complainants.

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

LEMUEL J. POTTS and
JOHN W. WARTMAN,

Of Counsel with Petitioners.

In Chancery of New Jersey.

Between

Thomas S. Rudderow, Barzillai A.
 Rudderow, Lemuel H. Rudderow,
 Levi O. Rudderow, Sarah A.
 Rudderow, Mary A. Groves, Annie
 Rudderow, Allen Rudderow,
 Benjamin Rudderow, Mary Anna
 Epley, Nancy Rowan, Sarah Ella
 Watson, Benjamin R. Epley, *et*
al.,
Petitioners,
 and
 Edward Dudley,
Defndt.

On Petition, &c.

Petition of Appeal

to the

Court of Appeals.

10

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

The humble petition of Thomas S. Rudderow, Barzillai A. 20
 Rudderow, Lemuel H. Rudderow, Levi O. Rudderow, Sarah A.
 Rudderow, Mary A. Groves, Anna Rudderow, Allen Rudderow,
 Benjamin Rudderow, Mary Ann Epley, Nancy Rowan,
 Sarah Ella Watson, Benjamin R. Epley, Jerusha Matilda Wilden
 and Eunice F. Foy, the appellants in the above stated
 cause, respectfully show that your petitioners find themselves

aggrieved by a final decree or order made in the Court of Chancery, by his honor Theodore Runyon, Chancellor of New Jersey, bearing date the first day of September, in the year A. D. eighteen hundred and eighty-five, wherein the said appellants were petitioners and the said Edward Dudley was defendant, in this respect, to-wit: That the said decree adjudges that the petitioners are not entitled to the relief prayed for in their said petition, and the order to show cause be and the same is hereby discharged with costs to the said defendant,
 10 Edward Dudley.

And your petitioners, humbly appeal from that part of the decree of the Chancellor, which decrees, as aforesaid, upon the ground that the same is erroneous, for that the decree discharging the petition with costs was not justified by the testimony or proofs, on the contrary it was opposed to the facts; further that the proof of setting up posters or the poster in the township where the property was located for less than two months was absolutely uncontradicted; further, that the said Rule to Show Cause should have been made absolute, and the sale
 20 set aside as illegal for want of advertisement, according to law; further, that the proofs establish the facts that the notice by poster in the township was up less than two months.

Your petitioners therefore pray that the said decree of the Chancellor may be in the particulars aforesaid, reversed, set aside and for nothing holden, and that your petitioners may have such relief in the premises, as to this honorable court shall seem meet.

LEMUEL J. POTTS AND
 JOHN W. WARTMAN,

30 *Solicitors for and of Counsel with Appellants.*

Court of Errors and Appeals.

Between

THOMAS S. RUDDEROW, *et als.*,

Appellants,

AND

EDWARD DUDLEY,

Respondent.

On Petition, &c.

Answer to Petition of
Appeal.

The answer of the above-named respondent to the petition of 10
appeal of the above-named appellants:

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 or order was on the first day of September last past made and entered in the Court of Chancery in the cause for that purpose mentioned in the said petition, as is therein stated; but as to the substance and form thereof this respondent prays to refer thereto when the same shall be produced.

And this respondent is advised and believes that the said decree or order is agreeable to equity, and he prays that the same may be affirmed with costs to be adjudged to this respondent.

20

DAVID J. PANCOAST,
Sol. and Counsel of Respondent.

Court of Errors and Appeals

On Petition, &c.
Answer to Petition of
Appel.

Appellants

and

Edward Deary,

Respondent.

The answer of the above-named respondent to the petition of to
appel of the above-named appellants; and in answer to the
This respondent, not acknowledging all or any of the mat-
ters which in the said petition of appellants are contained to be
true, for answer thereto respectively, save and admitting a
debt or debt due on the part of the respondent last past made
and stated in the Court of Chancery in the cause for that par-
tice mentioned in the said petition, as is therein stated; but as
to the substance and form thereof the respondent prays to refer
thereto when the same shall be produced.
And this respondent is advised and believes that the said de-
bit or debt is agreeable to equity, and he prays that the same
may be allowed with costs to be adjudged to this respondent.

DAVID J. PANKOAST,
Solicitor and Counsel of Respondent.

New Jersey Court of Errors and Appeals.

IN THE LAST RESORT IN ALL CAUSES AS
HERETOFORE.

THOMAS S. RUDDEROW, and

others,

Appellants,

and

EDWARD DUDLEY, WILLIAM S.

RUDDEROW and others,

Respondents.

ON APPEAL.

10

To the honorable the Judges of the Court of Errors and Appeals of the State of New Jersey in the last resort in all causes as heretofore :

The humble petition of Edward Dudley, one of the respondents in the above stated cause, respectfully showeth : 20

That in the above cause a bill of complaint was filed in the Court of Chancery for the partition or sale of a house and lot of land in the city of Camden, and a lot of about seventy-six acres of land in the township of Delaware, in the county of Camden, owned by the complainants and defendants (not including your petitioner) about sixty-six in number, in unequal

shares as tenants in common ; that the said cause was so proceeded upon in said Court of Chancery, that said Court, by its decree made on the ninth day of April, eighteen hundred and eighty-five, ordered and decreed the said premises in said bill of complaint described to be sold at public sale under the direction of Marmaduke B. Taylor, Esquire, one of the Special Masters of said Court ; that the said Master advertised the said premises for sale at public vendue, according to the provisions of the statute, at the Court House, in the city of Camden, on
10 the thirteenth day of June, eighteen hundred and eighty-five ; that at the time and place so advertised the said premises were sold at public vendue by said Master, the house and lot of land in the city of Camden to one John J. Logan, and the tract of land in the township of Delaware, after being started at a bid of twenty-five dollars per acre, was struck off to your petitioner at the price of thirty dollars per acre, amounting to the sum of two thousand two hundred and eighty dollars ; that the said Master reported the said sale of said premises to the said Court of Chancery, by his report in writing, bearing date the fifteenth
20 day of June, eighteen hundred and eighty-five ; that a copy of said Master's report, and copies of the affidavits of the advertisements of said sale accompanying said report are hereto annexed ; that on the twenty-third day of June, eighteen hundred and eighty-five, the sale to said John J. Logan of the house and lot in the city of Camden was confirmed by said Court, for which a deed was made and delivered by said Master ; that objection was made before said Court to the confirmation of the sale of said Master to your petitioner ; that on the sixth day of July, eighteen hundred
30 and eighty-five, the Court of Chancery made an order that all parties in interest do show cause before said Court, on the twenty-first day of July then instant, why the said sale should not be confirmed ; that a copy of the said order to show cause is hereto annexed ; that said order to show cause came on to be heard on the said twenty-first day of July, eighteen hundred and eighty-five, before the Honorable John T. Bird, Vice

Chancellor, in the presence of the complainants, or some of them, and their counsel John F. Harned, Esquire, and Howard J. Stanger, Esquire, and of your petitioner and his counsel, David J. Pancoast, Esquire; that at the hearing of the said rule to show cause, Levi O. Rudderow, one of the complainants and appellants; John F. Harned, the complainant's solicitor, and Edward Burrough were examined orally and gave testimony before said Vice Chancellor, and the affidavits annexed to the Master's report, and the affidavits of Edward Burrough, copies of which are hereto annexed, were read and used before said Vice Chancellor; that upon the hearing of said testimony and reading said affidavits, and due consideration thereof, the said Vice Chancellor respectfully advised a decree or order that the sale by the said Master should be confirmed, and that the said Master should execute and deliver to your petitioner a deed or conveyance of the said premises according to law; that a copy of said order of said Court, dated the twenty-first day of July, eighteen hundred and eighty-five, is hereto annexed; that in pursuance of the said decree or order of said Court of Chancery, the said Master, on the twenty-third day of July, eighteen hundred and eighty-five, made, executed and delivered to your petitioner his deed or conveyance of the said premises, bearing date the day and year last aforesaid, upon your petitioner paying to the said Master the residue or the whole of the said purchase money of two thousand two hundred and eighty dollars, and that the said deed was immediately recorded by your petitioner in the office of the Register of Deeds of Camden county, in Book No. 118 of Deeds, page 585, &c., as by reference to said deed or the record thereof will appear; that afterwards, on the first day of August, eighteen hundred and eighty-five, upon the filing of a petition in said cause by the appellants, a copy of which, with the affidavits thereto annexed, was printed in the appellant's state of the case or printed book, charging fraudulent actions to prevent competition at said sale between your petitioner and John F. Harned, the solicitor of the complainants in said cause, an order to show cause was granted by said Court

of Chancery, on the advice of the Honorable John T. Bird, Vice Chancellor, requiring your petitioner to show cause why the deed made to him, and the order of confirmation and sale in said petition named, should not be set aside and a new sale ordered on the eighteenth day of August then instant, when oral testimony should be heard, a copy of which rule is printed in the appellant's state of the case or printed book; that the hearing of the said rule to show cause was continued on the said eighteenth day of August and was heard on the first day of
10 September, eighteen hundred and eighty-five, before his Honor Vice Chancellor Bird, in the presence of the complainants, or some of them, and their counsel, John W. Wartman, Esquire, and your petitioner and his counsel, David J. Pancoast, Esquire; that at said hearing of said rule the Vice Chancellor stated that he considered all questions as to the due advertising of the sale as settled and already adjudicated; that he had allowed the said rule to show cause only on the ground that in the petition presented to him, fraudulent conduct was charged
20 against the solicitor of the complainant and your petitioner, and that he would only hear the matter on the charges of fraud set forth in the petition. At the hearing the complainants examined Laura and Sarah J. Rudderow, and John F. Harned, Charles I. Wooster and your petitioner were examined on his behalf, and after hearing the testimony the Vice Chancellor stated that the petitioners and complainants had utterly failed to support their charges of fraudulent action, and that he would advise an order discharging the rule to show cause, with costs to your petitioner; a copy of said order is printed in the appellant's state of
30 the case or printed book; that afterwards and on the sixth day of October, eighteen hundred and eighty-five, the Court of Chancery made an order or decree of distribution in said cause, thereby directing the said Master, after appropriating parts of the moneys received by him from the sale of the said premises to the payment or satisfaction of certain mortgage incumbrances thereon, to pay out the residue of said moneys the

taxed costs of said suit, to retain his fees and commissions allowed by law and the rules of the Court, and to distribute the remainder of said moneys among the defendants and complainants in said cause, according to their respective shares or interests therein, a copy of which said decree or order of distribution is hereto annexed; that the said Master, pursuant to the said order or decree of distribution, paid to the said appellants, Thomas Rudderow, Barzilla A. Rudderow, Lemuel H. Rudderow, Sarah A. Rudderow, Levi O. Rudderow, and Mary A. Groves, each one twenty-fourth of said proceeds; of the remainder of said proceeds of said sale of said premises, to Mary A. Epley, Nancy J. Rowand, Sarah Watson, and Benjamin R. Epley, each one ninety-sixth of said proceeds, and to Annie Rudderow, Allen Rudderow, and Benjamin Rudderow, each one seventy-second of said proceeds, and to all the other tenants in common parties to said suit for partition, except Elizabeth Pike and Hannah A. Stevenson, who died shortly after making said order, and certain minors, their several and respective shares of the proceeds of the said sale, after paying said mortgage, taxed costs, commissions, etc., as aforesaid.

And your petitioner further shows, that sometime after the order or decree made in the Court of Chancery on the first day of September, eighteen hundred and eighty-five, and above set forth, and on or about the eighth day of September in said year, the said appellants filed their notice of appeal from the said order, discharging said rule or order to show cause to this honorable Court, and afterwards their petition of appeal or printed book by the appellants they omitted, or failed to show in any way, that the said Court of Chancery had examined into and adjudicated upon the sufficiency of the advertisements of the said sale by the said Master, and had fully confirmed said sale, and directed said Master to deliver the deed or conveyance of said land to your petitioner, and that the said deed had been delivered by the said Master, (and the said moneys paid by your petitioner) under the order or de-

cree of the Court of Chancery, to your petitioner ; they omitted and failed to show the statements by the Vice Chancellor of the terms and grounds upon which said rule to show cause was granted and heard announced by him at the hearing as aforesaid, but inserted in said state of the case statements, (no parts of the record) different from the statements made by said Vice Chancellor. The order confirming the sale, made on twenty-first day of July, 1885, was never in any way appealed from. They omitted and failed to show in said state of

10 the case the order confirming said sale, the opinion or reasons in writing the Vice Chancellor gave for discharging said rule to show cause, (a copy of which opinion or reasons is hereto annexed) ; that the said appeal was heard by this Court, at the last November term thereof ; that this Court, on the first day of May, instant, announced its decision reversing the order or decree of the Court of Chancery discharging said rule to show cause, made on the first day of September, eighteen hundred and eighty-five ; that your petitioner is aggrieved by said decision or decree of this Court, and believes that if the

20 said printed case of said appellants had stated all the orders, proofs and proceedings in said cause, from the time of the sale by the said Master until the rule or order discharging said rule or order to show cause, appealed from, and the taking of said appeal, and said Vice Chancellor's opinion or reasons for making or advising said order or decree, discharging said rule to show cause appealed from, and a true statement of the grounds upon which the said rule to show cause was granted and heard by the Vice Chancellor as above stated, instead of the statement, (no part of the record,) contained in said state

30 of the case, that such decision or decree would not have been made by this Court.

Your petitioner therefore prays your Honors that you will be pleased to grant to your petitioner a re-hearing of the said cause upon the whole record, proofs, orders and decrees of the Court of Chancery, and the Vice Chancellor's opinion or reasons for advising said order or decree appealed from being

produced before this Honorable Court, and your petitioner, as in duty bound, will ever pray.

EDWARD DUDLEY.

P. L. VOORHEES,

Of Counsel with Ed. Dudley, Petitioner.

We have read the above petition and conceive there is good cause therein shown for a re-hearing.

PETER L. VOORHEES,

PETER V. VOORHEES.

10

Of Counsel with Petitioner.

New Jersey, ss.

EDWARD DUDLEY, of full age, being duly sworn, on his oath saith:

That he is the petitioner named in the above petition; that the matters and things therein set forth, so far as they relate to his own acts and deeds are true, and as far as they relate to the acts and deeds of others he believes them to be true.

20

EDWARD DUDLEY.

Sworn and subscribed this 12th day of May, A. D. 1886, before me.

GEORGE REYNOLDS,

M. C. C.

State of New Jersey, } ss.
Camden County. }

MARMADUKE B. TAYLOR, being duly sworn according to law, 30 on his oath says: that he has read the above petition, and that the same, so far as it relates to his own acts and deeds, is true, and so far as the same relate to the acts and deeds of others he believes it to be true; that after the sale mentioned in said petition to the said Edward Dudley was confirmed, on or about the

21st day of July, 1885, he delivered to said Dudley the deed for the said premises mentioned, and received the sum of two thousand two hundred and eighty dollars, the full consideration for which the said premises were sold; that afterwards an order was made in the Court of Chancery, directing this deponent to distribute the proceeds of the sale of said premises, and that this deponent, in pursuance of such order, paid to the appellants, Thomas Rudderow, Barzilla A. Rudderow, Lemuel H. Rudderow, Sarah A. Rudderow, Levi D. Rudderow and
 10 Mary A. Groves, or their solicitor, each the sum of one hundred and twelve dollars and eighty-two and one-fifth cents, being the one twenty-fourth part of the proceeds of said sale and their full share and interest in the same; to the said Mary A. Epley, Nancy J. Rowland, Sarah Watson and Benjamin R. Epley, or their solicitor, each the sum of twenty-eight dollars and twenty and one-half cents, being the one ninety-sixth part of the proceeds of said sale, and their full share and interest in the same; to the said Annie Rudderow, Allen Rudderow and
 20 Benjamin Rudderow, or their solicitor, each the sum of thirty-seven dollars and sixty and one-half cents, being the one seventy-second part of said proceeds of said sale and their full share and interest in the same.

M. B. TAYLOR.

Sworn and subscribed at the county aforesaid, this 13th day of May, A. D. 1886, before me, a Master in Chancery of New Jersey.

GEORGE REYNOLDS,

M. C. C.

In the Court of Errors and Appeals.

Between	}	ON BILL FOR PARTITION.
THOMAS S. RUDDEROW, et al.,		
<i>Complainants,</i>		
and		
WILLIAM RUDDEROW, and others,	}	
<i>Defendants.</i>		

This bill was filed to partition a house and lot on Third street, in Camden, and seventy-six acres of land in Delaware township—all the property of Jerusha I. Rudderow, deceased.

Sale took place June 13th, 1885, at Court House, Camden. Marmaduke B. Taylor, Special Master, John F. Harned, Solicitor.

Charles I. Wooster cried the sale.

The seventy-six acres in Delaware township were first offered for sale. The Sheriff's office full of the numerous heirs of the estate.

Amos Rudderow bid \$25 an acre.

Edward Dudley bid \$30 an acre and the property was struck off to him. The house and lot No. 3 was then put up. John J. Logan purchased same, the heirs also bidding on this.

Marmaduke B. Taylor, the Special Master, reported Sale to the Court, dated June 15, 1885. The report encloses the following affidavits :

State of New Jersey, }
County of Camden, } ss.

10 WILLIAM H. MOSES, of lawful age, being duly sworn according to law, doth depose and say, that he is the bookkeeper in the office of the *West Jersey Press*, a newspaper printed and published in the city of Camden, in said county and State, on Wednesday of each week, and that the notice of which the above is a true copy has been published in said newspaper for the period of five weeks successively, commencing on the 13th day of May, 1885, once in each week.

WM. H. MOSES.

Subscribed and sworn at the county aforesaid, before me, one of the Masters in Chancery in said State, this 15th day of June, 1885.

F. F. HOGATE,

M. C. C.

20

[Copy of advertisement annexed.]

In Chancery of New Jersey.

Between

THOMAS S. RUDDEROW, *et al.*,

Complainants,

and

WILLIAM S. RUDDEROW, *et al.*,

Defendants.

ON BILL FOR
PARTITION.
PROOF OF PUTTING
UP NOTICES OF
SALE.

10

State of New Jersey, }
County of Camden, } ss.

JOHN F. HARNED, of full age, being duly sworn, according to law, says: That on the eleventh day of April, A. D., eighteen hundred and eighty-five, he set up at five or more public places in the County of Camden and State of New Jersey, an advertisement of the sale in the above stated cause, of which the annexed is a true copy, to wit: One on the premises, No. 23 North Third street, Camden, in the First Ward of said city; another in the Register of Deeds' Office of said county of Camden; another in the County Clerk's Office of said county; another in the Sheriff's Office of said county, and another in the office of the *West Jersey Press*, in said county, one whereof was put up in the First Ward of the city of Camden, where the real estate thirdly described is situated.

JOHN F. HARNED.

Sworn and subscribed this 20th day of June, 1885, before me.

HOWARD J. STANGER.

M. C. C.

[Copy of advertisement annexed.]

State of New Jersey, }
County of Camden, } ss.

JOSEPH M. ENGARD, of lawful age, being duly sworn according to law, doth depose and say, that he is business manager
10 of the *Camden Daily Post*, a newspaper printed and published in the city of Camden, in said county and State, daily, and that the notice, of which the above is a true copy, has been published in said newspaper successively for the period of five weeks, commencing on the ninth day of May, 1885, once a week.

JOS. M. ENGARD.

Subscribed and sworn before me, Notary Public in said State, this 16th day of June, 1885.

T. F. BOARDMAN,

Notary.

20 [Copy of advertisement annexed.]

JOHN F. HARNED

In Chancery of New Jersey.

Between

THOMAS S. RUDDEROW, *et al.*,

Complainants,

and

WILLIAM S. RUDDEROW, *et al.*,

Defendants.

ON BILL FOR PAR-
TITION.

REPORT OF SALE.

10

In pursuance of a decree made by the Chancellor in the above cause, bearing date on the ninth day of April, A. D., eighteen hundred and eighty-five, by which it was, among other things, ordered, adjudged and decreed, that all and singular the premises in the bill of complaint mentioned and described, with the appurtenances, be sold at public vendue to the highest bidder, in the presence and under the direction of the subscriber, one of the Special Masters of this Court, and that said Master should give public notice of the time and place of such sale, and in all respects conduct the same according to the provisions of the statute in such case provided, and that after such sale he should make a report thereof to this Court, I, Marmaduke B. Taylor, Master as aforesaid, do hereby report to his Honor, Theodore Runyon, the Chancellor, that I did, by public advertisements, signed by myself, and set up at five or more public places in the county of Camden, one whereof was in the township of Dela- 20

ware, and another in the First Ward of the City of Camden, where said real estate is situate, at least two months next before the time appointed for selling the same, and also published in the *West Jersey Press* and the *Camden Post*, two newspapers printed and published in the county of Camden, in which said real estate is situated, at least four weeks successively, once a week, next preceding the time appointed for said sale, give public notice that the said land and premises would be exposed to sale at public vendue, on Saturday, the
 10 thirteenth day of June, eighteen hundred and eighty-five, at two o'clock in the afternoon, at the Court House, in the city of Camden, and at the time and place so appointed and advertised, did publicly expose said land and premises to sale at public vendue, to the highest bidder, and Edward Dudley then and there bidding for the first and second described tracts the sum of thirty dollars per acre (said two tracts containing seventy-six acres), and no one bidding so much or more for the same, the said first and second tracts were struck off and sold to said Edward Dudley at the price aforesaid,
 20 amounting to two thousand two hundred and eighty dollars; and John J. Logan then and there bidding for the third described tract the sum of twenty-three hundred and fifty dollars, and no one bidding so much or more for the same, the said third described tract was struck off and sold to said John J. Logan for the price last aforesaid.

Respectfully submitted this fifteenth day of June, A. D. eighteen hundred and eighty-five.

M. B. TAYLOR,
Special Master.

30 The sale to John J. Logan was confirmed by Court June 23, 1885, and deed executed, &c.

July 6, 1885, order made by the Court to show cause July 21, why sale of land to Edward Dudley should not be confirmed.

In Chancery of New Jersey.

THOMAS S. RUDDEROW, *et al.*,

Complainants,

and

WILLIAM S. RUDDEROW, *et al.*,

Defendants.

ON BILL, &c.

RULE TO SHOW

CAUSE.

10

This matter coming on to be heard upon motion of the purchaser of the land and premises described in said bill, for the information of said sale ;

It is, on this sixth day of July, A. D. eighteen hundred and eighty-five, on motion of the solicitor of the complainants, ordered, that all parties in interest show cause before this Court on Tuesday, the twenty-first day of July, instant, why said sale should not be confirmed.

20

THEODORE RUNYON, C.

Respectfully advised,

JOHN T. BIRD, V. C.

In Chancery of New Jersey.

<p>Between</p> <p>THOMAS S. RUDDEROW, <i>et al.</i>,</p> <p style="text-align: right;"><i>Appellants.</i></p> <p style="text-align: center;">and</p> <p>EDWARD DUDLEY, <i>and others</i>,</p> <p>10 <i>Respondents.</i></p>	}	<p>ON BILL, &C.</p> <p>RULE TO SHOW CAUSE.</p>
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I, John T. Bird, Vice Chancellor, do hereby certify that at the hearing of the rule to show cause before me on the twenty-first day of July, in the year eighteen hundred and eighty-five, in the presence of David J. Pancoast, solicitor for Edward Dudley, and Howard J. Stanger, solicitor of the appellants. John F. Harned, the solicitor in the original case in partition, and Levi O. Rudderow, the party interested to have the sale set aside, were produced and sworn by the appellants before me
 20 in person and thoroughly examined, and the two affidavits of Edward Burrough were read to the Court on behalf of Edward Dudley, and then the respondents offered to put Edward Burroughs, who was in the Court, on the stand for cross-examination, but the appellants declined to ask him any questions. The testimony was not taken down by me, nor was there any request to have the testimony preserved.

From the testimony produced at this hearing it was fully proved to my entire satisfaction that the property in question had been properly and legally advertised by giving notice by public advertisements, and set up at five or more public places in the county, one whereof was on the property in question, at least two months next before the time so appointed for the sale, and likewise was published in two of the newspapers printed and published nearest to the place in the county in which the lands are situate, at least four weeks successively, once a week next preceding the time appointed for selling the same, and at the 10 time and place so appointed between the hours of twelve and five in the afternoon the Special Master, Marmaduke B. Taylor, sold the same to Edward Dudley, he being the highest bidder for the same, and therefore I confirmed the sale.

Respectfully,

JOHN T. BIRD,
V. C.

State of New Jersey. } ss.
Camden County. }

20

EDWARD BURROUGH, being conscientiously scrupulous of taking an oath, on his solemn affirmation says: That he resides in the township of Delaware, county of Camden, and State of New Jersey, on the farm within view of the timber and brush land described in the annexed advertisement; that, on or before the thirteenth day of April, in the year eighteen hundred and eighty-five, on his way from Haddonfield to his own home, driving past the property in question he stopped and read a large bill or poster tacked up on a board fastened on a tree fronting on the public road, of which the annexed is a true 30 copy, which tree was situate on the premises described in said bill or poster, which is situate in the township of Delaware, in the county of Camden and State aforesaid; that he has the same notice or bill of sale on a post of the fence at the other side of said described premises, also on the public road, parts of which said notices are still on said post and tree aforesaid.

That one Levi Rudderow, one of the complainants in the said suit of partition, by virtue of which this sale was advertised, and who is said to have put the said posters up on the said premises, admitted to this affirmant within the last few days, and since the thirteenth day of June, when the sale took place, that there was no doubt about the posters having been put up in time; that this affirmant has no interest whatever in the said sale, or in any of the heirs or parties interested therein; that he was present, with many others owning property adjoining the said described premises, at said sale, and saw and heard the same struck off to one Edward Dudley.

E. BURROUGH.

Affirmed and subscribed this twenty-second day of June, A. D. 1885, before me.

ISRAEL ROBERTS,
M. C. C.

[Copy of advertisement annexed.]

20 *State of New Jersey,* } ss.
Camden County. }

EDWARD BURROUGH, being conscientiously scrupulous of taking an oath, on his solemn affirmation says, that he resides in the township of Delaware, county of Camden and State of New Jersey, within a short distance of the land described in the annexed advertisement; that on either the eleventh or thirteenth day of April, in the year eighteen hundred and eighty-five, on his way from Haddonfield he drove past the property in question and stopped and read a large bill or poster tacked up on a board fastened on a tree fronting on the public road, of which the annexed is a true copy, which tree is situate on the premises described in said bill or poster, which is situate in the township of Delaware, in the county of Camden, and State aforesaid, and that he is able to state this particularly and emphatically because on the eleventh and the

thirteenth of April he drove to Haddonfield for his sister, and it was on one of these trips he saw and read the poster as stated.

E. BURROUGH.

Affirmed and subscribed this 7th day of July, A. D. 1885, before me.

ISRAEL ROBERTS,
M. C. C.

[Copy of advertisement annexed.]

The matter of the order to show cause before this Court on Tuesday, the twenty-first day of July, eighteen hundred and eighty-five, when the State's side is Edward Dabney should not be continued, coming on to be heard in the presence of David J. Lanes, solicitor of the purchaser, and Howard J. Stanger, solicitor of the complainant, and the Court having fully heard and considered the matter of the said sale, and in being of the opinion that the same was duly advised and made according to law, the same is hereby confirmed and the Special Master is hereby ordered and directed to execute and deliver to the said Edward Dabney a deed of conveyance of the same according to law, and the said order to show cause is hereby discharged.

THORPHE KUYON, C.

Respectfully advised.

John T. Bird, V. C.

In Chancery of New Jersey.

Between THOMAS S. RUDDEROW <i>and others</i> , <div style="text-align: right;"><i>Complainants</i>,</div> and WILLIAM S. RUDDEROW <i>and others</i> , <div style="text-align: right;"><i>Defendants</i>,</div>	}	ON BILL, &c. ORDER TO SHOW CAUSE, &c. ORDER.
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10

The matter of the order to show cause before this Court on Tuesday, the twenty-first day of July, eighteen hundred and eighty-five, why the Master's sale to Edward Dudley should not be confirmed, coming on to be heard, in the presence of David J. Pancoast, solicitor of the purchaser, and Howard J. Stanger, solicitor of the complainants, and the Court having fully heard and considered the matter of the said sale, and
 20 being of the opinion that the same was duly advertised and made according to law, the same is hereby confirmed and the Special Master is hereby ordered and directed to execute and deliver to the said Edward Dudley a deed of conveyance of the same according to law, and the said order to show cause is hereby discharged.

THEODORE RUNYON, C.

Respectfully advised.

JOHN T. BIRD, V. C.

The deed was executed and delivered July 23, 1885, to Edward Dudley, dated July 23d, 1885.

The purchase money was paid same day to M. B. Taylor, Special Master.

The proceedings under the petition, and the rule to show cause, etc., appear in the front part of this book.

The following is a copy of Vice Chancellor's opinion upon the above hearing.

RUDDEROW
vs.
 10 RUDDEROW, *et als.*

On motion to set aside confirmation of sale.

Mr. J. W. Wartman, for the motion.

Mr. D. J. Pancoast, *contra.*

Bird, V. C. : I cannot entertain this motion, on this petition, because, after every opportunity to be heard, the case was decided against the petitioner, there being nothing new presented to prompt the court to action, except the question of fraud upon the part of the counsel of the petitioner. Indeed, the
 20 order to show cause was only allowed, upon the ground that a grave charge was made against an honorable member of the bar, which, by intimation, might possibly extend to the purchaser. The court could not hesitate to inquire into the merits of such charges.

But I refused to proceed upon any other ground and told counsel who presented the petition that I had given all parties the fullest chance and must regard the question as settled, so far as this court was concerned. Such opportunity to be heard is shown by the facts, as they appear by the papers now constituting the records of the court in this cause. The order confirm-
 30 ing the sale of the other portion of the premises was made in June, and I refused to advise an order confirming the sale of this portion, because it was intimated that there was some doubt whether or not the notices of sale had been posted long enough. I ordered the case to stand over. July 6th I was again asked to advise a confirmation of the report of sale, but not feeling satis-

fied that the doubt had been removed, I advised an order to show cause why the sale should not be confirmed. The question came on to be heard under this order July 21st.

July 21st every person had the fullest opportunity to be heard. Counsel appeared and evidence was offered. After this long delay, and the production of all the proofs that seemed possible, and after the argument of counsel, I thought the notices had been posted according to law and advised a confirmation of the sale.

On the evening of the same day that I so advised, but 10 several hours afterwards, I received, through the mail, a letter from Mr. John W. Wartman, saying that he wanted to be heard in opposition to the confirmation of sale. The order having been advised, I could do nothing until the other side had notice.

On Saturday of the same week Mr. Wartman presented the petition now under consideration and wanted the case heard anew on that petition—in effect a rehearing of the case. It appeared at that time that Mr. Wartman was fully apprised of the former hearing, on July 21st, and that he had ample time to be present and make his case, but did not appear because some other ordinary professional business detained him. 20 It was ordinary, but the precise nature of which was not disclosed. It was most evident that if the progress of a cause could be impeded by such excuses, the determination of every cause would depend entirely upon the will of the adversary. When this fact appeared I promptly refused to entertain any motion on the subject of rehearing, except as it might hinge upon the important matter of corruption stated in the affidavits.

This charge of corruption and infamy was not presented as any special ground for opening the case; but being disclosed 30 to the court, it was at once decided to hear the case on that charge, and on that alone, with the determination to wipe out the infamy imputed, or to compel the surrender of the prize. The most solemn obligation to the State seemed to demand this of the court. Although I allowed the petition to be filed, and also the affidavits, disclosing other matter, I distinctly

stated that so far as I was concerned, the inquiry should be limited to one point.

And when the case came on to be heard an effort was made to introduce testimony upon the point formerly agitated respecting the notices, which I rejected upon the ground that that branch of the case had been acted upon by this court, saying that I would not open the case, and that if I was in error redress could be obtained by appeal. I also said that I would allow the largest latitude in the examination in order to detect
 10 the corruption, if it existed, which, plainly, might lead to statements of what was said and done respecting the notices.

And now I have heard the evidence from the mouths of the witnesses. As I was bound by a sense of duty to order the inquiry, I am glad for the sake of the bar and the bench, that I did. Honorable men, heretofore enjoying an unblemished reputation, are still as deserving of confidence as before. Suffice it to say, that there is not one particle of evidence to sustain the gross imputation. I will advise an order dismissing
 the order to show cause with costs.

20 It is proper to say that the counsel who presented the petition did not ask for anything, in the first instance, on account of the said charge against other counsel; and only did before me, afterwards, because he thought that enough testimony had been deduced to establish the insufficiency of the notice; but virtually admitting that the main matter of inquiry was unsupported. As above stated, I only admitted testimony on the question of corruption and considered nothing else. The sufficiency of the notice had been previously considered.

October 6, 1885, order of distribution made as follows:

In Chancery of New Jersey.

Between

THOMAS S. RUDDEROW *et al.*,
Complainants,

and

WILLIAM S. RUDDEROW, *et al.*,
Defendants.

ON BILL IN
PARTITION.
ORDER OF 10
DISTRIBUTION.

This cause being opened to the Court by John F. Harned, Esquire, solicitor of the complainants, and it appearing by a report heretofore made by Marmaduke B. Taylor, Esquire, one of the Special Masters of this Court, and now on file, that the gross proceeds of the sale of the real estate and premises in the bill of complaint mentioned, as made by said Master, amounts to the sum of four thousand six hundred and thirty-one dollars and fifty cents; and it further appearing by the report of the Receiver heretofore appointed in this cause, that he had remaining in his hands, after paying all expenses, the sum of twenty-eight dollars and ninety-six cents, which said sum has, by order of this Court heretofore made, been paid to said Master for distribution, making the gross sum of money received by said Master from all sources the sum of four thousand six hundred and sixty dollars and forty-six cents; and it further appearing that said Master, in pursuance of an order entered in this cause on the eleventh day of August last, has

paid off and satisfied a certain mortgage debt against the premises in said cause mentioned, amounting to the sum of thirteen hundred and forty-eight dollars and fifty-eight cents, making the gross amount remaining in the hands of said Master for distribution the sum of three thousand and three hundred and eleven dollars and eighty-eight cents;

It is, on this sixth day of October, A. D., eighteen hundred and eighty-five, ordered, that out of the remainder of the proceeds of said sale the said Marmaduke B. Taylor, Master as
 10 aforesaid, do pay to the solicitor of the complainants their costs in this suit, to be taxed, and a counsel fee amounting to the sum of fifty dollars.

And it is further ordered, that the Clerk of this Court, in taxing the costs of this suit, do tax therein as part of said costs the sum of twenty-five dollars, fees for searching, which was necessary in the proper conducting of said suit.

And it is further ordered, that the said Master do also retain his fees and commissions on said sale, as allowed by the rules of this Court; and that of the residue he do pay to each of the
 20 complainants, Thomas S. Rudderow, Barzilla Rudderow, Lemuel H. Rudderow and Levi O. Rudderow, the one equal twenty-fourth part; to each of the defendants, Sarah Rudderow, Mary A. Grow, Jerusha M. Willden, Luanna Rudderow, Eunice F. Toy, Abigail Stiles, and Isaac F. Rudderow, the one
 25 twenty-fourth part; to each of the defendants, William S. Rudderow, Hannah Mullen, Jane Ann Nichols and Sarah Phillips, the one thirtieth part; to each of the defendants, Anna Rudderow and Allen Rudderow, the one seventy-second part; to the defendant, Harrison Rudderow, the one forty-eighth part;
 30 to each of the defendants, William Cox, George Cox, and Ella Shoemaker, the one ninetieth part; to each of the defendants, Mary A. Epley, Nancy Rowand, Benjamin R. Epley and Sarah E. Watson, the one ninety-sixth part; to each of the defendants, William Cook, Ella Anglen, Hannah Stevenson, Seth
 35 Rogers and Elizabeth Pike, the one hundred and twentieth part; to the complainant, Angeline Rudderow, and to each of

the defendants, Elmer Stone, Elizabeth Stone, William H. Rudderow and Amanda Moore, the one hundred and eightieth part; to each of the defendants, Phebe Ann Fisher, Hannah Wilson, William R. Fairholm, Isaac V. Fairholm, Emma Francis, Maggie Hubbard, Mary Evans, Thomas Phillips, William Phillips, Ner Phillips, Mary Gushalt, and Lizzie Bybe, the two hundred and tenth part; to each of the defendants, Alwilda Cory and Charles Boggs, the one four hundred and eightieth part; to the defendant, Joseph Wills, the one seven hundred and twentieth part; to the guardian of the infant defendant, Franklin Rudderow, the one twenty-fourth part; to the guardian of the infant defendant, Emma Rudderow, the one forty-eighth part; to the guardian of the infant defendant, Anna J. Hackett, the one hundred and twentieth part; to the respective guardians of the infant defendants, Charles Phillips and Samuel Phillips, the one two hundred and tenth part; to the several and respective guardians of each of the infant defendants, Ella Boggs, Emma Boggs, Albert M. Leabo, Eupha B. Leabo, Thomas P. Leabo and Melvina Leabo, the one four hundred and eightieth part; to the several and respective guardians of each of the infant defendants, Blanche Wills, Frank Wills and Annie L. Wills, the one seven hundred and twentieth part, upon each of said mentioned guardians severally executing bonds to the Ordinary of this State, with sufficient sureties in double the amount to which each of the said infant defendants are respectively entitled; which said bonds shall be approved by said Master and filed with the Clerk of this Court.

And further, that said Master do pay to the defendant, Mary A. Rudderow, out of the one twenty-fourth part to which the defendant, John S. Rudderow, is entitled, the sum of eleven hundred and eighteen dollars and nineteen cents, together with interest thereon from the sixteenth day of May, A. D. eighteen hundred and eighty-two, should the same so far extend, and in the second place do pay the balance of said one twenty-fourth part, if any there be, to the defendant, John S. Rudderow;

and do pay to the defendant, Edith Rudderow, out of the one seventy-second part, to which the defendant, Benjamin F. Rudderow is entitled, in the first place the sum of two hundred and eighty-nine dollars and fifty cents, together with lawful interest thereon from the sixteenth day of July, A. D. eighteen hundred and eighty-four, or so far as the same will extend ; and in the second place do pay out of said last mentioned share to the defendant, Richard Kaighn, the sum of three hundred and eighteen dollars and thirty-eight cents, together with lawful interest thereon
 10. from the thirteenth day of January, A. D. eighteen hundred and eighty-five, or so far as the same will extend, and in the third place to pay to the defendant, Benjamin F. Rudderow, the balance of said one seventy-second part, if any there be.

And it is further ordered, that the said Master file with the Clerk of this Court a statement of his fees and disbursements and commissions under these proceedings, together with a statement or report of the distribution, disposition and investment of the moneys that have come to his hands as the proceeds of said sale.

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Respectfully advised.

JOHN T. BIRD, V. C.

THEODORE RUNYON, C.

All the money has been distributed among the heirs by M. B. Taylor, Special Master, who has vouchers for the same.

DAVID J. PANCOAST,
Sol. of Edward Dudley.



