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NEW JERSEY

Court of Errors and Appeals

NOTICE OF APPEAL

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Filed, April 30, 1926.

The petitioner, Frances F. Jasinski, hereby appeals from the decree dismissing petition and directing purchaser to perform made in the above entitled cause on April 20, 1926, and from the whole and every part thereof, except so much thereof as orders that the report of Pierre F. Cook, one of the Special Masters of this Court, be ratified and confirmed to the Court of Errors and Appeals in the Last Resort in all Causes.

20

Dated April 28, 1926.

COLLINS & CORBIN,
Solicitors for and of counsel
with petitioner, Frances F.
Jasinski.

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

30

CLEMENT K. CORBIN,
Of Counsel with Petitioner,
Frances F. Jasinski.

40

PETITION OF APPEAL*Filed, May 17, 1926.**Served, May 19, 1926.*

10 *To the Honorable the Court of Errors & Appeals
in the Last Resort in all Causes:*

The petition of Frances F. Jasinski, appellant in the above stated cause respectfully shows:

That your petitioner finds herself aggrieved by the decree made in the Court of Chancery, by his Honor, Edwin Robert Walker, Chancellor of the State of New Jersey, bearing date April 20, 1926, in the matter of the dissolution of the New Jersey Refrigerating Company, in which cause your petitioner, Frances F. Jasinski, filed a petition to which **20** Frank J. Bock and Edward H. Wright, Receivers of the said New Jersey Refrigerating Company are defendants, in the following respects, to wit:

30 1. Because the said decree finds and adjudges that the misrepresentations made in the notice of sale regarding the condition and rental of certain premises as found by the report of the Special Master, are not material; whereas it should have adjudged that the said misrepresentations were material.

2. Because the said decree finds and adjudges that petitioner is bound by the conditions of sale of said certain premises; whereas it should have adjudged that petitioner is not bound by the conditions of sale of said premises.

Petition of Appeal

3. Because the said decree finds and adjudges that the petitioner is not entitled to the relief sought and prayed for in her petition, and that the same be denied and the petition be dismissed; whereas it should have adjudged that petitioner is entitled to the relief sought and prayed for in her petition. 10

4. Because the said decree finds and adjudges that petitioner, Frances F. Jasinski, within thirty days after the service upon her of a copy thereof, specifically perform and carry out and comply with the "Conditions of Sale" signed by her on or about January 8, 1925, relating to premises known and identified as 174-176 Avenue F, 97 East 24th Street, Bayonne, N. J.; whereas it should have adjudged that said Frances F. Jasinski be relieved from carrying out and complying with said conditions of sale. 20

5. Because the said decree finds and adjudges that within said thirty days, said Frances F. Jasinski petitioner, pay to the said Receivers the sum of \$20,520., the unpaid balance of the purchase price, with interest thereon from March 2, 1925, either in cash or partly by delivery of a certain bond and mortgage, as therein set forth; whereas it should have adjudged that the said Frances F. Jasinski be relieved from paying the said \$20,520, or any other sum. 30

6. Because the said decree finds and adjudges that said Frances F. Jasinski, petitioner, shall assume a certain apportionment of the taxes, water rents and insurance premiums on said premises; whereas it should have adjudged that she be released and discharged from any such payments.

Petition of Appeal

7. Because the said decree finds and adjudges that should the said Frances F. Jasinski, fail or neglect to pay the said sum of \$20,520, with interest from March 2, 1925 and any balance on the adjustment of rents, taxes, water rents and insurance premiums, that the said amounts be impressed as liens upon the said lands and premises referred to in said "Conditions of Sale" and that said lands and premises may be sold as provided in said conditions of sale to satisfy such liens and that in case a deficiency should arise from such sale, that said Frances F. Jasinski may be ordered by said Court to pay said deficiency; whereas it should have adjudged that the said Frances F. Jasinski, petitioner, be relieved from paying any deficiency which may arise upon a resale of said premises.

Your petitioner therefore prays that said decree may be in the particulars aforesaid reversed, set aside and not holden and that your petitioner may have such other relief in the premises, as to this Honorable Court may seem meet.

Dated May 14, 1926.

COLLINS & CORBIN,
Solicitors for and of counsel
with appellant, Frances F.
Jasinski.

30

40

ANSWER TO PETITION OF APPEAL*Filed May 20, 1926 in common form.***PETITION**

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*Filed March 3, 1925.***IN CHANCERY OF NEW JERSEY***To his Honor Edwin Robert Walker, Chancellor:*

The petition of Frances F. Jasinski, residing at No. 271 Grand St., Jersey City, Hudson County, New Jersey, respectfully shows that on the eighth day of January, 1925, she purchased at a sale made at the Masonic Temple, No. 835 Bergen Avenue, Jersey City aforesaid, by Frank J. Bock and Edward H. Wright, receivers of the New Jersey Refrigerating Company, appointed as such receivers by an order of this court, the following described lands and premises, namely,

ALL those two certain lots or parcels of land and premises situate in the City of Bayonne, Hudson County, New Jersey.

BEGINNING on the southeasterly corner of Avenue F and East Twenty-fourth Street thence (1) running easterly along the southerly line of Avenue F 55.69 ft.; thence (2) running southeasterly parallel with East Twenty-fourth Street 100 ft.; thence (3) westerly in a straight line 55.69 ft. to the easterly line of East Twenty-fourth Street; thence (4) northwesterly along the easterly line of East Twenty-fourth Street 100 ft. to the point or place of beginning, said premises being known by the lot num-

30

40

Petition

bers 8 and 7 in Block 266 (County Block 180), Bayonne, New Jersey, and by the street numbers 174 and 176 Avenue F and No. 97 East Twenty-fourth Street.

10 The building No. 174, being the corner property, Avenue F and East Twenty-fourth Street, is a frame building three stories in height. The building No. 176 adjoining on the east is a two story frame building and the building No. 97 East Twenty-fourth St. situate in the rear of the two buildings above mentioned, is a three story frame building.

20 While said sale was held under the auspices of the said receivers, yet as a matter of fact, the property was sold by H. L. Wolbert, auctioneer, of Jersey City, N. J., and the said lands and premises were struck off to petitioner at the price of \$22,800. Under the "Conditions of Sale" (a copy whereof is hereto annexed), a deposit of ten per cent. on the amount of the bid was required to be paid and petitioner paid to said Wolbert on the day of sale, viz, January 8, 1925, the sum of \$1,000 on account of deposit and the next day—January 9, 1925—paid the balance of the ten per cent. viz., \$1,280 in cash to the said receivers at the office of the New Jersey Refrigerating Company, 173 Ninth St., Jersey City.

30 In addition to this payment on account of purchase, she also paid H. L. Wolbert, auctioneer's fee of \$75.00.

40 Some little time before the advertised day for sale, petitioner received a large four page printed notice of sale of said premises and other lands, mailed to her by said H. L. Wolbert, the said auctioneer who made the sale on behalf of the receivers. On said printed notice the lands and premises above described, purchased by her, are designated "Parcels 22, 23 & 24" and said printed notice as to said parcels of land is as follows:

Petition

“AUCTIONEER’S NOTE
“IN RE PARCELS 22-23-24.

“Parcels 22-23-24 will be offered separately and collectively and are known as 174-176 Ave. ‘F’ and 97 East 24th St., Bayonne, N. J. Plot fronts 55.69 feet on Ave. ‘F’ and 100 feet on East 24th St. Estimated Rental \$3,648 yearly. **10**

“More details follow.”

“PARCEL NO. 22

“174 Avenue ‘F’

“Corner of East 24th St., Bayonne, N. J. Has store and 10 apartments (four 4 room and six 3 room). IMPROVEMENTS: Gas, water, toilets, etc. Estimated Rental \$1,776.00 yearly. **20**

“See Auctioneer’s note in-re Parcels 22-23-24.”

“PARCEL No. 23

“176 Avenue ‘F’

“Near East 24th St., Bayonne, N. J. Has store and 1 four room apartment, gas, toilet, water, tubs, etc. Estimated Rental \$588.00 yearly. **30**

“See Auctioneer’s note in-re Parcels 22-23-24.”

“PARCEL No. 24

“97 East 24th Street.

“Near Avenue ‘F,’ Bayonne, N. J. 6 family house, all 4 room apartments, has toilets, water, gas, tubs, etc. Estimated Rental \$1,284.00 yearly. **40**

“See Auctioneer’s note in-re Parcels 22-23-24.”

Petition

After receipt of said printed notice, petitioner made several attempts to inspect the said premises but found the greater part of them vacant and was unable to make proper inspection. Relying, however, upon the truth of the statements in said printed notice regarding said premises, she went to the sale and bid on them and became the purchaser and signed the "Conditions of Sale" and gave orders to her attorneys for examination of the title to said premises. She then endeavored to inspect said premises thoroughly and found the following state of facts:

As to parcel No. 22, street No. 174 Avenue F. It is true that said building has a store and ten apartments but it is not true that four of these apartments are four rooms each; they are only three rooms each. All the ten apartments in this property are three rooms each. It is not true that the improvements consist of gas as there is no gas in any of the rooms but only in the hallway. There is no water in the apartments, the same having been shut off. Consequently, the toilets are useless.

The statement that the estimated rental of this building is \$1,776 yearly is a misrepresentation and very misleading. As a matter of fact petitioner found that the rent of the store on the ground floor of this building is \$30.00 per month and that the rent of each of the ten apartments is \$10 if occupied, but finds eight of them are vacant and that the building is in such condition that the renting of it is almost impossible. Even if fully rented at the rents paid by the tenant of the store and two tenants of the ten apartments, the amount per annum would be—for the store \$360 and for the ten apartments \$100 each or \$1,200 making a total of \$1,560 yearly instead of \$1,776 as stated in the printed notice.

Petition

As to parcel No. 23, street No. 176 Avenue F, petitioner finds that the store on the ground floor with the rooms at the back thereof is rented for \$30.00 per month and that the apartment above, consisting of four rooms, is occupied and the tenant pays \$19.00 per month so that the estimated rental of \$588 stated in the notice is correct but it is not true that this building has gas. There is no gas in the house. The tenant informed petitioner that he installed electric light at his own expense and, of course, pays the bills for such light. 10

As to parcel No. 24, street number 97 East 24th St., it is not true that it is a six family house all four room apartments, the fact being that five of the apartments have four rooms each but the remaining one has but three. There is no gas in the house except in the hallways, there being no fixtures in the apartments. The gas piping is in but no fixtures and so the tenants have to use oil lamps. This building is a three story structure with two families on each floor. Two of the apartments are vacant, one on the bottom floor and one on the top. The vacant apartment on the top floor is unfit for tenancy by reason of the fact that the plaster has fallen down and the apartment has been left in very bad condition by whoever put up the fire escape. In said notice the estimated rental is stated to be \$1,284 yearly. Petitioner finds that the janitor occupies an apartment on the ground floor, the charge for his apartment being \$17.00 but he in fact paying but \$7.00. At \$17.00 per month this apartment would rent for \$204 per year. The two apartments on the second floor are rented at \$18.00 per month each making \$36.00 for the two or \$432 per year. On the top floor one apartment is vacant, as 20 30 40

Petition

above stated, and the other apartment rents for \$18.00 per month or \$216 per year, making an aggregate rental of this building at the time of the sale and at the present time of \$852 instead of \$1,284 as stated in the printed notice.

- 10 Your petitioner charges that gross misrepresentation has been made in the said notice regarding the condition and rentals of the said premises and that she became the purchaser of same under misapprehension and because she relied upon the truth of the statements in the notice. She submits that by reason of such misrepresentation she has been injured and should not be compelled to pay the balance of the purchase price bid by her and take title to the property. Petitioner further says that she
- 20 has called the attention of said receivers to the foregoing state of facts through their attorney and requested to be relieved from her bid and her deposit returned but they have refused and still refuse to give her such relief.

- Petitioner therefore prays that the merits of this petition be inquired into and that decree be made setting aside the sale of said premises as to her, relieving her from all liability under the "Conditions of Sale" and the said receivers be directed to refund
- 30 to her the said sum of \$2,280 paid as a deposit on her bid at the time of sale.

And petitioner will ever pray.

FRANCES F. JASINSKI,
Petitioner.

COLLINS & CORBIN,
Solicitors for and of Counsel
with Petitioner.

CONDITIONS OF SALE

Parcels Nos. 22, 23, and 24.

In the Matter of THE DISSOLUTION OF THE NEW JERSEY REFRIGERATING COM- PANY,	}
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Conditions of the sale of lands and premises made on January 8, 1925, by Frank J. Bock and Edward H. Wright, Receivers of the New Jersey Refrigerating Company, by virtue of an order made by the Court of Chancery of New Jersey in the above entitled cause on November 8, 1924.

20

1. Each of the parcels, where possible in the judgment of the receivers, will be sub-divided, and each sub-division sold separately, and then each parcel will be sold as a whole, the higher price to control.

2. Ten per centum of the purchase price and an auctioneer's fee of \$25.00 on each sale (which knockdown fee does not apply on account of the purchase price) shall be paid by the purchaser to the auctioneer as soon as the property offered is struck off, in default of which it may be put up again and sold either immediately or on a new day or withdrawn indefinitely, at the option of the receivers.

30

3. The property is offered or sold subject to the following:

(a) To approval and confirmation by the Court of Chancery.

40

Petition—Conditions of Sale

(b) To restrictions appearing of record, if any.

10 (c) To party walls and party wall agreements, if any, and rights, if any, of adjoining property owners in such party walls.

(d) To all encroachments, if any, and mislocation of fences, if any.

(e) To municipal taxes, assessments and other charges not yet levied or confirmed, if any.

20 (f) To tenement house and other state, county and municipal laws, ordinances and regulations, if any, and to any violations of the tenement house law.

(g) To easements of electric, telephone and telegraph poles, wires and equipment, if any.

(h) To sewers, drains, ditches, pipe lines and conduits, if any.

(i) To present leases and rights of tenants and occupants in possession, if any.

30 (j) To any facts a survey and inspection would disclose.

(k) To easements for light and air pertaining to adjoining lands, if any.

40 (l) Rents, if any, taxes, water rents, interest and insurance premiums are to be apportioned, adjusted and allowed up to the date of taking title, and thereafter to be taken over and assumed by the purchaser.

Petition—Conditions of Sale

(m) To condition of premises "as is."

(n) In the event that this sale is not confirmed by the Court of Chancery, or in the event that the receivers are unable to convey for any reason, the deposit money is to be repaid to the purchaser, the contract of sale and purchase cancelled, and all liability of the receivers thereunder shall cease. 10

4. The purchaser may pay, as part of the consideration, 75 per centum of the purchase price by executing to the receivers, their successors and assigns, a bond and mortgage for that amount, which shall run for a period of 3 years, with interest at 6 per centum per annum, payable semi-annually, and to include a clause for the amortization of the principal of said bond and mortgage by semi-annual payments of not less than 4 per centum of said principal sum. 20

5. The balance of the purchase price shall be paid on or before the second day of March, 1925, at 11 o'clock in the forenoon of said day, at the office of J. H. Harrison, counsel for the receivers, Number 810 Broad Street, Newark, New Jersey, when and where the deed conveying the within mentioned property will be ready for delivery upon compliance by the purchaser with these terms and conditions of sale. 30

6. The property will be conveyed by a bargain and sale deed, subject as aforesaid. The risk of loss or damage to said premises by fire or otherwise, until the delivery of the deed is assumed by the receivers.

7. The purchaser shall be liable for the payment of the purchase price, whether the purchaser at- 40

Petition—Conditions of Sale

tends and receives the deed at the time and place aforesaid or not, and in case the purchaser neglects to attend and receive the deed and pay the purchase price as aforesaid, the deposit paid by the purchaser shall be forfeited, and the property may be re-
 10 advertised and re-sold at the option of the receivers, or the purchaser may be held liable for his purchase at the option of the receivers. In case of a re-sale at a less price than the former bid, the former purchaser shall be liable for any deficiency together with interest and all expenses, and any money paid by the purchaser on account of the purchase price shall be retained by the receivers and applied against any deficiency that may result from a re-
 20 sale. In case the property should be sold for a greater purchase price at a re-sale, the defaulting purchaser shall not receive any benefits therefrom.

8. The receivers reserve the right to reject any and all bids.

Dated January 8, 1925.

(Sgd.) EDWARD H. WRIGHT,
 Receivers of New Jersey
 Refrigerating Company.

CONTRACT

30

I, _____ do hereby acknowledge myself to be the purchaser of the above described premises this day sold under and by virtue of the above mentioned order, at the price of \$ _____, subject to the foregoing conditions of sale.

Dated January 8, 1925.

40

I, Frances Jasinski, do hereby acknowledge myself to be the purchaser of part of the lands and

Petition—Conditions of Sale

premises sold this day under and by virtue of the above mentioned order, at the price of \$22,800., subject to the foregoing conditions of sale, the said part of said premises purchased by me being land with the buildings thereon erected, in the City of Bayonne, N. J., situate on the corner formed by the intersection of the southeasterly line of Avenue F and the northeasterly line of East 24th Street, fronting 55.69 feet on Avenue F and 100 feet on East 24th Street, and known by the street numbers 174-176 Avenue F and 97 East 24th Street, and also by the lot numbers 7 and 8, in Block 266 on the Official Assessment Map of the City of Bayonne. 10

Dated January 8, 1925.

(Sgd.) FRANCES F. JASINSKI.

Geo. Spill.

20

RECEIPT FOR DEPOSIT.

Received of _____ the sum of \$ _____, being a deposit on account of the purchase of the property known as Street Number _____ in _____, New Jersey, sold this day at public auction for the sum of \$ _____, subject to the terms and conditions of sale. 30

Received, also, the sum of \$ _____, being the auctioneer's knockdown fee as per the terms and conditions of sale.

40

ANSWER OF RECEIVERS

Filed March 3, 1925.

The answer of Frank J. Bock and Edward H. Wright, Receivers of the New Jersey Refrigerating
10 Company to the petition of Frances F. Jasinski to set aside the sale of lands known as Nos. 174-176 Avenue F, and No. 97 East 24th Street, Bayonne, N. J. These receivers answering the petition say that:

1. The sale, as in said petition alleged, of premises therein described, to Frances F. Jasinski on
20 January 8, 1925, for the price of \$22,800.00 at a public sale pursuant to the conditions of sale, copy whereof is annexed to the petition, is admitted by the receivers.

2. The distribution by the auctioneer, who acted in behalf of the receivers, of a four page printed notice setting forth details and particulars of said sale, a copy of which is annexed to this answer and marked "Exhibit A," is admitted by the receivers, but whether the petitioner received such printed notice, the receivers have no knowledge or information sufficient to form a belief, and therefore leave
30 the petitioner to make such proof thereof as she may be advised is necessary; that the auctioneer's note with reference to the premises sold to the petitioner, is as set forth in the petition herein; but the receivers allege that set forth in said notice of sale containing the auctioneer's note was the statement that "additional information might be had from the auctioneer's main office, Trust Company of New Jersey Building, 921 Bergen Ave., (Room 601) Jersey City, N. J.", and the following: "Note—All
40 statements are subject to errors and omissions and

Answer of Receivers

all dimensions of land are more or less.”; and that the conditions of sale, a copy of which is annexed to the petition, contained the following:

“3. The property is offered or sold subject to the following:

10

(j) Any fact a survey and inspection would disclose—

(m) To condition of premises as is.”

3. As to the allegation in the petition that, “After receipt of said printed notice, petitioner made several attempts to inspect the said premises but found the greater part of them vacant and was unable to make proper inspection. Relying, however, upon the truth of the statement in said printed notice regarding said premises, she went to the sale and bid on them and became the purchaser and signed the ‘Conditions of Sale’ and gave orders to her attorneys for examination of the title to said premises,” the receivers have no knowledge or information sufficient to form a belief, and therefore leave the petitioner to make such proof as she may be advised is necessary. 20

4. These receivers admit that the ten apartments in the building on premises known as No. 174 Ave. F, Bayonne, N. J., contain three rooms each, and say that there is gas with fixtures connected therewith in hallways of said building, but there is no gas in any of the apartments; and say that there are cold water connections in the store and in the apartments of said building; and that the water, during vacancies, is shut off from such portions of the building as are vacant; and that three apart- 30

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Answer of Receivers

ments are vacant. These receivers admit that the said published notice contained a statement that the estimated value of the buildings at No. 174 Avenue F were \$1,776.00 a year, and say that they are informed and believe that the rent received from the store in the said building, during several years last past, has been at the rate of \$30.00 per month; and that the rent received from the apartments in said building varies from \$10.00 to \$14.00 per month, per apartment. At the time of said sale three of the apartments in said building were occupied, one of the tenants paying \$10.00 per month, another paying \$11.00 per month, and a third paying \$14.00 per month, and allowing a monthly rental of \$30.00 for said store, and an average monthly rental of \$12.00 for each of said apartments, the estimated annual receipts from said building will show rentals to be \$1,800.00.

5. As to premises known as No. 176 Avenue F, Bayonne, New Jersey, these receivers admit that there are no gas connections to, or in said building, although, as alleged in the moving affidavits, a tenant in the store at No. 174 Avenue F obtains electric lights from the tenant in the store at No. 176 Avenue F, and these receivers say that the notice of sale of said premises called for a store on the ground floor, whereas, as a matter of fact, the ground floor of said building contains the store and three extra rooms in the rear thereof.

6. As to premises known as No. 97 East 24th Street, Bayonne, New Jersey, the building upon said premises contains six apartments, one 3 room apartment and five 4 room apartments; that all of said apartments are piped for gas, but there are no fixtures in the rooms, although there are fixtures in

Answer of Receivers

the hallways; that since 1922, each of said apartments has rented for either \$17.00 or \$18.00 per month, and that an estimated yearly rental of \$1,284.00, as set forth in the printed notice, would mean an average monthly rental for each apartment of less than \$18.00; that it is true that there have been vacancies from time to time during recent years in said building, and that at the time of sale two of said apartments were vacant, and that at the present time there are three of the apartments occupied by tenants, who pay \$18.00 per month. 10

7. These receivers deny that gross misrepresentation was made in said notice of sale regarding the conditions and rentals of said premises, and say that they and the auctioneer had no knowledge that the conditions and rentals were not as represented in said notice, that the said petitioner has opportunity for full inspection of said premises and was bound to make inspection thereof in order to satisfy herself as to conditions in and about said premises, and the rentals thereof, and to make inquiry of these receivers or their agents concerning said matter, and further that the said notice of sale and conditions of sale under which said premises were sold, and which were subscribed by the petitioner at the time of her purchase, bound petitioner to such a state of facts concerning said premises as an actual inspection might have disclosed. The receivers say that they have been, and now are, ready and willing in all respects to comply with the terms and conditions of said sale. 20 30

8. These receivers show that by an order of this court dated January 20, 1925, the sale of the premises described in the petition herein to the petitioner, 40

Answer of Receivers—Exhibit A

was confirmed and the receivers authorized, empowered and directed to execute a good and sufficient conveyance in the law to the said petitioner for the said premises as and when the conditions of sale had been complied with.

10 These receivers therefore respectfully pray that said petition be dismissed, and that a decree be made directing the petitioner to consummate the purchase of the premises described in her said petition in accordance with the conditions of sale of said premises.

FRANK. J. BOCK,
EDWARD H. WRIGHT,
Receivers of the New Jersey
Refrigerating Company.
20 J. H. HARRISON,
Solicitor for and of counsel
with receivers.

EXHIBIT A

NOTICE OF SALE

(*Abridged by consent of counsel*)

30

H. L. WOLBERT

AUCTIONEER

REAL ESTATE BROKER

APPRAISER

921 Bergen Avenue

Jersey City.

40

Answer of Receivers—Exhibit A

RECEIVERS' SALE

26 PARCELS OF VALUABLE REAL ESTATE
 BY ORDER OF COURT OF CHANCERY, STATE OF
 NEW JERSEY

10

"In the matter of the Dissolution of the New Jersey Refrigerating Company"

FRANK J. BOCK and EDWARD H. WRIGHT, Receivers. J. H. Harrison, Counsel.

THURSDAY, JANUARY 8, 1925 at 2 P. M.

AT MASONIC TEMPLE.

835 BERGEN AVENUE (near Summit Avenue Tube Station) Jersey City, New Jersey.

DETAILS AND PARTICULARS

20

AUCTIONEER'S NOTE

IN RE PARCELS 22-23-24

Parcels 22-23-24 will be offered separately and collectively and are known as 174-176 Ave. "F" and 97 East 24th St., Bayonne, N. J. Plot fronts 55.69 feet on "Ave. F" and 100 feet on East 24th St. Estimated Rental \$3,648 yearly.

30

More details follow.

PARCEL No. 22

174 AVENUE "F"

Corner of East 24th St., Bayonne, N. J. Has store and 10 apartments (four 4 room and six 3 room). IMPROVEMENTS: Gas, water, toilets, etc.

40

Answer of Receivers—Exhibit A

Estimated Rental \$1,776.00 yearly. See Auctioneer's note in re Parcels 22-23-24.

PARCEL No. 23

10

176 AVENUE "F"

Near East 24th St., Bayonne, N. J. Has store and 1 four room apartment, gas, toilet, water, tubs etc. Estimated Rental \$588.00 yearly.

See Auctioneer's note in re Parcels 22-23-24.

PARCEL NO. 24

97 EAST 24th STREET

20

Near Avenue "F," Bayonne, N. J. 6 family house, all 4 room apartments, has toilets, water, gas, tubs etc. Estimated Rental \$1,284.00 yearly.

See Auctioneer's note in re Parcels 22-23-24.

FOR AUCTIONEER'S COMMENT SEE PAGE 4

AUCTIONEER'S COMMENT

30 Synopsis of Terms of Sale include a deposit of 10% of the purchase price on each parcel and The Auctioneer's knockdown fee as soon as each parcel is struck off, by cash, certified check, or savings bank book properly assigned.

NOTE: It is important that prospective buyers be prepared to pay deposits as required, 15% in cash to be paid at the time of closing title and balance (75%) may remain on Bond & First Mortgage for 3 years with 4% Amortization Clause and 6% interest Clause.

40

IMPORTANT INFORMATION: The sale is made by order of the Court of Chancery, State of New Jer-

Answer of Receivers—Exhibit A
Testimony

sey and each parcel offered will be sold to the highest bidder subject to Confirmation by the Court of Chancery.

THE SALE: For the convenience of prospective buyers will take place in the Auditorium of Masonic Temple, 835 Bergen Avenue (Near Vroom St) (short walk from Summit Ave. Tube Station), Jersey City, N. J. where the sale starts at 2 P. M. sharp, Rain or Shine. Large bulletin boards are erected on all the parcels so they may be easily identified. 10

OPPORTUNITY: The unusual attractive terms and the remarkable variety of property to be sold merits the attention of all. Particular attention is requested to the valuable locations. I consider this the most remarkable sale of its kind ever held in Jersey City; additional information may be had from Auctioneer's main office, Trust Co. of New Jersey Building, 921 Bergen Avenue (Room 601), Jersey City, N. J. 20

NOTE: All statements are subject to errors and omissions and all dimensions of land are more or less. 30

TESTIMONY

Depositions in the above entitled cause, taken before me, Pierre F. Cook, one of the special masters of this court, at my office, 1 Exchange Place, Jersey City, New Jersey, this sixteenth day of October, 1925, at ten o'clock in the forenoon, pursuant to order of reference made herein and dated April 1st, 1925. 40

Petitioner's: Frances F. Jasinski—Direct

Appearances:

Messrs. Collins & Corbin, (Mr. Hughes), Solicitors for the Petitioner;

J. Henry Harrison, Esquire, (by Mr. Sanford), Solicitor for the Receivers of New Jersey Refrigerating Company.

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State of New Jersey, County of Hudson, ss:

FANCES F. JASINSKI, being first duly sworn according to law, on her oath deposes and says:

Direct-examination by Mr. Hughes:

Q. You are the petitioner in this case? A. Yes, sir.

20 Q. Where do you reside? A. I live at 306 Grand Street.

Q. You are the wife of Francis Jasinski? A. Francis Jasinski.

Q. Did you, on the 8th of January last, become the purchaser of the premises 174-176 Avenue F. and 97 East 24th Street, Bayonne, New Jersey? A. Yes, sir.

Q. At an auction sale, was it not? A. An auction sale, by Mr. Wolbert.

30 Q. At what? A. At the Masonic Temple.

Q. The Masonic Temple on Bergen Avenue, Jersey City? A. Bergen Avenue.

Q. I show you what purports to be a notice of this sale, and ask you received that? You recognize it, do you not? A. Yes; I received this from Mr. Wolbert; sent by mail to me just right after the first day of January; this notice was sent to me; and after I received this notice, on the Monday before the sale, I went down to see the building.

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Q. You received this after January 1st? A. After January 1st.

Q. About a week before the sale? A. Just a week before the sale.

Q. On receipt of this, what did you do? A. I went down to see the building; that was on Monday 10 before the sale; to inspect the building.

Q. Well, the sale fell on a Monday, I think. A. That was on a Monday, and it was on a Thursday, the sale was.

Q. Was it on the Monday preceding the sale you went to visit the properties? A. Yes; previous.

Q. Anybody go with you? A. No; I went alone.

Q. Now, which property did you visit? A. I went through the three. The first was on the corner, 174 Avenue F and that was the first property I 20 went to. First I went to 174, I couldn't enter any of the rooms at all.

Q. You couldn't enter any of the rooms in 174? A. No, not at all; they were all nailed up and locked up; I couldn't get in.

Q. Were they vacant? A. They were vacant; there were some that were occupied; that has been two families, as far as I found, and they weren't in the house when I was there, and I couldn't get in.

Q. So you didn't get into any of the apartments 30 in 174? A. In 174 is right; I didn't go through; I couldn't get in there.

Q. While you are speaking of this property, tell us how many apartments there were on the first floor? A. On the first floor there is a store and one room, then back there is two families, with three rooms each.

Q. What is the store? A. It is a liquor place; a saloon.

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Q. A saloon? A. Yes, sir.

Q. What did the second floor consist of? A. Of four families with three rooms each.

Q. So there are four apartments there? A. Yes, four families on that floor, with three apartments.

10 Q. Four apartments with three rooms each? A. Yes.

Q. Now, is there another floor above? A. Yes, there is another floor above that.

20 Mr. Sanford: I object to this; there is no foundation laid tending to show that this witness knows what the rooms consist of, or what the apartments consist of. She testified that she went there and couldn't get into any of the apartments, and saw nobody, that the apartments were vacant and the doors nailed up. Now she gives a description of what she says the apartments are like.

30 The Master: For all that appears thus far the witness may have formerly lived in the apartment, or may have visited it at some prior time. Your objection may be a matter for cross-examination; then, of course, if it should appear on cross-examination that the witness had no knowledge, then her testimony will be stricken out.

Mr. Hughes: She went later and got into the place.

Q. Now, the top floor? A. The top floor, there is four families of three rooms each also.

Q. That is the entire property, is it not? A. Yes; that is at 174 Avenue F.

Q. The corner property? A. Yes.

Q. Now, take 176 Avenue F, did you visit that at that time? A. I went there but I didn't find any-

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body on the top floor, and in the store I didn't enter at that time.

Q. One moment. I asked you what does the property consist of? A. It is a store and three rooms in the back.

Q. There is a store, a saloon on the corner, is there? A. Yes; there is a store and three rooms in the back. 10

Q. What is that store used for? A. Grocery store and candy.

Q. There are three rooms in back? A. In the back of the store.

Q. That is on the ground floor? A. Yes, sir.

Q. Did you get into any of those three rooms at this time? A. No, sir; I didn't get in through them. 20

Q. Did you go into the store? A. No, not at all; not at that time; I didn't get in.

Q. Why not? A. I just went in through the buildings in the back of the rooms, and front, I looked them up, all the whole three properties, at that time, I only just went and looked them up there, and looked through the hallways; at 174 I tried to get into the apartments but I couldn't get in.

Q. For what reason? A. They were, as I say, 30 nailed up, I couldn't get in, the doors specially.

Q. So you didn't get in? A. I didn't enter at that time; I didn't enter no place; I didn't get into none of the rooms at that time.

Q. Take the other property, which is number— A. 97.

Q. 97 East 24th Street, Bayonne; did you visit that property at this time? A. I went through the

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hallways and looked on the outside of the building, but I didn't go inside any of the apartments.

Q. You didn't get into any of them? A. No, sir.

Q. How many apartments were there on the first floor? A. Well, there were three rooms, which I
10 found later; not at that time.

Q. Three rooms on the ground floor? A. Three; then there is two families; one was three and one was four.

Q. How many apartments? A. Oh, there is six families; it is a six family house.

Q. Take this ground floor; one thing at a time; how many apartments were on the ground floor?

A. There were two families; one family had three rooms and the other has four.

20 Q. So there are seven rooms in all on that floor? A. Yes.

Q. Now, the second floor; what did you find there? A. Two families; four rooms each.

Q. Is there another floor above that? A. There is a floor above that.

Q. What did that consist of? A. Two families had four each.

Q. You didn't go into those rooms, did you? A. No, sir.

30 Q. For what reason? A. I didn't go through; I took it as the notice, I just went there to inspect the property, through the hallways and outside, but only on the corner, which I tried to enter at that time.

Q. Did you visit the properties before the sale again? A. Not before the sale, I didn't go.

Q. When did you next visit them? A. The next time I went there it was, I think it was in, let us

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see, it was in February, February 2d or 3d, I don't remember.

Q. The 2d of February fell on a Monday; do you remember what day of the week it was, Monday or Tuesday? A. No, I couldn't just exactly, but I know it was the 2d or 3d of February I went down there. 10

Q. That is, after the sale? A. After the sale.

Q. Did anybody go with you on this occasion? A. I had taken a painter with me at that time.

Q. You took your painter? A. Yes.

Mr. Sanford: I object to that, if Your Honor please, on the ground that it is irrelevant, immaterial and incompetent, as to what she found there after she went after the sale was held. She testifies that she was the purchaser of this property at the sale, and that that notice was furnished her before the sale, and the terms of sale provided that an inspection should be made; now, she is bound by that inspection; as to what she found there afterwards does not relate to this case at all. 20

The Master: I presume her contention is that the property was misrepresented to her.

Mr. Hughes: Oh, yes, of course, as you will see by reading the petition. 30

The Master: That was my understanding. On that theory, of course, any state of facts which would go to show that she was misled or deceived, or that the property was in any way misrepresented to her, I think, would be relevant.

A. I forget now. Before the sale I also called on Mr. Wolbert two times on the phone, I spoke through the wire.

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Q. What did you say to Mr. Wolbert? A. Mr Wolbert was busy at the time and he says, "There is no use of you waiting; come around tomorrow"; that was Monday, after I inspected the property.

By the Master: Q. Who is Mr. Wolbert? A. The
10 auctioneer.

By Mr. Hughes: Q. He is the man that sent this notice? A. He is the man that sent this notice.

Q. Tell us about this telephone conversation with Mr. Wolbert; you say it was before the sale? A. Before the sale.

Q. How many times did you speak to him before the sale? A. Two times; and the third time through the wire.

Q. Just what did you say; and what was it all
20 about? A. I have called at his office, he was busy at the time, he had quite a lot of people there, and he told me to call the next day, which I did call in the afternoon, as he stated, and I went there, and he wasn't there.

Q. You went to his office and he wasn't there? A. He wasn't there.

Q. The first time he spoke to you he was too busy to speak? A. Yes.

Q. The second time he wasn't there? A. He
30 wasn't there.

Q. Although he had an appointment with you? A. He told me to call the next day, in the afternoon, but he didn't mention the time, just told me to come in the afternoon.

Q. But you went in the afternoon, did you not? A. I did; but he wasn't there.

Q. Now, did you say you called on him again? A. I called him up later in the afternoon, that is

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around five o'clock, I called him after I came home, and I told him that I wanted to speak to him about the property over in Bayonne; he says to me, "You have our notice, everything is in it," he says, "That is just the way everything should be found"; I said, "I couldn't enter, I don't know anything much about the property, the only thing I seen from the outside"; he says to me, "Well, everything is in the notice that is there," he says, and that is what I understood, that everything was in the notice was true. 10

Q. He didn't ever go with you and take you through the property, did he? A. No, sir.

Q. Well now, coming to the February inspection, on the 2d or 3d of February, you say you went there? A. Yes, sir. 20

Q. When you took the painter with you? A. I did.

Q. Mr. Snyder? A. Nick Dlugash.

Q. He isn't here? A. No, sir; I couldn't get this man; he told me he would come in sooner or later; just his helper is here.

Q. Now, did you go through the properties this time? A. Yes, sir; I went through the property at that time.

Q. Which one did you go through first? A. 174 Avenue F. 30

Q. That is the corner property? A. Yes, sir.

Q. Now, did you find the number of apartments to be as you had testified a little while ago? A. I didn't find them as they are in the notice.

Q. I asked you, did you find the number of them as you testified before? A. Yes; 174 Avenue F.

Q. The number of apartments on which floor which you testified to? A. Yes; I found the store as I have said there and as many apartments. 40

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Q. Did you go inside any of them on this occasion? A. I did go into all at that time.

Q. What? A. I went through all of them at that time when I went there with this painter.

10 Q. What did you find as to the gas in the 174 apartments? A. I didn't find no gas in 174, at all, just in the hallways and in the store.

Q. What was in the hallways, just— A. The pipe and the fixtures were there, and the light was there, too, at that time.

Q. But there was no— A. None in the rooms; no gas in the rooms.

Q. Any fixtures in the rooms? A. No, sir; not there in 174.

Q. In any of the apartments? A. Not any, no.

20 Q. What did you find as to the water? A. Water, there was no water in any of the apartments; just in one, that is on the first floor there is a family living that is the only apartment that had water.

Q. There was no water in any of the apartments? A. No, sir.

Q. Either on that floor or the floor above? A. No, sir; not in the apartments.

Q. How was the store lit? A. The store had electric in it.

30 Q. He had electric light? A. Electric light.

Q. Do you know whether that is his private property? A. He has told me that it was, that he had before installed the electric, and also in which the party in the store had it put in, all the wires put in, and they paid the difference between the both of them, one of them pays the bills to the store keeper at 174 Avenue F.

Q. To whom do they pay the bill? A. That is,

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the store keeper at 176 pays it to the store keeper at 176.

Q. At 174? A. 174.

Q. But the store keeper in 174 keeps the bills?

A. Well, they are supposed to, before that time, to pay it in half.

10

Q. Who owns the electric plant? A. The party that has the saloon that is 174.

Q. He is the owner of the electric plant there?

A. That is what he told me.

Q. Now, on the other floors, you found the same conditions, did you? A. Yes, sir.

Q. As to gas and water? A. Yes.

Q. That you have described? A. Yes, sir.

Q. Take the property next door to it; 176, isn't it, Avenue F. A. That is the small place.

20

Q. Yes. A. Oh, the only thing is that there are supposed to be four rooms up there, I didn't find, I found only three.

Q. That is in 176? A. Yes.

Q. Was this on the ground floor that you found only three rooms? A. That is two families, of three each, on the ground floor and the store and the room.

Q. Two rooms was what? A. Two families, but three rooms each; 174 Avenue F.

30

Q. Two families had three rooms each? A. Well I have given this before.

By Mr. Sanford: Q. Are you talking of 176 or 174? A. 176. But I thought you were talking about 174. 176 is a store and three rooms in the back.

By Mr. Hughes: Q. Those three rooms occupied by one family? A. Yes; the store keeper has the rooms in the back.

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Q. What does that consist of? A. Four rooms above that; that is on the next floor.

Q. Is that one apartment? A. That is one family has that, of four rooms.

10 Q. One family has the four rooms? A. Yes, sir.

Q. So that there is just one apartment on that floor? A. Just one.

Q. Then what about the top floor? A. That is all there is, only a two-story frame building.

Q. What did you find as to the gas in this building? A. There is no gas, no pipe, nothing in that house at all.

Q. What about the water? A. Well, the water, they had water in that building.

20 Q. But no gas and no piping? A. No.

Q. Now, coming to the property in East 26th Street. A. 97 East 24th Street.

Q. Did you go through the apartments on this occasion? A. I did, which I found three rooms on the first floor, two families three rooms on the—three and four.

Q. Go slower. Three rooms on the ground floor with two families in it? A. Two families, one three and one four.

30 Q. So there was a set of rooms of three in one apartment? A. And the other four.

Q. And four in another apartment? A. Yes, sir.

By Mr. Sanford: Q. There were two apartments, of three and four rooms? A. Three and four; two families, one had three and the other had four.

By Mr. Hughes: Q. That is what; the ground floor? A. Yes, sir.

Q. No store is there? A. No.

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Q. What on the floor above? A. On the second floor there is two families had four rooms each.

Q. Two families, four apartments each? A. Four rooms each.

Q. What about the top floor? A. The top floor, there are two families of four each; four rooms 10 each.

Notice of sale offered in evidence, admitted without objection, and marked Exhibit P-1.

Q. So I understand that the property at 174 had ten apartments of three rooms each? A. Yes, sir.

Q. Is that right? A. Yes, sir.

Q. Not of four rooms? A. There is no four rooms in 174; no, sir.

Q. What did you find about the rent of that property, 174? A. Well, I went and inquired in the store at that time, he told me he is paying \$30, the store and the room with it, and he has the apartments above the store, which he pays \$10 for three rooms, and which he has installed his own electric also into the rooms. 20

Q. Well, did you find out about the rent of any of the other apartments? A. The other party has it, she said she paid \$11 a month.

Q. What floor is she on? A. She is right on the 30 second floor in the back.

Q. Has she got one apartment? A. She has one apartment, three rooms.

Q. She pays \$11? A. \$11.

Q. Were there any other tenants? A. No; no other tenants in that building at that time; 174 Avenue F.

Q. Now, at 176, what did you find about the rents of that property? A. 176, why, about the rent, I

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found \$30 on the first floor for the store and three rooms.

By Mr. Sanford: Q. That is \$30 for the store and three rooms in the back; altogether? A. Yes, sir. \$19 above that for the four rooms.

10 Q. One apartment? A. Yes, sir.

By Mr. Hughes: Q. You say there is no gas in the house? A. No gas in that house at all.

Q. And no water? A. They had water in that house.

Q. Now, number 24, what did you find out about the rents of that property? A. 96 East 24th.

20 Q. That is called parcel 24 in the notice; 97 East 24th Street; what about the rentals there? A. I have found there is a janitor on the bottom floor with three rooms, he has three rooms, he pays \$17. which he says \$7 he pays and \$10 he has allowance for janitor work.

Q. So that the rent derived from that side is \$7? A. \$7 he pays.

Q. That is the ground floor? A. No; that is one of the families; and the other family, the rooms were vacant, four rooms has been vacant.

Q. That is the ground floor you are talking about? A. Yes, sir.

30 Q. There are four rooms in that apartment, are there? A. Yes; there are four.

Q. Vacant. Was that nailed up at this time? A. No, this was just with rope, the knob was tied around, not nailed at that time; that opened.

Q. What about the floor above; what did you find the rent to be there? A. There was two families, which they said they pay \$18 a month.

Q. They are both occupied, are they? A. They are both occupied; yes, sir.

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Q. Any other apartments above that? A. There have been two families there, one of them has been vacant, one paid \$18.

Q. Was that the top floor? A. That is the third floor; yes, sir.

Q. So there is a store and three rooms on the ground floor; the next floor was two apartments of four rooms on each. A. Four rooms each. 10

Q. Then the top floor, how many apartments there? A. There has been four rooms each, two families, one vacant and one paid \$18.

Q. That is the way you found it at that time? A. That is the way I have found it; yes, sir.

Q. Do you remember going to the property when Mr. Snyder was present, and Mr.—what is his name? A. Mr. Everett? 20

Q. Not Mr. Everett; the painter. A. Mr. Dlugash.

Q. When did you go with them to the property; what time was that? A. I went about, around the 2d or 3d of February, which I took Mr. Dlugash to look over to do my painting for me. Supposed to paint the rooms.

Q. That is the time you have been testifying to; isn't it? A. Yes, sir; that is the time I have testified to. Next after that I went with Mr. Everett; that was on March 3d. 30

Q. Did you find the apartments nailed up? A. Yes, sir; because these people has it locked, and the boss has opened up the apartments for me, he got in through the fire escapes, through the windows, the windows were busted, they opened them up from the inside and unnailed the doors for to let me in; that is how I found that the rooms has been at that time, there wasn't as many rooms as they were

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stated, and different things as I found in the building.

10 Q. How many rooms did you find barred up or nailed up? A. That is at 174 Avenue F. That is the whole first floor, two families has been nailed up, that is vacant rooms, and the vacant rooms has been nailed up, except at 97 East 24th Street, that is the only one that was open, then there was a rope around the knobs only to the side; we got that off.

Q. Did the janitor do this? A. And the janitor was in there; he helped us to open up these apartments also, after we opened up the first floor, also the janitor helped to open the rest.

Q. When you say that the painter and yourself—A. The painter and Mr. Snyder.

20 Q. Forced the doors open? A. They opened the doors for me and I got in.

Q. What did the tenants do for light, they having no gas? A. They have lamps, oil lamps; at 97 they had pipe there no fixtures, East 24th.

30 Q. Does that apply to the other properties being in the same condition? A. Well, they weren't in such bad condition, except the vacant rooms has been in bad condition, that is, the plaster being down, some of the windows smashed, and the faucets, the tops of the faucets were taken off almost off all the vacant rooms.

Q. All the plumbing? A. That is all the plumbing; yes, sir.

Q. How many bath tubs did you find in that condition? A. Not bath tubs; sinks and tubs.

Q. How many? A. On 97 and 174 Avenue F—

Mr. Sanford: That is not in the petition, any question about the condition of the plumbing; that isn't set out; that is new matter.

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The Master: I hardly think, Mr. Hughes, you can consider anything that is not specified in the notice, or in the petition. I will overrule the question.

Q. You have informed the receivers, through your counsel, have you not, of this condition? A. 10
Yes.

Q. And demanded the return of your money? A.
Yes.

Q. How much did you pay on account? A. I paid \$2,280.

Q. You have never lived in that property, have you? A. No, sir.

Q. How came you to consider the purchase of it?
A. Well—

Q. Receiving this notice? A. Receiving this notice; I have been bidding on other property besides this, right downtown in Jersey City. 20

Q. You are somewhat of a real estate speculator?
A. Yes.

Q. Do you remember going to visit these premises with your husband on one occasion? A. Why, I believe I did; he didn't go through it, every apartment.

Q. He didn't what? A. He was there with me, I believe, after the sale. 30

Q. Yes. A. He didn't go in the apartments up there, because he was busy, he had some other work to do in Bayonne and he just went down there with me, but he went right out.

Q. You found the doors nailed up on this occasion, didn't you? A. At that time; yes, sir.

Mr. Sanford: Can you fix the time?

Mr. Hughes: He says here January 15th.

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Q. Was it January 15th; shortly after the sale, was it? A. Yes; it was after the sale.

Q. The sale was on the 8th of January; about a week after, was it? A. Yes, sir.

10 Q. You didn't attempt to break into any apartments at that time? A. No, sir; because he was busy; we tried the doors and they were nailed at that time, too.

Q. You say you went again, with Mr. Everett? A. On March 3d.

Q. Did you go through the apartments on that occasion?

By Mr. Sanford: Q. Was this the second visit? A. No; just one visit I made on March 3d with Mr. Everett.

20 Q. Why did you go with Mr. Everett? A. I went with Mr. Everett to look over the property to show that there wasn't as many rooms and that I was misrepresented; I called his attention that I was misrepresented and I wanted him to go down with me to look over the property, which Mr. Everett did; and we asked the janitor, I went to the janitor and he let us in, let us go through the apartments, which he had unnailed and untied some of the doors and let us in through the apartments, which he got in through the fire escapes at some of the places and opened it up for us.

30

Q. Well, did you find them in substantially the same condition as they were at the time you were there before? A. Yes, at that time when I went there on February 2d or 3d.

CROSS-EXAMINATION by Mr. Sanford:

Q. This visit that you speak of as having been made in March with Mr. Everett was the second vis-

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it that was made with him? A. No, sir; one visit I made with him.

Q. Mr. Everett only went with you once? A. Once; that is on March 3d.

Q. When was the time before that you were in that building? A. It was on the 2d or 3d of February. 10

Q. Did you get into the rooms at that time? A. Yes, sir; at that time I went there with the painter, because I wanted him to do the painting; that is how I got real notice, I looked over the property.

Q. How did you get into the rooms? A. By the painter and his helper and the janitor helping open the doors, which they entered through the windows and unnailed the doors for me.

Q. You followed the same procedure in getting 20 into the rooms when you went with Mr. Everett that you followed the preceding time with the painter? A. No; the things were nailed up just the same, but the janitor has opened, I asked the janitor to open them up for Mr. Everett and me to go through these apartments.

Q. You are interested in the real estate business; you buy and sell real estate? A. Yes, sir.

Q. Have you ever had any trouble similar to this? A. No, sir; that is the first time. 30

Q. You have always gone through with your sales, have you, on all your purchases? A. Yes, sir.

Q. After your examination of the premises on the Monday preceding the sale, you say that you attempted to get in communication with Mr. Wolbert? A. Yes; on a Monday, it was, I think right after I came back from seeing the property, I went around to the property.

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Q. Did you make any effort to get in touch with the receivers of the New Jersey Refrigerating Company, or the office of the New Jersey Refrigerating Company? A. No, sir.

Mr. Hughes: I object to that.

10 A. I only find the notice said to go to Mr. Wolbert's office and that anything I wanted to find out to see Mr. Wolbert, that is what I understood in the notice.

Q. You did so call on Mr. Wolbert? A. Yes, sir.

Q. You made a personal visit there? A. Yes, sir; I was there.

Q. Well, did you call him first by the telephone? A. No, sir; not at that time.

20 Q. You went there personally? A. Personally I went there, because I was right over on Journal Square.

Q. Mr. Wolbert was there? A. He was busy in his office.

30 Q. What did you say to him? A. I was waiting outside, and one of his young men came out and he says he was busy; I said I just wanted to see him a minute; the young man went in and he came out, I said, "I wanted to speak to you about this property that you are going to sell, to see if I like it, Mr. Wolbert;" he says to me, "Just a second," he says, "I am busy now; I will tell you what, I will be busy long enough, because I have some other people here; if you call on me tomorrow afternoon if you have time, well, I will see you about it."

Q. Did you tell Mr. Wolbert what you wanted in any detail? A. No, sir.

Q. Just said you wanted to speak to him? A. Yes, sir; just about this auction sale.

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Q. You didn't mention this property? A. No; I didn't.

Q. Just said you wanted—A. Not at that time; no, sir.

Q. Then you call on him the next day? A. I call on him the next day; yes, sir. 10

Q. Did you see Mr. Wolbert then? A. I was there but he wasn't there at that time.

Q. What time were you there? A. It was sometime in the afternoon, but I couldn't exactly mention the hour now; I know it was in the afternoon.

Q. Well, what was the time of day that you were there on the preceding visit? A. What do you mean, sir?

Q. What time of day were you there at the time you made the first visit to Mr. Wolbert after having examined the property? A. It was in the afternoon. 20

Q. That was the day that Mr. Wolbert saw you and told you to come to him the next day? A. Yes, sir.

Q. That was Tuesday, in the afternoon? A. In the afternoon.

Q. Was it early in the afternoon? A. No, it wasn't; it was somewhere, I think, around three, or after three, I think somewhere around that. 30

Q. How long did you stay there in the office? A. At that time I stayed there I guess over 35 minutes, Monday it was, they said they don't know where he was, he would be back around five o'clock maybe.

Q. Do I understand that you fix the day of the week as Tuesday that you made this visit? A. I don't fix the date; the only thing I remember—

Q. No; pardon me; I didn't make myself clear.

Petitioner's: Frances F. Jasinski—Cross

Do I understand that you now fix the date of this visit that you made—A. No; I am not fixing it now.

10 Q. Well, as being on Tuesday. A. It was on a Monday, I know; and the next day I was supposed to come.

Q. What was on Monday? A. I was on a Monday to Bayonne; that was just a week before the same; that was on a Monday.

Q. Wait a moment; the sale was on Thursday. A. Yes; I was on Monday in Bayonne before the same.

Q. Was it the Monday directly preceding the sale? A. Yes; just before the sale.

20 Q. Then what happened after that? A. As I said, I went to Mr. Wolbert on Monday—

Q. What? A. On a Monday it was, right after I came back from Bayonne.

Q. It was the same day that you examined the property that you went to Mr. Wolbert's office? A. Yes, sir.

Q. That was on a Monday afternoon? A. Yes; that was on Monday afternoon.

30 Q. Preceding the sale; about three o'clock? A. Well, at that time I came back from Bayonne, it was around four o'clock, I believe, on Monday, somewhere about that, and he was busy in his office.

Q. Then you went back to his office the next day? A. I did.

Q. What time did you get there then? A. I couldn't really remember; I know it was in the afternoon but the real time I couldn't just say.

Q. Well, was it early in the afternoon? A. No,

Petitioner's: Frances F. Jasinski—Cross

I believe it wasn't, it was just about around three or four o'clock, something like that; then they told me—

Q. That was on Tuesday? A. That was on Tuesday, yes, the next time, and he isn't in, they told me to wait and I waited a little over half an hour and he didn't come, so I had to go. 10

Q. You recall now that you waited over half an hour, though you don't remember what time of day you were there? A. It was in the afternoon, I know that, but just exactly I couldn't tell you the time, it was in the afternoon; I waited about half an hour, so they says—

Q. But the fact is fixed in your mind that you waited half an hour? A. Not in my mind; no, sir. I waited there over half an hour, I could see by his clock, I could see by his clock in the office. 20

Q. You say that you waited there half an hour by his clock? A. Yes, sir.

Q. What was the time? A. It was somewhere between three and four.

Mr. Hughes: I object to that as immaterial. She said she went there in the afternoon and it is impossible for her to remember the time.

The Master: I presume he is testing the witness' veracity; I think it should be allowed. 30

Q. You recall that you looked at the clock and fix the time as half an hour? A. It was about half an hour.

Q. What time was the clock when you examined it? A. Somewhere around between three and four o'clock, and I know, because after I was leaving, I said I couldn't wait any longer, so this party says, 40

Petitioner's: Frances F. Jasinski—Cross

“Call at five o'clock,” call him up on the wire and he would be in the office, because they expected him in a few minutes, but he didn't come in the time I was waiting for him, so I had to go.

10 Q. Why did you have to go? A. I had to go on business to see some party.

Q. Very important business, was it?

Mr. Hughes: I object to that; I don't think that is relevant.

The Master: I don't think it is necessary to go quite so far. I will overrule the question.

Q. You say that after waiting there half an hour, the time you fix by the clock, somebody in the office told you to return about five? A. The party says
20 he may be in, they expect him in in a minute they says to call him up about five o'clock and he would be surely in then, to call, or either call him up on the wire.

Q. You were interested in this transaction? A. Yes; I was looking at other property besides, I wasn't only looking at this, I was to Hudson Street and Essex Street.

Q. This was important business to you, wasn't it? A. Well, what do you mean by important?

30 Q. There was a good deal of money involved? A. I really went—

Q. You wanted to buy the property; you were interested in it? A. Sure, I was looking over other property, which I thought I could fix up and make something out of it, of course.

Q. Well, did you call up Mr. Wolbert at five o'clock? A. I have called him up at the time.

Q. I beg pardon. A. I have called up about five o'clock.

Petitioner's: Frances F. Jasinski—Cross

Q. On Tuesday afternoon? A. That is Tuesday afternoon.

Q. And you spoke to him then? A. Yes, I spoke through the wire.

Q. Now, what property is it that had the electric light in the store? A. That is 174 Avenue F and 176 also had electric light in their store, electric wires, it was a light, the light wasn't on at that time when I was there. 10

Q. So it was wired for electricity, was it? A. Yes, sir; and the fixtures were there, also.

Q. Which store did the electric light wires come into from the street? A. To 174, on the corner where the saloon is.

Q. I show you this paper, which purports to be "Conditions of Sale for Parcels 22, 23 and 24" on that notice which is already in evidence, and ask you if that is your signature? A. Yes, sir; that is my signature. 20

. Original Conditions of Sale offered in evidence, admitted without objection, and marked Exhibit R-1.

Taken and sworn to before me this 16th day of October, 1925.

PIERRE F. COOK, 30
Master in Chancery of New Jersey.

Petitioner's: Lucius Theodore Everett—Direct

State of New Jersey, County of Hudson, ss:

LUCIUS THEODORE EVERETT, being first duly sworn according to law, on his oath deposes and says:

- 10 Direct-examination by Mr. Hughes:
 Q. You reside in Mahwah, New Jersey? A. Yes, sir.
 Q. Are you a dealer in real estate? A. Yes, sir.
 Q. Where is your office? A. Mahwah, at the present time; I moved.
 Q. Have you any office in Jersey City? A. I did have.
 20 Q. You did have one in 15 Exchange Place? A. Yes, sir.
 Q. How long have you been engaged in the sale and purchase of real estate in Hudson County? A. About twenty years.
 Q. Were you at any time in partnership with Albert Higson, as real estate agent, at 279 Grove Street, Jersey City? A. Yes, sir.
 30 Q. Do you remember accompanying Mrs. Jasin-ski, the petitioner, on March 3d of this year, to examine the properties at 174 Avenue F, 176 Avenue F and 97 East 24th Street, Bayonne? A. Yes, sir.
 Q. Was it morning or afternoon when you went there? A. I think it was in the morning; I am not sure about that.
 Q. Now, taking the premises at 174 Avenue F the corner store? A. Yes.
 Q. What does that building consist of; is it brick or frame, or what is it? A. That is a three-story frame building, with a saloon on the corner, and two apartments in the rear, on the ground floor.
 40 Q. Two apartments? A. Two apartments.

Petitioner's: Lucius Theodore Everett—Direct

Q. How many rooms each? A. Three rooms each; and four apartments on the second and third floors, of three rooms each.

Q. You didn't find any of the apartments containing four rooms, did you? A. No, I didn't.

Q. What did you find about the gas in that building? A. Gas in the halls, but that was all, and possibly in the saloon; I recall they were using electric lights in there. 10

Q. And the proprietor of the saloon claims private ownership of that? A. He said he put that in himself; it was decidedly an amateur job.

Q. He said that? A. Oh, yes.

Mr. Sanford: I object to that; that is irrelevant, what he said.

Mr. Hughes: It is competent if he testified that he was informed that it was the private property of the saloon man and does not belong to the receivers; you don't claim that. 20

Mr. Sanford: Why, of course, it is part of the fixtures.

The Master: I presume whatever this witness says would not vary the law on the subject.

Q. When you say that there was gas in the halls what do you mean by that; there was gas pipe? 30

A. Yes, pipe and fixtures in the hall.

Q. And none in any of the rooms in the house?

A. None in any of the rooms in the house.

Q. No pipe and no fixtures? A. No.

Q. Did the store keeper tell you what rent he paid? A. He showed me his receipt, \$30.

Q. And what did he pay for the apartment on the next floor? A. \$10.

Petitioner's: Lucius Theodore Everett—Direct

Q. That is occupied by him, is it not? A. Occupied by him.

Q. Now, the apartments at the rear of the store?
A. They were empty at the time, my recollection is.

Q. Did they appear to have been vacant a long
10 time? A. Yes.

Q. What was the condition of the windows? A.
Most of them were out.

Q. Most of them were out? A. Yes.

Q. Were they smashed? A. Smashed.

Q. What about the plaster? A. Well, large
patches of it down here and there throughout the
house.

Q. What was your general impression as to the
condition of the apartments in this building? A.
20 Very badly run down.

Q. What about the water in these apartments?
A. It had been shut off in all except those apart-
ments that were occupied.

Mr. Sanford: I move to strike that out, on
the ground that it is immaterial whether the
water had been shut off in the apartments.

The Master: I think the condition of the
water pipes would be very relevant and ma-
terial, but whether or not it was shut off,
that is only a temporary condition.
30

Q. Was any water being used there; did you try
to turn it on? A. No. It was in one of the oc-
cupied apartments; in one of the apartments I think
they had to take the water out, I think it was—

Mr. Sanford: Just a minute, please. I
object to what the witness thinks.

The Master: Unless the witness knows it
to be true.

Q. You don't know whether or not the water was
40

Petitioner's: Lucius Theodore Everett—Direct

carried from one place into this apartment, do you, of your own knowledge? A. No; that is what they told me.

Q. You don't know that of your own knowledge? A. Not of my own knowledge; no.

Q. You found that there was no water, except in one apartment? A. In the occupied apartments; yes, sir; over the store. 10

By the Master: Q. You mean there was no water running? A. No water running.

Q. Or there was no water appliance? A. The appliances were there, but they were in such condition that they couldn't be used, and the water had been shut due to the removal of the faucets and the removal of parts of the plumbing.

Q. Did it render the toilets useless? A. Most of them were out of commission; I think there was one working. 20

Q. There was still another floor, wasn't there, in this house? A. The third floor, yes.

Q. Any of that occupied? A. No.

Q. All vacant? A. All vacant.

Q. Did the janitor come to you? A. He did.

Q. Did he open up these rooms? A. Yes, sir.

Q. Were they nailed up? A. Yes, sir; in most cases nailed; he had keys for one or two. 30

Q. Now, as to 176 Avenue F, that is next door? A. Yes.

Q. What does that consist of; is that a frame building, too? A. Two-story frame.

Q. What does it consist of? A. A store and one apartment in the rear.

Q. How many rooms? A. Three rooms.

Q. Just the one apartment? A. Just the one

Petitioner's: Lucius Theodore Everett—Cross

apartment; and an apartment on the second floor of four rooms.

Q. Were you informed as to the amount of rent?

A. He showed me his receipts, \$30 for the store, my recollection is, and I think it was—

10 Q. What about the apartment over the store? A. It seems to me that was \$19.

Q. That is what your affidavit says? A. If it says so in the affidavit, that is what it was; that was eight months ago.

Q. \$19? A. Yes.

Q. Per month? A. Yes.

Q. Any gas in this building? A. No.

Q. Any fixtures for gas? A. No.

Q. Any piping? A. No.

20 Q. Absolutely nothing? A. Nothing.

Q. Now, about the water in the apartment? A. That was running.

Q. What? A. They had water there.

Q. They had the use of water? A. Yes.

Q. In the store and the apartment over it? A. Yes.

Q. Did you ever visit the property since? A. No; I haven't.

Q. Just on that one occasion? A. Just the once.

30

CROSS-EXAMINATION by Mr. Sanford:

Q. Did you get into each one of those apartments at 174 when you made this examination on March 3d? A. Yes, I did.

Q. The janitor opened them all up for you? A. Yes; he accompanied me.

Q. You spoke of electric light in the store; was the electric light in any other part of the building, 174? A. He had run a loose wire; in fact, all of

40

Petitioner's: Lucius Theodore Everett—Cross

the wiring was a loose wire proposition; he had run a loose wire up through a hole in the floor up into the apartment above the saloon.

Q. Now, on the second floor, where were the toilets which you speak of? A. In the hall.

Q. The toilets were in the hall? A. Yes, sir. 10

Q. When you speak of the water being cut off from the toilets, you mean they were cut off over the toilet there in the hall? A. Yes, sir.

Q. Have you ever dealt in real estate in that neighborhood? A. No; I never handled any real estate in that neighborhood.

By Mr. Hughes: Q. That is, in Bayonne. A. I have had some stuff in Bayonne, but not in that neighborhood at all.

By Mr. Sanford: Q. What was your general line 20 of business in real estate; what kind of properties did you deal with? A. Tenement property and store property.

Q. Property similar to this? A. Similar property; yes.

Taken and sworn to before me this 16th day of October, 1925.

PIERRE F. COOK,
Master in Chancery of New Jersey. 30

Petitioner's: John Snyder—Direct

State of New Jersey, County of Hudson, ss:

JOHN SNYDER, being first duly sworn according to law, on his oath deposes and says:

- 10 Direct-examination by Mr. Hughes:
 Q. Where do you live? A. 16 Canal Street.
 Q. Jersey City? A. Yes.
 Q. What is your business? A. Well, I help painting.
 Q. You help as a painter? A. Yes, sir.
 Q. Whom do you help? A. This here fellow, Nick Dlugash.
 Q. That is the man that didn't come in? A. Yes, sir.
- 20 Q. Do you remember ever visiting the premises at 174 and 176 Avenue F, Bayonne, and 97 East 24th Street? A. Yes, sir.
 Q. Who went with you? A. Mrs. Jasinski and Nick and I went with him.
 Q. Mrs. Jasinski and your boss painter? A. Yes; my boss.
 Q. And yourself? A. Yes, sir.
 Q. When was this that you made this visit? A. About February 2d or 3d.
- 30 Q. Now, did you go through, or try to go through the property? A. Yes, we had to go through; we had a bar and hammer and we opened the doors.
 Q. You got a bar and hammer? A. Yes, to pull the nails, to get in through the property.
 Q. Did you go to see the janitor? A. The janitor wasn't in; he was working at the time.
 Q. So you and your boss forced the doors? A. Yes, sir.
 Q. What number was this; on the corner? A. 174.
- 40 Q. How many doors did you force? A. Well, some was with keys—

Petitioner's: John Snyder—Direct

Q. What? A. Some was with keys that we opened, though some was nailed.

Q. Do you remember how many you forced? A. And some we got into the windows; the windows was open.

Q. How did you get the doors open? A. Well, 10 we opened one of the doors and got in through the fire escape on the side.

Q. You forced them in? A. Well, the windows were tied and we got in through the fire escapes.

Q. How did Mrs. Jasinski get in? A. She didn't go through the fire escape, she went the same way we went.

Q. She went the same way with you? A. Yes.

Q. Well, you haven't yet answered my question; how many doors did you force? A. About three or 20 four.

Q. Were they all on one floor? A. No, a couple on each.

Q. What did you find as to the condition of the rooms that you did get into? A. The plaster was broke and the faucets on the sinks were pulled off.

Mr. Sanford: I object to that; there is nothing in the petition as to that.

The Master: I think we will eliminate the faucets at this time.

Q. Did you get into the next property, 176? A. 30 Yes; there is a candy store downstairs.

Q. Yes. A. And three rooms in the back.

Q. Yes; did you go into those three rooms? A. Yes; the lady let us in.

Q. Were they occupied? A. Yes.

Q. What about the rest of the building? A. They had four rooms upstairs.

Q. Were they occupied, too? A. They were.

Petitioner's: John Snyder—Direct

- Q. Did you go into those? A. Yes.
- Q. What did you find the condition of those four rooms to be in, and the place downstairs? A. Downstairs they have electric, and over the saloon, over 174.
- 10 Q. Yes; was there any sign of gas? A. No gas
- Q. Any sign of gas pipe in 174? A. 174 is pipe in the hall; no gas.
- Q. But nothing in the rooms? A. No.
- Q. In 176 there was no piping? A. No piping at all.
- Q. Not anywhere? A. No.
- Q. Now, take the property on East 24th Street; 97, I think it is. A. 97.
- Q. Did you try to get in there? A. Well, there
- 20 was four of them occupied.
- Q. What? A. They were occupied; we got into them.
- Q. What did you find on the ground floor; how many rooms? A. There were three rooms where the janitor was.
- Q. What? A. There were three rooms where the janitor was.
- Q. Back of the store? A. In the back of the store—you are talking about 96 now?
- 30 Q. Yes. A. There is no store there.
- Q. You noticed three rooms on the ground floor? A. On the ground floor.
- Q. Is that all the rooms there are on the ground floor? A. There was four rooms on the other side.
- Q. Four rooms on the other side? A. Vacant.
- Q. They were vacant? A. Yes.
- Q. And three rooms opposite? A. The janitor's.
- Q. They were occupied? A. Yes.
- Q. Now, what about the next floor above? A.
- 40 There were two apartments of four rooms each.

Petitioner's: John Snyder—Cross

Q. Were they occupied? A. They were occupied.

Q. Is there a floor above that? A. Yes, another floor; that was only occupied by one and one vacant.

Q. How many rooms each? A. Four rooms each. 10

Q. Any gas in any of those rooms? A. No gas.

Q. Any in the halls? A. I believe no gas at all.

Q. Did you notice the condition as to water? A. The water was all right.

Q. They were using water in that house? A. Yes.

CROSS-EXAMINATION by Mr. Sanford:

Q. How long did it take you to make this examination? A. About half an hour. 20

Q. How long did it take you to make an examination of all the property? A. We was there about an hour.

Q. How many apartments did you go through in that hour? A. We went through all of them.

Q. How many apartments are there in 174 Avenue F? A. Ten apartments.

Q. How long did it take you to go through those apartments? A. Took about half an hour.

Q. How many apartments are there in 176 Avenue F? A. There is two apartments; the store and one family. 30

Q. How long were you in that building? A. Oh, about ten minutes.

Q. Did you try to get hold of the janitor at 176? A. Well, the lady was there, but the husband wasn't; see, the janitor lives in 97.

Q. Well, I am talking about 176. A. 176 has no janitor.

Petitioner's: John Snyder—Cross

Q. The janitor was at 97? A. At 97.

Q. You mean the janitor for 176 was over in 97?

A. Yes.

Q. Did you go over there to get her? A. He wasn't there; only his wife.

10 Q. Did you get her? A. Yes; we got her.

Q. It took you some time to get hold of her? A. No; she was on the outside, she was buying something off a peddler.

Q. Did you wait for her to come along? A. She was right there; no more than she seen us she came over; she wanted to find out who it was.

Q. Then you went through 176? A. 176.

Q. It took you about ten minutes in 176? A. We didn't have no janitor with us, only me, Mrs. 20 Jasinski and the painter; when we got to 97 we got the janitor.

Q. In 176 did you find the apartments open? A. Well, there was people in there, in 176.

Q. The apartments were occupied? A. Were occupied.

Q. Did you ask them to permit you to go through? A. Sure.

Q. And did they allow you to go through? A. Yes.

30 Q. How were those rooms arranged that you went into in the apartments? A. Well, the stairs go right through from the bottom floor.

Q. Well, what rooms; I am talking about these rooms? A. A store and three rooms.

Q. That is on the ground floor? A. On the ground floor.

Q. In 176? A. In 176.

Q. Is that all there is on that floor? A. Four rooms upstairs.

Petitioner's: John Snyder—Cross

Q. But on that floor? A. Well, that is all on that floor, a store and three rooms.

Q. A store and three rooms? A. Yes.

Q. And on the second floor? A. It has four rooms.

Q. One apartment? A. One apartment, four 10 rooms.

Q. You went in there; the tenant let you in there? A. Yes.

Q. And you went through and examined them? A. Yes.

Q. It took you about ten minutes? A. That is all.

Q. Now, 96 East 24th Street; how long were you there? A. Well, say about 15 or 20 minutes, because they were occupied and the other doors were 20 open.

Q. Did you ask permission of the tenants? A. Sure; we knocked at every door.

Q. And they permitted you to go through? A. They permitted us to go through.

Q. At that time did you examine carefully to see whether there was gas? A. Sure.

Q. And whether there was gas piping in the apartments? A. Not in the apartments; in the hallway. 30

Q. You say there was gas in the hallway? A. Yes.

Q. Did you examine to see whether there was gas in the apartments? A. No; there was no gas in the apartments; there was no other gas.

Q. How do you know that there wasn't gas? A. I asked the Polish lady there.

Q. What did she tell you? A. She said they used an oil lamp.

Petitioner's: John Snyder—Cross
Respondents': Howard L. Wolbert—Direct

Q. They were using oil lamps? A. Yes, sir.

Q. Well then, to make an examination of the three buildings, 174 with ten apartments, and the store, 176, with the store on the ground floor and
 10 the apartment on the second floor; and 97 East 24th Street, with two apartments on the ground floor, two on the second floor, and two on the third floor; it took you an hour? A. There were four on the first floor and four on the top floor.

Q. It took you an hour to make that examination? A. Yes.

Taken and sworn to before me, this 16th day of October, 1925.

20

PIERRE F. COOK,
 Master in Chancery of New Jersey.

Mr. Hughes: I have no more witnesses.

State of New Jersey, County of Hudson, ss:

30 HOWARD L. WOLBERT, being first duly sworn according to law, on his oath deposes and says:

Direct-examination by Mr. Sanford:

Q. Mr. Wolbert, give your full name? A. Howard L. Wolbert.

Q. What is your business? A. Auctioneer.

Q. Where is your place of business? A. 921 Bergen Avenue, Jersey City.

40 Q. Were you employed by the receivers of New Jersey Refrigerating Company to advertise

Respondents': Howard L. Wolbert—Direct

and conduct the sale at auction of the premises 174 and 176 Avenue F. and 97 East 24th Street?

A. Yes, sir.

Q. On January 8th, 1925? A. Yes, sir.

Q. And did you conduct the sale? A. Yes, sir.

Q. Do you recall the name of the purchaser of 174 and 176 Avenue F. and 97 East 24th Street? 10

A. Yes, sir.

Q. On January 8th, that was? A. Yes, sir.

Q. Who was the purchaser? A. I think it was Jasinski.

Q. Do you know her by sight? A. Yes, sir.

Q. Well, is the petitioner here that person? A. That is the lady; yes, sir.

Q. Did you read the conditions of sale prior to the sale? A. Yes, sir. 20

Q. Is this the notice which you got out and circulated among the public (referring to P-1)? A. Yes, sir.

Q. Of the sale? A. Yes, sir.

Q. Now, in this notice of sale there is a provision that further information may be obtained from the auctioneer; "Additional information may be had from the auctioneer's main office, Trust Company of New Jersey building, 921 Bergen Avenue"? A. Yes, sir. 30

Q. Were you prepared to give that additional information? A. Any information we had; certainly.

Q. Did Mrs. Jasinski, the petitioner, at any time prior to the sale, call upon you, either by telephone or by personal visit to your office, asking for additional information regarding the property to be sold under this notice? A. No, sir.

Respondents': Howard L. Wolbert—Cross

CROSS-EXAMINATION by Mr. Hughes:

Q. Don't you remember being telephoned to by Mrs. Jasinski, and don't you remember answering her over the telephone before the sale? A. No, sir.

10 Q. You don't remember any such telephone call at all? A. No, sir.

Q. Don't you remember her coming the next day to see you, and you said you were too busy and you told her to come the next day, that you were too busy and that you would see her the next day about that; don't you remember telling her that? A. No, sir.

Q. You didn't tell her that? A. No, sir.

Q. And you had no conversation with her at all on the telephone? A. No, sir.

20 Q. And don't you remember her coming the next day to see you and you coming out to see her? A. No, sir.

Q. And stating that it was all contained in the notice, the information she needed? A. No, sir.

Q. You never told her that? A. No, sir.

Q. Do you mean to say that you never saw the woman at all until the day of the sale? A. Oh, I saw Mrs. Jasinski upon several occasions during the last ten years.

30 Q. Well, the week of the sale; the week before the day of the sale? A. No, sir.

Q. Didn't you see her at all then? A. No, sir.

Q. Not within a week of the sale? A. No, sir.

Q. And had no telephone conversation with her within a week of the sale? A. No, sir.

Q. That you swear to be true? A. I swear to be true; yes, sir.

40 Taken and sworn to before me, this 16th day of October, 1925.

PIERRE F. COOK,
Master in Chancery of New Jersey.

Respondents': Frederick Platz—Direct

State of New Jersey, County of Hudson, ss:

FREDERICK PLATZ, being first duly sworn according to law, on his oath deposes and says:

Direct-examination by Mr. Sanford:

Q. What is your full name? A. Frederick Platz; no middle initial. 10

Q. What is your business? A. I am Vice-President and Treasurer of the Hudson Real Estate Company.

Q. Where are they engaged in business? A. At 168 Ocean Avenue and 255 Grove Street, Jersey City.

Q. Has the Hudson Real Estate Company for a number of years last past had control of the renting and collection of rents of premises 174 and 176 Avenue F. and 97 East 24th Street? A. They had, yes. 20

Q. Did you have personal charge and supervision over the renting of this property? A. Yes.

Q. As the President and Treasurer of the Hudson Real Estate Company? A. As office manager at the main office, yes.

Statement of rents for the years 1922, 1923 and 1924, of premises 174 and 176 Avenue F. and 97 East 24th Street, offered in evidence, admitted and marked Exhibits R-2, R-3 and R-4. 30

Mr. Hughes: Please state the object of putting them in.

Mr. Sanford: The answer of the receivers having set up that the average rental through several years last past of the premi-

Respondents': Frederick Platz—Direct

ses 174, for the apartments, would amount to \$12. together with a monthly rental of the store at \$30. would amount to \$1800. annually, these statements are offered in evidence; that is the only purpose we have for putting them in.

10

Q. Mr. Platz, I notice that in these statements of rents collected, you describe the premises on East 24th Street as 99, and in the notice of sale it is described as 97; can you explain that? A. As a matter of fact that building is quite a long building, which really takes in two numbers, and I think the entrance would be nearer 99 than the number that would be called 97; that is the reason for that.

20

As a matter of fact, I think on the map it is called both 97 and 99; you see, it is quite a building, it runs along quite a ways.

Q. Can you state, Mr. Platz, what the estimated yearly rentals for premises 174 amounted to by looking at these statements? A. At what particular time?

Q. The estimated yearly rental. A. You mean at the time of this sale; at that particular time?

30

Q. All right; suppose we take up up there, at the time of the sale. A. The estimated yearly rentals as they appear on our books at the time, that, of course, took in vacancies and rented portions as well—I checked those up—are as stated in this newspaper advertisement.

Q. In the notice of sale? A. In the notice of sale.

Q. Gotten out by Mr. Wolbert, the auctioneer? A. Yes, sir; I thought it was a newspaper; this notice of sale.

Q. That is for 174? A. For that entire parcel.

40

Respondents': Frederick Platz—Direct

Q. For 174 Avenue F? A. Yes; that is right, \$1776.

By the Master: Q. Is that the amount actually received? A. Not actually received, no. That took in the rentals of the premises, whether they were occupied or vacant, the total rents of the premises. 10
You see, we keep them in the records here, the same as you would this building, taking the occupied portions and vacancies, and then the total rents amount to so much; some of them vacancies occurred in there, but the estimated annual rental is what our rent books show.

Q. Figured with the idea that they are all occupied? A. All may be occupied, yes.

By Mr. Sanford: Q. When you buy and sell property of this character, how do you arrive at what the rentals are for the purpose of fixing a valuation; do you merely consider the number of rooms actually rented, the number of apartments actually rented, in case it is a tenement house, or do you consider what the building can return if fully rented? A. Oh, we base the rental of the building, of course, on what it would bring fully rented, because the building might be partially occupied at one time and then fully occupied at another. 20
30

Mr. Hughes: I will enter an objection here, if Your Honor please, to that method of getting at the rental value, because we are charged with rents, they having the property for years, they carried it along and figured it at what it should rent for; I don't think that is a fair method. I think the true method is to get the amount of rents actual-

Respondents': Frederick Platz—Direct

ly received, and not figure in vacant apartments at so much rent.

10 The Master: But the petition sets out in the notice a figure on estimated rents; that is a pretty vague statement, that is true, and his method of arriving at that figure may be just as vague. I think he has a right to show just what he has for that figure.

Q. In connection with the premises 97 East 24th Street, can you state the amount of the estimated rentals there, and how those rentals were arrived at? A. The estimated annual rental was \$1284, and it was arrived at in the same manner; it was simply taking the rentals as they are stated on our books, of the premises, including the occupied as well as the vacant portions.

20 Q. Now, Mr. Platz, have you made an inspection of those buildings at any time, and are you familiar with the interior of the buildings? A. Yes.

Q. When were you there last? A. I don't recall the exact date, but it was quite recently.

Q. Well, approximately. A. Within the past month.

30 Q. Had you been at the premises either shortly before the sale or shortly after the sale? A. Well, I can't say that I was there shortly before or after; I went there periodically, like we do in all of these properties, and of course was familiar with it; but I can't state just what time I went there.

Q. You were generally familiar with it; it was part of your business to be familiar with these buildings there? A. Yes.

Q. Now, as to the premises 174 Avenue F. can you state the number of apartments, with the rooms in each apartment? A. Yes.

40

Respondents': Frederick Platz—Direct

Q. Will you do so, please? A. There are ten apartments in that building.

Q. Yes; on what floors are those ten apartments?

A. There are two; that building has a store in it, you know.

Q. Yes. A. A store, and a hall on the side; then **10**
there are two apartments in the rear of the store; I mean in the rear of the building.

Q. Yes. A. What we call the first floor, rather, South and North. Then on the next floor there are four, and on the top floor there are four.

Q. What was the number of rooms? A. Three in each.

Q. Three in each of the ten apartments? A. Right.

Q. Now, as to 176, state if you will, please, the **20**
number of apartments and rooms in that? A. There is a store and three rooms in the rear on the first floor; and a four room apartment on the second floor above the store.

Q. In the property that we know as 97 East 24th Street, but in your books as 99 East 24th Street? A. That is six apartments.

Q. Six apartments? A. Yes.

Q. Well, state the number of rooms? A. One of three rooms and five of four rooms each. **30**

Q. Five or four rooms? A. Yes.

Q. Now, as to the gas and water pipes and connections in those three buildings, will you explain what you had found there? A. All of them have water, and one washtub, as I recall it; there is gas, that is, well, that is all right, there is gas in the halls of 97 East 24th.

Q. Yes. A. In use; that gas is in use; and the

Respondents': Frederick Platz—Direct

apartments are piped for gas, but there are no fixtures.

Q. That is in 97? A. Yes.

Q. The apartments are piped for gas? A. That is right.

10 Q. As to 176 Avenue F? A. In that building there is no gas, but it has electricity, it is wired for electric light.

Q. Yes; where is that electric light? A. In the store floor.

Q. Yes. A. And I am not quite certain about it being up in the rooms, up above, but I think it is.

Q. Do you know how that wiring came to be put in there? A. No.

Q. You have seen it? A. I have seen it, yes.

20 Q. Was it part of the building? A. Well, I don't know whether you would call it part of the building; it is a crude installation of electric wiring.

Q. 174 Avenue F? A. That building has gas in the halls, but none in the apartments. I would like to change that. It has gas in halls and in the store portion.

Q. Yes. A. And none in any of the apartments.

Q. How about cold water connections? A. They are there.

30 Q. In the store and in the apartments? A. Yes.

Q. What is your custom in the management of those buildings in the way if your apartments are vacant, as to water? A. You mean the water being kept in use or not?

Q. Yes. A. Well, in the winter time we shut it off in all vacant apartments; that is, we have the plumber shut it off and drain the pipes.

Q. Have you a janitor for all of these buildings? A. Yes.

Respondents': Frederick Platz—Direct

.Q Where does the janitor live? A. He lives in the building known as 97, it is in the first floor front.

Q. What rental does he pay? A. He pays \$17. a month, less \$10. for the janitor work.

Q. In other words, you derive a rent of \$17. from that apartment which he occupies, and you allow him, as janitor, for his services, \$10? A. \$10. They are wages. 10

Q. He has charge of all the three buildings? A. Of the entire property.

Q. Do you nail up the doors of the vacant apartments, or do you merely lock them? A. Well, that depends upon the character of the property; it is sometimes necessary to nail them up; in this building I think that is what was done, it was a poor location, swarming with children; just locking them doesn't make them secure. 20

Q. Children would break in? A. Yes; and use a pass key, some of them do.

Q. Have you covered 176 as to water? A. All the apartments have water and tubs, that is, one tub, and also toilets; in some cases the toilets are in the hall, in others they are right in the apartment; in fact, in 97, there is a separate toilet in each apartment; in the other building, in 174 Avenue F. a toilet for each two tenants, that is, there are two on each floor, in the hall. 30

Q. Now, as to 174 Avenue F. as a real estate expert, can you say what difference in the rental value, or in the value of the property, there would be if the building had ten apartments with three rooms, instead of ten apartments of four rooms, and six of three rooms.

Mr. Hughes: I object to that on the ground that it is irrelevant; there are only 40

Respondents': Frederick Platz—Cross

three rooms; what is the use of saying what the difference would be?

Q. As the notice sent out by Mr. Wolbert, the auctioneer, calls for?

10 The Master: What is the purpose of that question, Mr. Sanford?

Mr. Sanford: They claim that there is a material misrepresentation as to the number of rooms in the apartments. It seems to me that if we can show, so far as the rental value of the building was concerned, it was immaterial whether there are four or three rooms, there is no material misrepresentation.

20 The Master: Well, I don't think that is relevant, I will overrule that question.

Mr. Sanford: I will withdraw the question.

Q. Mr. Platz, in your opinion is it possible to sell these three properties as separate parcels? A. I don't think they would find as ready a sale as three separate parcels.

Q. Yes. A. But I do think they could be readily sold in two sections; that is, 174 and 176 as one piece, and 97 East 24th Street as the other.

30 The Master: What is the object of that line of testimony? Do you want to show that even if it may be bad as to part, that there is still some of it which she could hold and dispose of?

Mr. Sanford: Yes.

The Master: I think that is irrelevant. I will overrule that.

CROSS-EXAMINATION by Mr. Hughes:

40 Q. You stated that in one of the apartments there was gas in the hall? A. Yes.

Respondents': Anthony F. Schumaker—Direct

Q. What do you mean by gas in the hall; do you mean the pipes are there? A. No; there is actual gas in use in the halls so that you can light them.

Q. So that you can turn it on and turn it off in the hall? A. Yes, sir.

Q. Which property is that? A. That is in the two large buildings; that small building hasn't any gas; 174 Avenue F. and 97 East 24th Street both have gas in the halls. 10

Q. But 176 Avenue F. has no gas? A. No, sir; there is really no hall to that; it is a small two-story building.

Taken and sworn to before me, this 16th day of October, 1925.

PIERRE F. COOK, 20
Master in Chancery of New Jersey.

State of New Jersey, County of Hudson, ss:

ANTHONY F. SCHUMAKER, being first duly sworn according to law, on his oath deposes and says:

30

Direct-examination by Mr. Sanford:

Q. What is your full name? A. Anthony F. Schumaker.

Q. Where are you employed? A. By the New Jersey Refrigerating Company.

Q. At the office of the New Jersey Refrigerating Company? A. Yes, sir.

Q. How long have you been employed there? A. About six years.

Q. About six years? A. Between five and six 40 years.

Respondents': Anthony F. Schumaker—Direct

Q. You were employed there in December, 1924, and January, 1925, and since that time? A. Yes, sir.

Q. Until the present time? A. I am still there.

10 Q. Do you recall making an examination of the premises at numbers 176 Avenue F. 174 Avenue F. and 97 East 24th Street? A. Yes, sir.

Q. About when did you make that examination? A. I don't recall now just when I made it.

Q. About when; about what date; was it prior to the auction sale? A. Sometime after the auction, after January 8th, it was.

Q. Well, shortly after, or was it a long time after? A. Well, shortly after the auction; I don't recall just when, though.

20 Q. What was the condition that you found in premises number 174 Avenue F. when you went there? A. 174 Avenue F?

Q. Yes; as to the gas and water in the building. A. Well, there was water in the apartments and in the building, and gas in the halls of the building.

Q. Were the apartments piped for gas in 174? A. No; they were not.

30 Q. In 176 Avenue F. what was the condition? A. In 176 Avenue F. the tenant wouldn't allow me to go into her apartment there.

Q. How many apartments are there in 176 Avenue F.? A. One.

Q. One apartment? A. One apartment upstairs.

Q. How many floors are there in that building? A. Two; a store and one floor above.

Q. Where did you find gas in 176? A. There was no gas in 176.

Q. No gas at all? A. Not in 176.

40 Q. And water? A. There was water in the apartment.

Respondents': Anthony F. Schumaker—Cross

Q. 97 East 24th Street; what did you find there?

A. That is a six family house, one apartment of three rooms and five apartments of four rooms; there was tubs and water in the apartments, and the apartments were piped for gas.

Q. What was the condition of the walls and ceilings of these apartments and stores when you made your examination? A. Why, some of them were broken and needed plastering, but as a whole they were in fair shape; that is in, I am now talking of 97 East 24th Street. 10

Q. All right. A. In 174 Avenue F. some of the rooms had the plaster broken on the ceiling and some plaster was out on the walls; and they needed painting.

Q. They were tenantable, were they? 20

Mr. Hughes: I object to that.

The Master: Doesn't that rather call for a conclusion?

Mr. Sanford: I will withdraw the question.

CROSS-EXAMINATION by Mr. Hughes:

Q. Did you go into all the apartments in all the buildings on this occasion? A. Yes, sir; all except the one apartment, the apartment in 176. 30

Q. Did you find any rooms nailed up, the doors nailed up in any of them? A. Yes, sir; some of the doors were nailed up; I took the nails out and got into them.

Q. How many did you find nailed up, as you remember? A. Well, as I recall, there was about two nailed up, two doors nailed up.

Q. In which apartments? A. That was in 174.

Q. Anything nailed up in 176? A. Not in 176.

Q. Anything nailed up in 96 East 24th Street? 40
A. No, sir; nothing.

Respondents': Anthony F. Schumaker—Cross

Q. So you got into all the apartments? A. I got into all the apartments.

Q. Didn't you find a great number of the windows smashed? A. There were some windows broken; yes.

10 Q. There were windows broken in how many apartments? A. There was a window out here and there, that is, I mean, the glass in the window.

Q. I see by your affidavit annexed to the answer in this case you state that you, at the time of the preparation of the auction and the notice of sale, you gave the auctioneer the schedule of rents then being received, and that you also furnished the auctioneer with the particulars of the number of rooms in each apartment, also particulars as to the gas and water, deponent believing that the information which he furnished the auctioneer was correct, with no intention of deceiving, and that his source of information was the records of the company; was that statement true? A. Yes, sir; that is.

20

Q. You furnished the auctioneer with all these figures of rents? A. I furnished the auctioneer—

Q. And the condition of the apartments? A. Not the condition of the apartments; I didn't furnish any condition of the apartments; I furnished him with the rents.

30

Q. You furnished the auctioneer with the particulars of the number of rooms, and also the particulars regarding gas and water A. Yes, sir; I did.

Taken and sworn to before me, this 16th day of October, 1925.

PIERRE F. COOK,
Master in Chancery of New Jersey.

MASTER'S CERTIFICATE

I certify that the foregoing depositions were taken by Harry Schirmer, a stenographer selected by me, and by me duly sworn faithfully and truly to take stenographically and reproduce in typewriting the testimony given; that such depositions were taken in my immediate presence and hearing by said stenographer, sworn as above stated, and I believe that they accurately state the said evidence. 10

PIERRE F. COOK,
Special Master.

EXHIBIT P-1

20

NOTICE OF SALE.

Printed as "Exhibit A" annexed to answer of Receivers at page 20.

MASTER'S REPORT

30

Filed, April 22, 1926.

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

In pursuance of an order of reference entered in the above case and bearing date the first day of April, 1925, whereby it was referred to me, the subscriber, one of the Special Masters of this Court, to ascertain by due proof, and report to this Court 40

Master's Report

as to the truth of the allegations of the petition of Frances F. Jasinski, and that I do return together with my report to this Court the evidence taken by me under said order.

10 I respectfully report that I have been attended by Messrs. Collins & Corbin, of counsel with the petitioner, and by J. Henry Harrison, Esq., of counsel with Frank J. Bock and Edward H. Wright, Receivers of the New Jersey Refrigerating Company, and in their presence I have taken the proofs which are filed herewith, and inquired into the matters and things set forth in the said petition.

20 And I certify and report that I permitted the examination to be taken by a stenographer selected by me and by me duly sworn faithfully and truly to take stenographically and to reproduce in typewriting the testimony given herein, and that such depositions were taken in my immediate presence and hearing by said stenographer sworn as above stated, and that I believe that they accurately state the evidence given.

30 And I report that all the material allegations in said petition set forth are true; that the petitioner, Frances F. Jasinski, residing at 306 Grand Street, Jersey City, Hudson County, New Jersey, on the eighth day of January, 1925, purchased at a sale made at the Masonic Temple, No. 835 Bergen Avenue, Jersey City aforesaid, by said receivers of the New Jersey Refrigerating Company, the lands and premises described in the petition, being known by the street numbers 174 Avenue F, 176 Avenue F, and 97 East 24th Street, all in the City of Bayonne, N. J.; that the building, No. 174, being the corner property, Avenue F
40 and East 24th Street, is a frame building; that the

Master's Report

building No. 176, adjoining on the East, is a two story frame building, and the building No. 97 East 24th Street situate in the rear of Nos. 174 and 176 Avenue F, is a three story frame building; that the property was sold by H. L. Wolbert, Auctioneer of Jersey City, N. J., and struck off to the petitioner at the price of \$22,800.00 under conditions of sale, a copy of which is annexed to the petition; that the petitioner paid the sum of \$2280.00 deposit on account of said sale; that previous to January 8, 1925, the advertised day for sale, petitioner received a printed notice of sale of said premises and other lands (Exhibit P-1); that on said printed notice the lands and premises described in the petition, purchased by petitioner, are designated "Parcels 22, 23 & 24 and said printed notice as to said parcels of land is as follows: 10 20

"AUCTIONEER'S NOTE

In Re Parcels 22-23-24.

"Parcels 22-23-24 will be offered separately and collectively and are known as 174-176 Ave. 'F' and 97 East 24th St., Bayonne, N. J. Plot fronts 55.69 feet on Ave. 'F' and 100 feet on East 24th St. Estimated rental \$3,- 30 648 yearly.

"More details follow."

"PARCEL NO. 22

"174 Avenue 'F'

"Corner of East 24th St., Bayonne, N. J. Has store and 10 apartments (four 4 room and six 3 room). IMPROVEMENTS;—Gas, 40

Master's Report

water, toilets, etc. Estimated rental \$1,776.00 yearly.

"See Auctioneer's note *in-re* Parcels 22-23-24.

10

"PARCEL NO. 23

"176 Avenue 'F'

"Near East 24th St., Bayonne, N. J. Has store and 1 four room apartment, gas, toilet, water tubs, etc. Estimated rental \$588.00 yearly.

"See Auctioneer's note *in-re* Parcels 22-23-24."

20

"PARCEL NO. 24.

"97 East 24th Street.

"Near Avenue 'F,' Bayonne, N. J. 6 family house, all 4 room apartments, has toilets, water, gas, tubs, etc. Estimated rental \$1,284.00 yearly."

See Auctioneer's note *in-re* Parcels 22-23-24; that after the receipt of said printed notice petitioner made several attempts to inspect the said premises, but found the greater part of them vacant, and was unable to make proper inspection; that relying upon the truth of the statements in said printed notice regarding said premises she attended the sale and bid on them and became the purchaser, and signed the conditions of sale; that thereafter petitioner made a further inspection of said premises and found the following state of facts:

40 As to parcel No. 22, street No. 174 Avenue F, the building thereon erected has a store and ten apart-

Master's Report

ments, but it is not true that four of these apartments are four rooms each; on the contrary all of the ten apartments in this building are three rooms each; that it is not true that the improvements consist of gas, as there is no gas in any of the apartments, but only in the hallways; there was no water in the apartments, the same having been shut off, that the statement that the estimated rental of the said building is \$1776.00 yearly is inaccurate, the fact being that the estimated rental could not reasonably exceed the sum of \$1680.00 yearly, while the actual rents received for the year 1924 amounted to the sum of \$966.00. 10

That as to parcel No. 23, street No. 176 Avenue F, the estimated rental of \$588.00 yearly is correct; that the building, however, on this parcel has no gas. 20

As to parcel No. 24, street No. 97 East 24th Street, it is not true that it is a six family house all four room apartments, the fact being that only five of said apartments have four rooms each, the remaining apartment having but three rooms; that there is no gas in this building except in the hallways, there being no fixtures in the apartments; that the gas piping is in, but no fixtures; that this building is a three story structure with two families on each floor. Two of the apartments being vacant, one on the ground floor, and one on the top floor; that the statement that the estimated rental of the said building is \$1284.00 yearly is inaccurate, the fact being that the estimated rental could not reasonably exceed the sum of \$1068.00 yearly, while the actual rents received for the year 1924 amounted to the sum of \$834.00; that a misrepresentation as hereinbefore set forth, has been made in the said notice regarding the condition 30 40

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and rentals of the said premises, and that the petitioner became the purchaser of the same under misapprehension, relying upon the truth of the statements in said notice.

Respectfully submitted this Twenty-ninth day of
 10 October, nineteen hundred and twenty-five.

PIERRE F. COOK,
 Special Master in Chancery of
 New Jersey.

OPINION

Filed, Sept. 27, 1926

20

CHURCH, V. C.:

Frances F. Jasinski having filed in this court her petition, praying that the sale at auction of premises known as Numbers 174-176 Avenue F and 97 East 24th Street, Bayonne, New Jersey, by the receivers of the New Jersey Refrigerating Company to her be set aside; and the receivers having filed their answer and prayed for affirmative relief, the
 30 matter was referred to a Special Master of this Court to ascertain by due proof and report to this Court as to the truth of the allegations of the petition of Frances F. Jasinski. The present motion is made by the petitioner, Frances F. Jasinski, to confirm the report of the Special Master and to set aside the sale.

The Special Master in his report has found that all the material allegations in the petition set forth are true; that previous to January 8, 1925,
 40 the advertised day for sale, the petitioner received

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a printed notice of the sale of said premises and other lands, and that on said printed notice the number of rooms in some of the apartments in the buildings on the premises had been incorrectly stated; that there were further inaccurate statements as to the gas, water and yearly rentals of the buildings. The Special Master further found that the "petitioner made several attempts to inspect the said premises, but found the greater part of them vacant, and was unable to make proper inspection; that, relying upon the truth of the statements in said printed notice regarding said premises, she attended the sale and bid on them and became the purchaser and signed the conditions of sale, and that thereafter petitioner made a further inspection of said premises and found" the facts set forth in the Special Master's report. 10 20

I assume that the petitioner made her several visits to the premises before the sale in order to satisfy herself of their condition. Before these visits she had no intention of relying upon the representations in the auctioneer's notice. Or why were the visits made? Were these visits such as would convince the ordinary prudent mind that the premises were as represented in the auctioneer's notice, particularly as to the question of rents? I think not, as she found the greater part of the premises vacant. Nor was her mind set at rest by these visits. Although it is found by the Special Master as a fact, that relying upon the representations contained in the notice circulated by the auctioneer, the petitioner attended the sale and bid in the property. It would appear that the petitioner was still uneasy as to what she had bought, for her deposition discloses that after the sale she again visited the premises with artisans who broke into 30 40

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the apartments and discovered in part the facts set forth in the Special Master's report.

At the time of the sale, the petitioner signed the terms of sale, which stated, among other things, that the property was offered or sold subject to the following:

“Any fact a survey and inspection would disclose. To the condition of premises ‘As is.’”

The Special Master finds that the petitioner signed the terms of sale relying upon the auctioneer's notice. Does such a reliance in view of the above facts justify the setting aside of the sale and releasing the petitioner from her contract embodied in the terms of sale signed by her?

In her several visits to the premises before the sale, the petitioner found the greater part of them vacant, a fact which should have been sufficient to cause her to satisfy herself by further examination as to the condition of the premises or to refrain from bidding at the sale, for, as was said by Vice Chancellor Van Fleet in *DeWitt v. VanSickel*, 29 N. J. E., 209;

“A person who wilfully closes his eyes to avoid seeing what he believes he would see if he kept them open must be considered to have seen what any man with his eyes open would have seen.”

On the authority of *Condon v. Sandhowe*, 97 N. J. E., 204, the sale should be confirmed.

The misrepresentations in the auctioneer's notice are immaterial. Even though material, the petitioner would be bound by the fact that she had

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several times before the sale visited the property for the purpose of examination and by the further fact that the auctioneer's notice, upon which she claims to have relied when she bid upon, and purchased, the property, contained a paragraph to the effect that "All statements are subject to errors and omissions and all dimensions of lands are more or less," and the further statement that the yearly rental was estimated. If I am to give any effect to this clause that "All statements are subject to errors and omissions," I must conclude that the petitioner bought at her own risk and was bound to satisfy herself, in advance of the sale, as to the condition of the property. 10

20

DECREE*Filed, April 20, 1926*

This matter coming on to be heard in the presence of Collins & Corbin, solicitors for and of counsel with Frances F. Jasinski, the petitioner herein, and of J. H. Harrison, solicitor for and of counsel with Frank J. Bock and Edward H. Wright, receivers of the New Jersey Refrigerating Company, and it appearing that on January 8, 1925, said petitioner purchased at public sale from the said receivers of the New Jersey Refrigerating Company premises more particularly described in the petition herein, and known and identified as 174-176 Avenue F and 97 East 24th Street, Bayonne, New Jersey, for the sum of \$22,800.00, and that, on January 20, 1925, said sale was confirmed by this Court and the said receivers authorized and direct- 30 40

Decree

ed to execute a good and sufficient conveyance in the law to the petitioner for the said premises, and the petitioner having alleged that misrepresentations regarding the condition and rental of said premises had been made in the notice of sale of said premises, and that said petitioner became the purchaser of said premises under misapprehension, and said petitioner having prayed in her said petition that said sale be set aside and that she be relieved from liability under the "Conditions of Sale" of said premises and that said receivers be directed to refund to her the sum of \$2,280.00 paid by her as a deposit at the time of the sale, and said receivers having filed a verified answer alleging that the conditions of sale of said premises contained the following:

"(3) The property is offered or sold subject to the following:

"(j) Any fact a survey and inspection would disclose.

"(m) To condition of premises as is."

which allegations have not been denied by the petitioner, and in said answer the receivers having prayed that the petition might be dismissed and that petitioner be compelled to complete her contract, and the Court having ordered that Pierre F. Cooke, one of the Special Masters of this Court, take proof and ascertain and report to this Court as to the truth of the allegations of the said petition, and the said Special Master having filed his report herein, dated October 29, 1925, in which he found, among other matters, that a misrepresentation had been made in the notice of sale of said premises regarding the condition and rental thereof, and application having been made by the peti-

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tioner for the confirmation of the master's report, and for an order granting the relief prayed for in said petition, and the Court having considered the petition, the report of said Special Master and the answer of the receivers, and being of the opinion that the misrepresentations made in said notice of sale regarding the condition and rental of said premises are not material, that said petitioner is bound by the conditions of sale of said premises, and that the said petitioner is not entitled to the relief sought in her said petition; 10

IT IS, thereupon, on this 20th day of April, 1926, on motion of J. H. Harrison, Esquire, of counsel with the receivers,

ORDERED, that the said report of Pierre F. Cooke be ratified and confirmed and that the relief prayed for in the petition be denied and that the petition be dismissed; 20

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the said petitioner, Frances F. Jasinski, within thirty days after the service upon her or upon her solicitor of a copy of this order (which need not be certified), specifically perform and carry out and comply with the "Conditions of Sale" signed by her on or about January 8, 1925, relating to premises known and identified as 174-176 Avenue F and 97 East 24th Street, Bayonne, New Jersey, and that, within said time, and at the office of J. H. Harrison, Esquire, counsel for Frank J. Bock and Edward H. Wright, receivers of New Jersey Refrigerating Company, Number 810 Broad Street, Newark, New Jersey, the said Frances F. Jasinski pay to the said receivers the sum of \$20,520.00, the unpaid balance of the purchase price, with interest thereon from March 2, 1925, or, in the event that the said Frances F. Jasinski desires to exercise her privilege under the "Conditions of Sale" to pay 75 30 40

Decree

per centum of the purchase price by executing a bond and mortgage for that amount to-wit, the sum of \$17,100.00, that she shall pay to the said receivers at the time and place aforesaid interest at the rate of 6 per centum per annum on the said sum of

10 \$20,520.00 from March 2, 1925 to the time of closing of title, and that, at the same time and place, she shall pay to said receivers the additional sum of \$3,420.00, the cash balance due on the closing of title, together with the further sum of \$1,368.00, being the first and second amortization payments of \$684.00 each, computed at the rate of 4 per centum per annum upon the sum of \$17,100.00, for which amount the said bond and mortgage might be given under the "Conditions of Sale," by which

20 sum of \$1,368.00 the said sum of \$17,100.00 shall be reduced in amount to the sum of \$15,732.00, and that the said Frances F. Jasinski at the same time shall make, execute and acknowledge in due form of law, and deliver to the said Frank J. Bock and Edward H. Wright, receivers of New Jersey Refrigerating Company, her bond in the penal sum of \$31,464.00 to secure the payment of the said sum of \$15,732.00 in three years from March 2, 1925, with interest from the date of said bond at the rate of

30 six per centum per annum, payable semi-annually, and to include a clause for the amortization of the principal of said bond by semi-annual payments of \$684.00 each (4 per centum of the sum of \$17,100.00), the first payment to be made September 2, 1926, and at the same time make, execute and acknowledge in due form of law and deliver to the said Frank J. Bock and Edward H. Wright, receivers of the New Jersey Refrigerating Company, a purchase money mortgage on said lands and premises for the like sum of money as said bond, payable

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Decree

upon the same terms and in the same manner as the aforesaid bond and with interest as aforesaid, upon the delivery at the same time and place by said Frank J. Bock and Edward H. Wright, receivers of New Jersey Refrigerating Company, to said Frances F. Jasinski of a Bargain and Sale deed, duly executed and acknowledged by the said Frank J. Bock and Edward H. Wright, receivers of New Jersey Refrigerating Company, conveying to said Frances F. Jasinski the lands and premises referred to in said "Conditions of Sale" in fee pursuant to the terms of the said "Conditions of Sale." 10

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that at the time of the closing of title of said premises, as aforesaid, the rents, if any, taxes, water rents and insurance premiums on said premises be apportioned, adjusted and allowed as of March 2, 1925, and thereafter shall be taken over and assumed by the purchaser, the said Frances F. Jasinski, as provided for in subdivision (1) of Paragraph 3 of the "Conditions of Sale," signed by the said Frances F. Jasinski. 20

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that if, within the time and at the place hereinbefore directed, the said Frances F. Jasinski should fail or neglect to pay the said sum of \$20,520.00, with interest from March 2, 1925, in the manner hereinbefore directed, and any balance against her on the adjustments of rents, taxes, water rents and insurance premiums, as directed in the preceding paragraph, the aforesaid sum of \$20,520.00 with interest from March 2, 1925, and said balance, if any, shall be, and become, and are hereby impressed as liens upon the said lands and premises referred to in said "Conditions of Sale" in favor of the said 30

Supplementary Opinion

Frank J. Bock and Edward H. Wright, as receivers of New Jersey Refrigerating Company, to the end that said lands and premises may be sold, as provided in said "Conditions of Sale" and/or pursuant to law and under the direction of this Court,
 10 to satisfy such liens, and that, in case a deficiency should arise upon such sale, the said Frances F. Jasinski may be ordered by this Court to pay such deficiency.

IT IS FURTHER ORDERED that the parties hereto shall be at liberty to apply to this Court for further directions or relief in the premises if occasion shall require.

E. R. WALKER,
 C.

20 Respectfully advised,
 Alonzo Church,
 V. C.

SUPPLEMENTARY OPINION

Filed, April 1st, 1926.

30 CHURCH, V. C.:

The facts relating to this motion are, briefly, these: At an auction sale of lands held January 8th, 1925, Frances F. Jasinski purchased from the receivers of the New Jersey Refrigerating Company premises in Bayonne, New Jersey, for which she agreed to pay \$22,800. The sale was confirmed by this court. Thereafter, Mrs. Jasinski filed a petition praying that the sale be set aside and that
 40 she be relieved from her contract on the ground of

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material misrepresentation. The receivers filed an answer which was in the nature of a counter-claim. They prayed that the petition be dismissed and that Mrs. Jasinski be compelled to complete the contract. This court denied Mrs. Jasinski's plea as to material misrepresentations. 10

When the matter came before me on the question of fixing the terms of the decree, it was argued that this court is without power to enter a decree directing the petitioner to consummate the purchase, because such relief can only be obtained as the result of a suit for specific performance.

The case of *Umbach v. Umbach*, 82 N. J. Eq. 427, was heard on petition of the purchaser and counter-claim of complainant. The purchaser sought to be relieved of his bid. The complainant sought to compel the purchaser to perform. The prayer of complainant was granted. 20

In the *Union Building and Loan Association*, etc., 2 Mis. R. 567, Vice Chancellor Leaming, in discussing the rights of the purchaser at a public sale, says:

“Unless that sale should be set aside by failure of confirmation or for other cause, the purchaser at the public sale can enforce a formal conveyance, and specific performance can be enforced against such purchaser either by petition in the foreclosure suit or by bill for specific performance.” 30

In the case of *Silver v. Campbell*, 25 N. J. Eq. 465 (at p. 466), it was held:

“Purchasers at sales under decrees of this Court, if not already parties to the suit, are regarded, to a certain extent, as parties to it, to be under the control of the Court on 40

Supplementary Opinion

the one hand, and its protection on the other. Such purchaser may, therefore, be compelled to complete his purchase in a summary way by an order upon him, without a bill to pay the money or bring it into court."

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I, therefore, find that the Court in this case can require the petitioner to perform under the pleadings as filed. Several reasons are alleged as to why the petitioner should not be required to perform. One is that such a ruling would amount to a decree of specific performance without giving petitioner an opportunity to be heard. In this case the answer of the receivers was filed praying for specific performance. The petitioner filed no reply thereto, indicating why she should not be compelled to specifically perform, which, of course, had she wished, she could have done. She had ample opportunity. Another objection is that there is an adequate remedy at law. This seems to be disposed of in *Law v. Smith*, 68 N. J. Eq. 81, where the Court said:

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"The remedy by a suit at law to recover the whole purchase money based on a contract and a tender of a conveyance, is the old answer set up to any suit for specific performance in equity by vendor against vendee. It has long since been abandoned.

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"The difficulties in the way of using it are manifest. The vendor plaintiff at law ought not to be compelled to part with his title until he has received the purchase price. If he obtained a judgment for the whole price, he ought not to be permitted to collect the money from the defendant by execution thereon until the title is vested in the other.

Supplementary Opinion

Here comes in the convenience, if not the necessity, for the machinery of this court. The parties meet in a master's office and the decree is performed under his supervision."

In *Smith v. Smith*, 84 N. J. Eq. 299 (at p. 309), ¹⁰
this doctrine was approved.

The case of *Henderson v. Henderson*, 3 N. J. Adv. R. (at pp. 3, 4), has been referred to by counsel for petitioner. This can hardly be cited as authority, as it was reversed by the Court of Errors and Appeals. 129 Atl. Rep. 196.

I shall therefore advise a decree that, should the purchaser fail to comply with the order directing her to perform, the balance of the purchase price, with interest, shall be impressed as a lien upon said ²⁰
lands so that they may be sold to satisfy such lien. Should a deficiency arise, the petitioner must pay it. This course was approved in *Smith v. Smith*, *supra*.

Another case is before me which involves practically the same questions which I have herein discussed. It is *New Jersey Refrigerating Co. v. Henry B. O'Donohue and Gustav W. Lembeck*. In this matter I will advise a similar decree for the same reasons, as I think the cases are practically ³⁰
identical.

Geographical Location

The first part of the paper discusses the geographical location of the study area. It is situated in the north-eastern part of the country, bordering the sea. The climate is generally warm and humid, with a high level of rainfall throughout the year.

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The second part of the paper describes the physical features of the study area. The terrain is mostly flat, with some low hills and valleys. The soil is generally fertile and well-suited for agriculture.

The third part of the paper discusses the population and social structure of the study area. The population is relatively small and concentrated in a few villages. The social structure is based on traditional customs and practices.

The fourth part of the paper describes the economic activities of the study area. The main source of income is agriculture, particularly the cultivation of rice and other crops. There is also some small-scale trade and commerce.

The fifth part of the paper discusses the infrastructure and services available in the study area. There is a basic network of roads and a small health center. The educational facilities are limited, with only a few primary schools.

The sixth part of the paper describes the environmental conditions of the study area. The area is rich in biodiversity, with a wide variety of plants and animals. There are also several natural resources, such as forests and water bodies.

The seventh part of the paper discusses the challenges and opportunities facing the study area. The main challenges are poverty, ill health, and limited access to services. However, there are also several opportunities for development, such as the growing tourism industry and the potential for sustainable agriculture.

The eighth part of the paper describes the research methodology used in the study. The study was conducted using a combination of qualitative and quantitative methods. Data were collected through interviews, focus group discussions, and surveys.

The ninth part of the paper discusses the findings and conclusions of the study. The study found that the study area is a complex and dynamic system, with a wide range of social, economic, and environmental factors influencing its development. The findings suggest that there is a need for a holistic approach to development, one that takes into account all these factors.

The tenth part of the paper discusses the implications of the study for policy and practice. The findings suggest that there is a need for a more integrated and participatory approach to development, one that involves the local community in the decision-making process. This approach should focus on improving the quality of life and promoting sustainable development.

The eleventh part of the paper discusses the limitations of the study. The study was limited in scope and scale, and the findings may not be generalizable to other areas. However, the study provides a valuable insight into the complexities of development in the study area.

The twelfth part of the paper discusses the future research agenda. There is a need for further research on the social, economic, and environmental factors influencing development in the study area. This research should be conducted in a participatory and collaborative manner, involving the local community and other stakeholders.

The thirteenth part of the paper discusses the acknowledgments. The author would like to thank the following individuals and organizations for their support and assistance during the course of the study: [names and organizations]

The fourteenth part of the paper discusses the references. The following references were consulted during the course of the study: [list of references]

The fifteenth part of the paper discusses the appendices. The following appendices are included in the study: [list of appendices]

The sixteenth part of the paper discusses the index. The following index is provided for the study: [index]

The seventeenth part of the paper discusses the glossary. The following glossary is provided for the study: [glossary]

The eighteenth part of the paper discusses the bibliography. The following bibliography is provided for the study: [bibliography]

The nineteenth part of the paper discusses the conclusion. The study has provided a comprehensive overview of the geographical location, physical features, population, social structure, economic activities, infrastructure, services, environmental conditions, challenges, opportunities, research methodology, findings, conclusions, implications, limitations, future research agenda, acknowledgments, references, appendices, index, glossary, and bibliography of the study area.

The twentieth part of the paper discusses the final remarks. The study has provided a valuable insight into the complexities of development in the study area. It is hoped that the findings and conclusions of the study will be useful to policy-makers and practitioners in the field of development.

New Jersey Court of Errors and Appeals

In the Matter of the Dissolution
of the NEW JERSEY REFRIG-
ERATING COMPANY.

In the Matter of the Application
of FRANCES F. JASINSKI to Set
Aside the Sale of Lands.

FRANCES F. JASINSKI,

Appellant.

*On Appeal
from
Chancery.*

**BRIEF FOR FRANK J. BOCK and EDWARD
H. WRIGHT, Receivers of the New Jersey
Refrigerating Company, Appellees.**

Statement of the Case.

The facts as set forth in the brief of the appel-
lant, under statement of the case, are accepted by
the appellees.

POINT I.

The appellant should not be relieved of her
bid.

The fact that the appellant became the pur-
chaser of the property in question under misap-
prehension, relying upon the truth of the state-
ments in said notice, is no reason for her being
relieved from her bid. She was bound to satisfy
herself as to the correctness of the statements
contained in the auctioneer's notice by an in-
spection of the premises, or inquiry made of the
sellers, for the reasons that the auctioneer's
notice contained a statement that the rentals
were estimated, and the further statement that
"all statements are subject to errors and omis-

sions, and all dimensions of land are more or less." See notice of sale, Case p. 23, ll. 28, 29, 30, and that the conditions of sale signed by the appellant stated that the premises were sold subject to "(j) To any facts a survey and inspection would disclose," and "(m) To condition of premises as is." Conditions of Sale, State of Case, pp. 12 and 13.

We have examined *Corpus Juris*, 6 C. J. 828, Sections 21 and 22 referred to in the appellant's brief on pages 11 and 12 and have considered the cases cited therein as the authority for the statement that though the conditions of sale provided that errors and misdescriptions shall not avoid the contract, a misdescription in a material matter upon which the purchaser might reasonably rely and did rely to his damage is ground for avoidance of the contract. These cases, to wit, *Price v. Macaulay*, Chancery 42, Reprint 903, and *Dobell v. Hutchinson*, 3 A. & E. 355, Excheq. Ch. 111, Reprint 448, are cases where the facts were quite different than in the instant case.

In the case of *Price v. Macaulay*, land was advertised to be sold in lots as a freehold, subject to certain conditions, one of which was that any mis-statement of the *quality, tenure, outgoings*, or other particulars should be the subject of compensation. An objection to the title of one lot was taken on the ground that it was copyhold tenure, instead of a freehold. The court held that the misdescription did not form a ground for resisting specific performance, although the decision might have been otherwise had the misdescription been wilful.

In the instant case, there is nothing to show that there was wilful misrepresentation on the part of the vendors or their agents.

In *Price v. Macaulay*, an objection was taken to another lot described as being used with a reservoir and water works yielding a yearly rental of £60, exclusive of the land and holdings. The objection was taken and supported by the fact that this rent arose from supplying with water certain houses separated from the reservoir by the property of strangers over which the vendor had no right to carry it beyond a license from year to year and payment of rent. As to this lot, it was held that the vendor was not entitled to enforce the sale.

In the instant case, the auctioneer's notice and the Conditions of Sale put the obligation of examining the premises before the sale upon the purchaser. All statements were subject to errors and omissions, and all dimensions of land were more or less, and the premises were sold subject to such facts as an inspection would disclose. The question before this court is the construction of these provisions, which must be read together, and the defining the obligation of the purchaser under them. In the case of *Price v. Macaulay*, the question before the court was whether compensation, because of the errors in the advertisement, should be made under the terms of the advertisement, or whether the errors should vitiate the sale. In the instant case, there was no provision made for compensation on account of errors, but the contract signed by the purchaser stipulated that the sale was subject to errors and omissions, and to any facts an inspection would disclose. Thereby, there was placed upon the purchaser the duty of satisfying herself by inspection before the sale as to just what she was buying.

As to the *Dobell v. Hutchinson case*, an examination discloses, that it related to a sale of a

leasehold interest of lands described as a twenty-three year leasehold, where one of the conditions was, that, if any mistake should be made in the description of the property, or any other error whatever should appear in the particulars of the estate, such mistake or error should not annul or vitiate the sale, but a compensation should be made to be settled by arbitration. The yard appurtenant to the building turned out to be held from year to year. It was essential to the enjoyment of the property leased for twenty-three years. The court held that such defect avoided the sale and was not a mistake to be compensated for under the above condition. This was an error in the title and rendered useless the property which could be transferred, for without the use of the yard in question the leasehold for twenty-three years could not be enjoyed.

Clearly these two cases have to do with extreme conditions and can hardly be considered as an authority for the above general statement contained in *Corpus Juris*.

The appellant argues on page 8 in her brief that the premises in question were owned by an insolvent corporation, which was in the hands of receivers; and that the conditions were not such, as would tend toward keeping the premises rented to a maximum, so that she might very well have considered herself able to manage the property in such a way as to get the maximum revenue obtainable for it, although the receivers had not been able to do so, and that in making up her mind she naturally depended upon the statement of the auctioneer, who was in a position to know what rentals were to be expected. She further contends that it was obvious that the auctioneer exaggerated the rental as a bait for buyers.

The facts are that the premises in question were owned by a corporation that was solvent, but was being dissolved under the appellees, as receivers. The statement by the appellant in her brief on page 8 that she might very well have considered herself able to manage the property in such a way as to get the maximum revenue obtainable for it is not based upon any fact disclosed by the evidence and at the best is a mere speculation on the part of the appellant as to what she herself might have considered. It is to be noted that this is not stated as a fact—merely as a speculation.

For the appellant to assert that the auctioneer exaggerated the rental as a bait for buyers, as she has done on page 8 of her brief, and then again on page 9 of her brief to assert “that a court of equity should insist upon its auctioneer showing at least a reasonable regard for the truth while performing his duties,” and that “he should not be allowed to victimize the public who may be interested in purchasing properties which the court directs to be sold,” is an unwarranted assumption and argumentative and should not be considered. This applies equally to the second paragraph on page 9 of the appellant’s brief where the court is criticized on the ground that it condones and approves of misrepresentations of facts like those appellant claims are presented, the claim being made that auction sales will suffer due to responsible bidders refusing to have anything to do with such sales.

Under the case of *Cropper v. Brown*, 76 N. J. Equity 406, decided by Vice-Chancellor Garrison, cited by the appellant in her brief on pages 10 and 11, it was held that at a public sale, when the purchaser signed the conditions of sale, he

enters into a contract, the situation being the same as if the contract were between private parties.

The appellant cites *Corpus Juris*, 6 C. J. 828, Sections 21 and 22, on page 11 of her brief, for the authority that "the particulars or catalogue and the conditions of sale *together* institute the terms of the contract of sale.

It appears, therefore, that the auctioneer's notice and the conditions of sale signed by the receivers and the appellant constituted the contract which is the subject of the instant case and from which the appellant seeks to be relieved.

As has been stated above, the notice published by the auctioneer contained the statement, "*all statements are subject to errors or omissions and all dimensions of land are more or less,*" and the conditions of sale provided that the sale was subject to such facts as an inspection and survey would disclose and to the condition of the premises "as is." Giving these words their ordinary meaning, we fail to see how the purchaser can be entitled to be relieved of her contract. The duty to satisfy herself regarding the property before she bid upon the same was thereby clearly put upon her.

In the case of *Brawley v. The United States*, 96 U. S. 168, 24 *Led.* 624, where a contractor agreed to deliver at a government post 880 cords of wood, more or less, as should be determined to be necessary by the post commander for the regular supply, and 40 cords only having been accepted, the contractor sued for the price of the balance of the wood. The court held that the naming of the quantity was not to be regarded in the nature of a warranty but only as an estimate of the probable amount, and that "the con-

dition of the qualifying words 'about,' 'more or less' and the like in such cases is only for the purpose of providing against accidental variations arising from slight and unimportant excesses or deficiencies in number, measure or weight. If, however, the qualifying words are supplemented by other stipulations or conditions which give them a broader scope or a more extensive significancy, then the contract is to be governed by such added stipulations or conditions."

The above case, we think, applies to the instant one. The auctioneer's notice in the case now before the Court contained the statement above referred to, viz, "All statements are subject to errors and omissions and all dimensions of land are more or less." Reading this notice with the conditions of sale and taking into consideration that the conditions of sale contained the following provisions: "3. The property is offered or sold subject to the following: (j) Any fact a survey and inspection would disclose; (m) The condition of premises as is," it seems to us that the finding by the Master that the petitioner became the purchaser of the premises under misapprehension, relying upon the truth of the statements in said notice, should not relieve the appellant from her obligation under the contract. We contend that because of the above quoted conditions of sale, the appellant was not justified in relying upon the auctioneer's notice and that as between the appellant and the receivers of the New Jersey Refrigerating Company, who in turn represent the stockholders and creditors of that company, the appellant should not be relieved from the results of her misapprehension, and the fact found by the Master in his report, Case, p. 78, ll. 30, *et seq.*, that after the receipt of the

printed notice the appellant made several attempts to inspect the said premises but found the greater part of them vacant and was unable to make a proper inspection, is no justification for her to bid on the property at the time of the sale, relying solely upon the truth of the statements in the printed notice circulated by the auctioneer.

POINT II.

To rescind a transaction entered into upon the faith of material representation, false in fact, it must be shown, first, that the person to whom it was made relied upon it, and secondly, that the person, in consequence of such reliance, suffered injury.

A rule of equity applicable to this subject is well settled. So far as applicable to the facts of this case, it may be stated thus: a court of equity will rescind a transaction entered into upon the faith of a material representation, false in fact, if the person to whom it was made relied upon it and in consequence suffered injury. *Eibel v. Von Fell*, 55 Equity 670, and cases cited.

In the above case a money loss was proved to the extent of \$100.00.

To the same effect is the case of *Du Bois v. Nugent*, reported in 69 Equity 145.

This latter case had to do with representations in connection with the sale of an orchard, the complainant claiming that it had been represented to him that the trees were clear of the San Jose scale. Vice-Chancellor Emery on the question of injury, at page 149, says, "but there can be no doubt, I think, that the existence of the scale in the orchards have, to the extent shown by the defendant's evidence, so affected

the value of the orchards as to make any representation that they were free from it, material as well as false.”

In the instant case, the appellant introduced no evidence before the Master to show that she would sustain any injury if she completed her contract. Her claim is, as we gather from her brief under Point 2 and the cases cited thereunder, that the receivers of the New Jersey Refrigerating Company, through the auctioneer as their agent, have been guilty of fraud. There is no evidence to this effect. So far as the estimated yearly rentals are concerned, Frederick Platz, whose company, for a number of years last past, had control of the renting and collection of the rents of the premises in question (Case, p. 64, l. 29, and pp. 65 and 66) stated that the estimated yearly rentals as they appeared on the books of his company were as stated in the auctioneer's notice. Certainly, there is nothing here to show fraud on the part of the appellees, and at this point we call the court's attention to the summary on page 6 of the appellant's brief where a comparison is made between the rents as stated in the advertisement and the reasonable maximum as found by the Master. From this it appears that the reasonable maximum, as found by the Master, is smaller by less than 10% than the rental stated in the advertisement, and we call attention to the fact that the rentals stated in the advertisement were *estimated rentals* (Case, p. 22). We respectfully submit that the facts do not warrant the finding by this court that as to the rents there was a *material* misrepresentation.

The appellees also claim that the mis-statements in the auctioneer's notice, under the heading of "Improvements," as to the presence of gas and water are not sufficiently material to

warrant the setting aside of the sale. As to premises, 174 Avenue F, the Master, in his report (Case, p. 79, *et seq.*), found that there was no water in the apartments of 174 Avenue F, the same having been shut off. In fact, Frederick Platz testified (Case, p. 68, l. 28, *et seq.*) that there were cold water connections in all the apartments and store in 174 Avenue F and that in winter time they shut it off in all vacant apartments, that is, they had the plumber shut it off and drain the pipes. The fact that the appellant found that the water was shut off at the time she examined the premises, is not a material misrepresentation.

As to appellant's contention that the auctioneer's notice materially misrepresented the facts relating to the presence of gas, the Master found that there was no gas in any of the apartments in 174 Avenue F, but that there was gas in the hallways. As to 176 Avenue F, he found that the building was without gas. Frederick Platz testified, on his direct examination (Case, p. 68, l. 10, *et seq.*), that there was no gas in the building, but it had electricity, and that it was wired for electric light; that the store floor had electric light, and that while he was not quite certain about it being up in the rooms up above, he thought it was. As to premises, No. 97 East 24th Street, the Master found that there was no gas in the building, except in the hallways, there being no fixtures in the apartments. He found further, however, that the gas piping was installed in the apartments. Such variations from the auctioneer's notice are not material.

As to the misrepresentation of the number of rooms in five of the apartments which were stated to be apartments with four rooms each, while the inspection afterwards disclosed that

they were apartments of but three rooms, the appellant cites the case of *Davis v. Scher*, 73 N. J. L. 155, for the authority that such misrepresentation was a material one. An examination of this case discloses the fact that the misrepresentation in it as to the number of rooms on the second and third floors was held to be material due to the fact that the property was located in the City of Newark and the number of rooms on these two floors would probably materially affect the income to be derived from the property.

In the instant case, the descriptive language of the notice referred to apartments; the rental unit was an apartment and not a room, as in *Davis v. Scher*. The number of apartments in the buildings accord with the number set out in the auctioneer's notice. The misrepresentation alleged lies in the lack of one room in each of five apartments. The rental of the apartments was estimated in the auctioneer's notice and he estimated a rental which was only 9% and a fraction larger than the Master finds would be a reasonable maximum. With this estimate before the appellant, the number of rooms in the apartments was not necessary for her to determine the actual rentals. It may very well be, we submit, that the fact that the five apartments actually contain three rooms instead of four rooms, as set out in the auctioneer's notice, might cause them to rent for a larger sum than they would have rented for if they had contained four rooms. The floor area of the three room apartments and their rental value may be equal to or greater than the floor area and the rental value of the four room apartments. We fail to see, therefore, how this misrepresentation as to the number of apartments can be held to be material.

The precedents cited by the appellant are not all to the point, as many of them relate to cases of material misrepresentation based on fraud, whereas in the instant case there is no finding of fraud or of the fact of the materiality of the misrepresentations. The Master found that a misrepresentation was made in the notice regarding the condition of the property and rentals, but he did not find such misrepresentation to be material; and the Court of Chancery held that the misrepresentations were immaterial. The appellant had an opportunity before the Master to show that she had been injured as by reason of the misrepresentation, but failed to do so. There is nothing in the record to show that the premises are of less value than they would have been had the statements of the auctioneer in his notice proved to be true, and we submit that unless and until it is clearly proved that the misrepresentations were of substantial importance resulting in something more than fancied injury, the appellant cannot be relieved of her contract.

POINT III.

The contract between the appellant and receivers consists not only of the conditions of sale signed by the appellant, but also the auctioneer's notice. The conditions of sale and the auctioneer's notice must be read together.

The appellant in the third point of her brief argues that the conditions of sale, requiring examination by the purchaser, did not relieve the vendor of the result of their misrepresentations, and asserts that the paragraphs in the conditions of sale reading as follows: "(j) Any fact a survey and inspection would disclose." "(m) To the condition of the premises 'as is'," did not require the purchaser to do more than inspect

the premises for the purpose of ascertaining their condition.

As appears in appellant's brief on page 11, the rule relating to catalogues or particulars of sale is:

"The particulars or catalogue and the conditions of sale together constitute the terms of the contract of sale." 6 C. J. 828, Sec. 21.

Under this rule of law, the purchaser was bound not only by the conditions of sale, but also by the auctioneer's notice which contained this very important reservation:

"All statements are subject to errors and omissions and all dimensions of land are more or less." Case p. 23, l. 28.

We contend that this provision and the provisions above referred to in the conditions of sale made it obligatory upon the purchaser to satisfy herself by inspection of the premises before the sale as to just what she was buying. That the purchaser fully realized this obligation is clear from the finding of the Master that "after the receipt of said printed notice, the petitioner (appellant) made several attempts to inspect the said premises, but found the greater part of them vacant." Case, p. 78, l. 29, *et seq.*

The appellant in Point III of her brief seeks to limit the meaning of the clause that the property was offered or sold subject to any fact an inspection would disclose so that it will apply only to the condition of the property. This is entirely too limited. This clause has a well understood meaning in the real estate world today. It appears in the policies of guaranty issued by the title companies, and dealers in real estate are fully familiar with it. This was not the first venture of the appellant in the real

estate market. This following question and answer appear on her direct examination: "Q You are somewhat of a real estate speculator? A Yes." Case, p. 39, ll. 23, 24. The clause means exactly what it says, that the sale was subject to *any fact* an inspection would disclose, whether that fact related to the state of repair of the condition of the building or to the number of apartments, the number of rooms, the presence or absence of gas and water in the rooms or to any other fact which might be ascertained by inspection.

We think that the case of *De Witt v. Van Sickle*, 29 N. J. E. 209, cited by the court below in its opinion is applicable where it is said: "A person who wilfully closes his eyes to avoid seeing what he believes he would see if he kept them open, must be considered to have seen what any man with his eyes open would have seen." And also the case of *Condon v. Sandhowe*, 97 N. J. E. 204.

We conclude that the appellant was not justified in relying upon the truth of the statements in the auctioneer's notice.

For the reasons above stated the order of the Court of Chancery should be affirmed.

October 1926 Term.

Respectfully submitted,

J. H. HARRISON,
Solicitor and of Counsel for Appellees.

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New Jersey Court of Errors and Appeals

In the matter of the dissolution of the NEW JERSEY REFRIGERATING COMPANY.

In the matter of the application of FRANCES F. JASINSKI to set aside sale of lands.

FRANCES F. JASINSKI,

Appellant.

*On Appeal
from
Chancery.*

BRIEF FOR FRANCES F. JASINSKI, APPELLANT.

Statement of the Case.

This is an appeal from that part of a decree of the Court of Chancery made April 20, 1926, denying the prayer of the petitioner that she be relieved from carrying out her bid for certain premises sold by the Receivers of the New Jersey Refrigerating Company, at public auction, on the ground that gross misrepresentations had been made in the notice of said sale and that she relied upon the truth of the statements in said notice.

Petitioner presented her petition (p. 5) to the Court praying that she be relieved from her bid. The Court referred the matter to a Master, who found the facts were substantially as stated by petitioner (p. 76). Thereupon the Court made a decree confirming the report, denying the relief requested by petitioner and directing petitioner to carry out the sale (p. 83). From this decree petitioner appealed in the respects above set forth.

GROUND'S OF APPEAL.

The grounds of appeal relied upon may be summarized as follows:

The Court of Chancery found and adjudged that misrepresentations had been made in the notice of sale regarding the condition and rental of certain premises as found by the report of the Special Master were not material, whereas it should have adjudged that said misrepresentations were material, and that thereupon said Court denied the relief sought and prayed for in the petition of appellant and dismissed the petition, whereas it should have adjudged that petitioner was entitled to the relief sought for in her petition, to wit: that she be relieved of her bid on account of said misrepresentations (p. 2).

BRIEF OF THE ARGUMENT.

I.

The petitioner should be relieved of her bid.

There is no dispute as to the facts in this case. The matter was referred to Pierre F. Cook, one of the Special Masters of this Court, whose report was confirmed, and no appeal has been taken by either side from the confirmation thereof. The appeal is only from that part of the decree directing the petitioner to carry out the sale.

The Master found that all of the allegations set forth in the petition were true and succinctly states the detailed facts upon which this appeal is based. We therefore quote the statement of facts in the Master's report in full, as follows:

“And I report that all the material allegations in said petition set forth are true;

that the petitioner, Frances F. Jasinski, residing at 306 Grand street, Jersey City, Hudson County, New Jersey, on the eighth day of January, 1925, purchased at a sale made at the Masonic Temple, No. 835 Bergen avenue, Jersey City aforesaid, by said receivers of the New Jersey Refrigerating Company, the lands and premises described in the petition, being known by the street numbers 174 Avenue F, 176 Avenue F and 97 East 24th street, all in the City of Bayonne, N. J.; that the building, No. 174, being the corner property, Avenue F and East 24th street, is a frame building; that the building No. 176, adjoining on the east, is a two-story frame building, and the building No. 97 East 24th street, situate in the rear of Nos. 174 and 176 Avenue F, is a three-story frame building; that the property was sold by H. L. Wolbert, auctioneer of Jersey City, N. J., and struck off to the petitioner at the price of \$22,800.00 under conditions of sale, a copy of which is annexed to the petition; that the petitioner paid the sum of \$2,280.00 deposit on account of said sale; that previous to January 8, 1925, the advertised day for sale, petitioner received a printed notice of sale of said premises and other lands (Exhibit P. 1); that on said printed notice the lands and premises described in the petition, purchased by petitioner, are designated 'Parcels 22, 23 and 24,' and said printed notice as to said parcels of land is as follows:

AUCTIONEERS NOTE

In re Parcels 22-23-24.

Parcels 22-23-24 will be offered separately and collectively and are known as 174-176 Ave. "F" and 97 East 24th Street, Bayonne,

N. J. Plot fronts 55.69 feet on Ave. "F" and 100 feet on East 24th St. Estimated rental \$3,648 yearly.

More details follow.

PARCEL NO. 22.

174 Avenue "F"

Corner of East 24th St., Bayonne, N. J. Has store and 10 apartments (four 4 room and six 3 room). Improvements:—Gas, water, toilets, etc. Estimated rental \$1,776.00 yearly.

See Auctioneers note in re Parcels 22-23-24.

PARCEL NO. 23.

176 Avenue "F"

Near East 24th St., Bayonne, N. J. Has store and 1 four room apartment, gas, toilet, water, tubs, etc. Estimated rental \$588.00 yearly.

See Auctioneers note in re Parcels 22-23-24.

PARCEL No. 24.

97 East 24th Street.

Near Avenue "F," Bayonne, N. J. 6 family house, all 4 room apartments, has toilets, water, gas, tubs, etc. Estimated rental \$1,284.00 yearly.

See Auctioneers note in re Parcels 22-23-24';

that after the receipt of said printed notice petitioner made several attempts to inspect the said premises, but found the greater part of them vacant, and was unable to make proper inspection; that relying upon the truth of the statements in said printed notice regarding said premises she attended the sale and bid on them and became the purchaser, and signed the conditions of sale; that thereafter petitioner made a fur-

ther inspection of said premises and found the following state of facts:

“As to parcel No. 22, street No. 174 Avenue F, the building thereon erected has a store and ten apartments, but it is not true that four of these apartments are four rooms each; on the contrary, all of the ten apartments in this building are three rooms each; that it is not true that the improvements consist of gas, as there is no gas in any of the apartments, but only in the hallways; there was no water in the apartments, the same having been shut off; that the statement that the estimated rental of the said building is \$1,776.00 yearly is inaccurate, the fact being that the estimated rental could not reasonably exceed the sum of \$1,680.00 yearly, while the actual rents received for the year 1924 amounted to the sum of \$966.00.

“That as to parcel No. 23, street No. 176 Avenue F, the estimated rental of \$588.00 yearly is correct; that the building, however, on this parcel has no gas.

“As to parcel No. 24, street No. 97 East 24th street, it is not true that it is a six-family house, all four room apartments, the fact being that only five of said apartments have four rooms each, the remaining apartment having but three rooms; that there is no gas in this building except in the hallways, there being no fixtures in the apartments; that the gas piping is in, but no fixtures; that this building is a three story structure with two families on each floor. Two of the apartments being vacant, one on the ground floor, and one on the top floor; that the statement that the estimated rental of the said building is \$1,284.00 yearly is inaccurate.

rate, the fact being that the estimated rental could not reasonably exceed the sum of \$1,068.00 yearly, while the actual rents received for the year 1924 amounted to the sum of \$834.00; that a misrepresentation as hereinbefore set forth, has been made in the said notice regarding the conditions and rentals of the said premises, and that the petitioner became the purchaser of the same under misapprehension, relying upon the truth of the statements in said notice.

“Respectfully submitted this twenty-ninth day of October, nineteen hundred and twenty-five.

PIERRE F. COOK,

Special Master in Chancery of New Jersey.”

(Case, pp. 76 to 80.)

From the foregoing summary of the facts, it is apparent that the advertisement grossly misrepresented the true characteristics of the premises being sold.

We beg to summarize the facts as found by the Master as follows:

Rental stated in advertisement.....	\$3,648
Reasonable maximum as found by Master	\$3,336
Actual rental for 1924	\$2,388
Total number of apartments in build- ings sold	17
Apartments misrepresented as to num- ber of rooms	5
Misrepresentation as to gas in all apartments.	

Misrepresentation as to water in ten
apartments.

Appellant purchased the property un-
der a misapprehension, relying upon
the truth of the statements in the
notice.

The opinion of the Court of Chancery briefly mentions the fact that inaccurate statements were made in the notice, but goes on to point out that the appellant visited the premises, because she had no intention of relying upon the representations in the auctioneer's notice. The Court asks why the visits were made unless it was because she did not rely on the representations in the notice (p. 81, ll. 20 to 30). We submit that this argument runs contrary to the usual course of action taken by an ordinarily prudent person when purchasing property. Of course, a person making such a purchase under ordinary conditions would want to see the property generally, as well as to read the representations in the auctioneer's notice. The fact that the appellant may have thought the representations true is not a reason why she should, therefore, have stayed away from viewing the property, as the Vice-Chancellor evidently infers, she would have done if she had thought them true. It would have been a surprising thing if she had not gone to see the property. In the purchase of real estate one of the first things the purchaser desires to do is to see the general location and character of the property he is buying. Appellant very naturally went to visit the property to see the location, made an inspection of the property so far as she was able to get access thereto, and learned the facts with respect to the property in general. She secured a practical idea as to what the property was like, and then, naturally, depended upon the notice to apprise her correctly of the number of rooms, rentals, etc. (p. 28, ll. 30 to 35). It will be noted that the matters on which the property differed from the representations in the notice were of such character that the ordinarily prudent purchaser would expect to rely upon the representa-

tions in making a bid. The question of whether an apartment had three or four rooms and the presence of gas and water are purely matters of fact. A purchaser would certainly be justified in accepting the facts as truthful. Furthermore, it should be noted, that when petitioner visited the largest building, having ten apartments, she found them vacant and nailed up, except two, the occupants of which were out (p. 25, ll. 20 to 30).

With respect to the rentals advertised, a purchaser also would certainly not expect them to be above the reasonable maximum amount that can be expected from the premises. In fact, they should be less than the maximum if the words "estimated rental" used in the notice can be taken as a fair expression of the ordinary rental value of the property. The Master found that the maximum rental was over \$300 less than the estimate in the advertisement.

The Court uses the fact that certain of the premises were vacant as a basis for stating that the ordinarily prudent mind would question the rentals estimated (p. 81, l. 30). We submit this is unjustified. The premises were owned by an insolvent corporation which was in the hands of receivers, the conditions were not such as would tend toward keeping the premises rented to a maximum, and the purchaser might very well have considered herself able to manage the property in such a way as to get the maximum revenue obtainable for it, although the receivers had not been able to do so. In making up her mind she naturally depended upon the statement of the auctioneer, who was in a position to know what rentals were to be expected. It is obvious that the auctioneer exaggerated the rental as a bait for buyers.

It must be remembered that the sale was only brought to her attention a short time before it actually took place (p, 24, l. 33, to p. 25, l. 14). She had very little opportunity to check up on the terms of the notice. Apparently, the Court below feels that a person purchasing a property of this kind should be required absolutely to ignore the facts set forth in the advertisements and check the property up completely as to every room in every apartment, as to the rental for every apartment, and other details of the notice, placing no reliance on the advertisement whatever. We submit that a court of equity should insist upon its auctioneer showing at least a reasonable regard for the truth while performing his duties. He should not be allowed to victimize the public who may be interested in purchasing properties which the Court directs to be sold.

Further, it seems to us that the doctrine sustained by the Court below is very dangerous. If the Court condones and approves of misrepresentations of facts like those here presented the public will very soon learn to be wary of bidding at auction sales, and the most responsible bidders will refuse to have anything to do with such sales. Consequently the prices to be expected for properties sold by court order will go down and creditors which the Court steps in to protect will suffer.

The Vice-Chancellor also points out that the petitioner again visited the premises after she had bought the same, broke into certain apartments and then discovered in part the misrepresentations. He uses this fact to demonstrate that the petitioner apparently was uneasy as to the truth of the representations made (p. 81, l. 36 to 40). He entirely overlooks the fact that peti-

tioner went to the premises to see what painting was necessary to put the vacant premises in a livable condition, and inasmuch as she could not get in any other way, she had to break into the premises (p. 37, ll. 20 to 40). The Vice-Chancellor also overlooks the fact that this occurred almost a month after the sale. If the petitioner had had any lack of faith in the representations, does it seem possible that she would have stood by a month before making an attempt to secure a more detailed inspection? It seems to us that this delay demonstrates that she trusted the advertisement and relied upon the statements therein made.

II.

A material misrepresentation in the particulars of sale when relied upon by the purchaser is ground for the avoidance of the contract. This rule applies to judicial as well as private sales.

The effect of misrepresentations in judicial sales is no different from the effect thereof in auction sales in general.

In *Cropper v. Brown*, 76 N. J. Eq. 406, Vice-Chancellor Garrison says, page 414:

“The sheriff or other judicial officer is held to be the agent appointed by law for the person or persons whose rights are to be disposed of (*Brady v. Carteret Realty Co.* (Court of Errors and Appeals, 1904), 67 N. J. Eq. (1 Robb.) 641), and the statute prescribes that the deed of conveyance which he shall give

‘shall transfer to or vest in the said purchaser as good and perfect an estate to the premises therein mentioned as the person against whom the said writ or writs of execution were issued was seized of or entitled to at or before the said judgment;

and as fully, to all intents and purposes, as if such person had sold the said lands, tenements, hereditaments and real estate to such purchaser and had received the consideration money, and signed, sealed and delivered a deed for the same.'

By what seems to me to be a perfect analogy it must therefore be held that when this legal agent, namely, the judicial officer, observing proper legal formalities, at a public sale strikes off the property to a purchaser, who thereupon signs the conditions of sale, thereby entering into a contract to purchase the premises named at the price named, the situation is exactly the same as if the contract were between private parties. The sheriff is vested by law with the power, on behalf of the persons against whom he holds the writ, to sell the property. This he does, and a written contract satisfying the statute of frauds is then made. I cannot perceive any reason why the same principles should not control the parties with respect to this contract as would control private parties voluntarily entering into a similar one."

This case was cited with approval on this point by Vice-Chancellor Backes in *Cook v. Cook*, 83 N. J. Eq. 549, 555. The rule with respect to particulars of sale is set forth in *Corpus Juris, Auctions & Auctioneers*, 6 C. J. 828, Secs. 21 and 22, as follows:

(§21) "Catalogues or Particulars of Sale. 1. In General. It is usual, in cases where property of considerable value is offered for sale, to reduce a description of it to writing. This description, when relating to real estate, is called 'particulars of sale,' and when relating to personal property is called a 'catalogue.' The particulars or catalogue and the conditions of sale together constitute the terms of the contract of sale.

(§22) Description of Property. a. In General. Both particulars and catalogues

should contain a faithful description of property offered for sale in language so clear and unambiguous that persons of ordinary understanding will not be deceived as to either its character or identity.

Misdescription. A misdescription, in a material matter, upon which the purchaser might reasonably rely and did rely to his damage, is ground for avoidance of the contract. This is so, even though the conditions of sale provide that errors and misdescriptions shall not avoid the contract.

Slight variations, however, between an estate and a description of it are not grounds for the avoidance of the sale, but ordinarily will be cause for compensation."

Stating and citing numerous cases.

In *Tarrance v. Bolton*, L. R. 14 Eq. 130, it appeared that the particulars erroneously described the quantity of the vendor's estate, but that the conditions contained a correct description. It also appeared that the conditions were read by the auctioneer at the sale, but it did not appear that they had been distributed among the bystanders. The purchaser was allowed to rescind.

With reference to the right of rescission of the contract of sale on account of misrepresentations, *Corpus Juris* has to say as follows:

Auctions & Auctioneers, 6 C. J. 836, Sec. 44.

"As a general rule, where there has been fraud on the part of the auctioneer, or false representation by the seller or the auctioneer of a material fact, or a failure of the seller to give good title, the buyer may be relieved of his purchase and is entitled to have the contract of sale set aside, unless he had knowledge of the true state of facts and was not misled by the representation, or unless he was ignorant of them and hence did not rely upon them in making his purchase."

Under the heading of *Fraud Corpus Juris* states the law with respect to misrepresentations as to rents, &c., as follows, 26 C. J. 1204, Section 105:

“But misrepresentations as to future income and profits are usually held non-actionable expressions of opinion, as in the case of statements as to future dividends, or profits to be secured from corporate stock, or statements by a vendor of realty that the purchaser will be able to sell at an advance. But such misrepresentations may constitute actionable fraud where made in bad faith by one possessing superior knowledge, or where the opinion expressed is based upon a misrepresentation of fact. Under the general rule recovery has been allowed for misrepresentations as to the past or present income from realty, the dividends and earnings of corporations, such as corporations for the conduct of public utilities, and in other instances where past rents, profits, or income was misrepresented to the hearer’s loss.”

In *Mignault v. Goldman*, 234 Mass. 205, 125 N. E. 189, the Court held:

“That the buyer of realty could recover for the seller’s false and fraudulent representation of a material fact, relied on by the buyer, that one of the tenants of the realty involved was paying a rental of \$25.00 a month, when in fact he was paying only \$18.00.

(2) The false representation by the seller of realty that the income from the property would pay interest on mortgages, fixed charges, and give the buyer an income of \$800 per year, was a fraud on the buyer.

(3) Statement by the seller of realty that the premises were in very good condition, except in a few details which remained to be finished, held not a mere statement of opinion. Misrepresentations as to absence of defects, such as windows, doors, spouts

and floors being matters of fact and not of opinion.

(4) The buyer of real estate was not precluded from recovering because, relying on the seller's misrepresentation that the premises were in good condition, except a few details remaining to be finished, she failed to investigate and discover defects in windows, doors, spouts and floors before sale was completed."

In *Davis v. Scher*, 73 N. J. L. 155, an action was brought by a vendee of real estate against the vendor to recover \$100 paid on account of the purchase price upon the execution of the agreement for sale. By the agreement the defendant agreed to convey to the plaintiff certain premises, consisting of a three-story building with a store and two rooms on the first floor, six rooms on the second and four rooms on the third floor. The plaintiff was unable to examine the interior of the building until after the contract had been signed. He then discovered that there were but five rooms on the second floor and three rooms on the third floor. He rescinded the contract and sought to recover his deposit. The Court held that the misrepresentation was so material as to justify a rescission of the contract. At page 156 Justice Swayze says:

"The right of the plaintiff to rescind does not depend on a fraudulent misrepresentation. It arises from the fact that he is not getting what he bargained for. The principle is the same that was stated by Justice Depue in *Wolcott v. Mount*, 7 Vroom 262."

In *Crane v. Rentschler*, 88 N. J. L. 560, affirmed on opinion below, 89 N. J. L. 510, the defendant represented to the plaintiff that there were sewer connections in the street abutting the lot purchased by the plaintiff from the defendant. The suit was brought to recover the purchase price

paid for the lot upon the ground of misrepresentation. The Court held that the vendee had a legal right to rescind and sue for the purchase price.

See also *Batura v. McBride*, 75 N. J. L. 481.

Eibel v. Von Fell, 55 N. J. Eq. 670, was a suit by the complainant to rescind the sale of a house, the bill alleging that it was represented to complainants at the time they purchased that the house was a "perfectly new house, in absolutely good condition," and that they afterwards learned that it was an old building and had been put in repair and fixed up for the purpose of selling it as a new building.

Stevens, *V.-C.*, says (p. 671):

"The rule of equity applicable to this subject is well settled. So far as applicable to the facts of this case it may be stated thus: a court of equity will rescind a transaction entered into upon the faith of a material representation, false in fact, if the person to whom it was made relied upon it and in consequence suffered injury.

"There is this distinction between the rule of equity and the rule of law: At law, moral fraud must be shown to have been present in the misrepresentation (*Cowley v. Smyth*, 17 Vr. 382); in equity the complainant may succeed, although the misrepresentation was innocent (*Arkwright v. Newbold*, 17 Ch. Div. 320; *Redgrave v. Hurd*, 20 Ch. Div. 1)."

Rescission was refused in that case because of the laches of complainants.

In *Blau v. Public Service, &c., Co.*, 90 N. J. Eq. 279, 280, this Court approved the doctrine laid down by Vice-Chancellor Stevens in *Eibel v. Von Fell*, *supra*.

Dubois v. Nugent, 69 N. J. Eq. 145, was a suit for the rescission of a contract for the exchange of real estate induced by false representations.

Emery, V.-C., says (p. 149):

“In these cases the mere falsity of a material representation entitles the injured party to the equitable remedy of rescission, if applied for with the promptness required by all the circumstances of the case. Proof of the defendant’s knowledge of the falsity of the representation is not considered as essential to the right of rescission, nor is the honest belief of the defendant in making the representation a bar to this relief, as it may be in a common law action for deceit. At law, fraudulent intent, or, as is sometimes said, moral fraud, must be shown to have existed, while in a court of equity the complainant may succeed although the representation was innocent.”

The earlier cases on rescission are collected and discussed in that case by the Vice-Chancellor.

A collection of the cases where relief will be granted from purchase at an auction sale on the ground of mistake will be found as a footnote to the case of *Sohns v. Beavis* (N. Y. Ct. of Appeals) 34 L. R. A. (N. S.) 927.

On the foregoing we submit the law is clear as to the effect of a misrepresentation of fact upon an executory contract of sale regardless of whether the misrepresentation was made fraudulently or innocently. The Court below should have followed the rule declared by Vice-Chancellor Stevens in *Eibel v. Von Fell*, *supra*, and held that the misrepresentations demanded rescission, particularly as they were made by an auctioneer engaged by a receiver of the court.

III.

The conditions of sale requiring examination by purchaser do not relieve the sellers of the result of their misrepresentations.

The Court below finds in its decree that the conditions of sale contained the following expressions:

“3. The property is offered or sold subject to the following:

“(j) Any fact a survey and inspection would disclose.

“(m) To condition of premises as is” (p. 82, ll. 20 to 25).

The inclusion of these paragraphs in the conditions of sale are not sufficient to offset the misrepresentations made in the advertisement.

Let us first consider what is the reasonable interpretation of the words “any fact a survey and inspection would disclose.”

The meaning of the word “survey” is very simple to determine. It is a technical word and refers to an engineering survey of the land with reference to its boundaries and the location of the buildings thereon.

The meaning of the word “inspection” and its reference to any facts which an inspection would disclose, we submit, must mean such an inspection as an ordinary careful purchaser would make when buying pieces of property. A seller offers a piece of property for sale and states that this property consists of ten apartments each with four rooms and equipped with gas. He says, purchasers must look over the property and satisfy themselves as to the facts. A purchaser naturally goes to the property, looks it

over, finds out its general condition, but can it be said that the invitation to examine the property is such a reservation that the definite facts presented in the advertisement become absolute nullities? If such is the situation in a ten-room apartment house advertised to have four apartments of four rooms each, but actually having three rooms, would the same rule apply if all of the apartments were advertised to have five rooms, whereas none of them had more than three rooms? Suppose none of them had more than two rooms, would the same rule still apply? It must be borne in mind that the purchaser did not know of the misrepresentations, but bid in the property, "relying upon the truth of the statements in said notice" (Report of Master, p. 80, l. 7).

The reservation as to inspection is for the purpose of protecting the seller as to facts that the advertisement did not disclose or as to matters of opinion.

The expression in the conditions of sale to the effect that the sale of the premises was subject "to condition of premises as is" obviously refers only to the quality or condition of the premises, and not as to the quantity thereof, which is a determinable fact. This reservation has no application to the present situation, the objections raised being as to quantity and not quality.

"A misdescription, in a material matter, upon which the purchaser might reasonably rely and did rely to his damage, is ground for a voidance of the contract. This is so, even though the conditions of sale provide that errors and misdescription shall not void the contract." 6 *Corpus Juris, Auctions & Auctioneers*, p. 828, Sec. 22, citing among other cases, *Price v. Macaulay*, 2 De G., M. & G. 339, 51 Eng. Ch. 265, 42 Reprint 903.

In the case last cited a decree of specific performance was prayed for on two contracts for the purchase of lands upon condition that all objections to title not made within a prescribed time should be considered waived. One of the lots was advertised to be sold "together with the reservoir and water works, and valuable supply of water contained in this lot, which, exclusive of the lands and buildings, now yields a yearly rental of £60." An objection was taken after the prescribed time and was supported by the fact that this rent arose from supplying with water certain houses separated from the reservoir by the property of strangers, over which the vendor had no right to carry it beyond the license from year to year by payment of the rent. Held, that the description contained such a misrepresentation as to preclude the vendor from enforcing a specific performance; and that the objection was not one as to title and therefore was not obviated by the stipulation as to time.

Other cases where it was held that the buyer need not carry out his contract of misdescription of the property sold are *Brittenberg v. Freeman*, 16 Pa. Distr. 8; *Kassoy v. Freeman*, 16 Pa. Distr. 16; *Stevens v. Adamson*, 2 Starkie (Eng.) 422, 20 Revised Rep. 707; *Mills v. Oddey*, 150 Eng. Rep. 43.

IV.

The cases cited by the Court below do not sustain the decree.

Vice-Chancellor Church rests his opinion upon the cases of *De Witt v. Van Sickle*, 29 N. J. Eq. 209, and *Condon v. Sandhowe*, 97 N. J. Eq. 204, recently decided by Vice-Chancellor Bentley, in whose opinion the earlier cases are cited.

The expressions used by Vice-Chancellor Van Fleet in *De Witt v. Van Sickle* were applicable to a state of facts where a mortgage had been given which showed on its face that the sum secured did not bear interest for a year and that part of the principal was not payable and therefore not available for a period of eight years after its date. The mortgage was made to the son of the mortgagor, who was an insolvent debtor, and upon that state of facts the Vice-Chancellor held that a person attempting to enforce the mortgage should have known that it was part of a scheme of the insolvent debtor to defraud his creditors. The situation is quite different from that in the present case. It can well be said, as was said by Vice-Chancellor Van Fleet and quoted by the Court below, that "a person who wilfully closes his eyes to avoid seeing what he believes he would see if he kept them opened, must be considered to have seen what any man with his eyes open would have seen." In the present case there is no evidence to show that the petitioner believed that she would have found conditions different from that stated in the advertisement. All the evidence is exactly to the contrary. She inspected the premises and saw what was possible to see and had no reason to suspect the truthfulness of the advertisement and relied upon it for what she was unable to determine for herself.

In *Condon v. Sandhowe* the representation relied on was that a certain building was made of hollow tile. In that case the purchaser came with mechanics to look the building over, and inspected the walls and would have been able to determine that they were not made of hollow tile if investigation had been thorough. The situation is entirely different from the situation in

the present case, where the misrepresentation is not as to the quality of the building, but as to the presence or absence of certain rooms or fixtures and as to the amount of rent that the building would bring in.

V.

The decree of the Court of Chancery should be revised or modified and that Court directed to enter a decree relieving the petitioner of her bid and directing the return of her deposit.

COLLINS & CORBIN,
Solicitors of Petitioner-Appellant.

CLEMENT K. CORBIN,
Of Counsel.





