

ORDER CONFIRMING SALE.

Filed Sept. 24, 1918.

IN CHANCERY OF NEW JERSEY.

ON BILL ORDER DISMISSING EXCEPTIONS
AND CONFIRMING SALE.

Between

JAMES M. DUNLAP,

Complainant,

and

EMMA L. CHENOWETH, Et Vir, Et als,

Defendants.

On motion for the dismissal of the exceptions heretofore filed by Lewis Steelman, Emma L. Chenoweth, and George D. Chenoweth in this cause having been heard and considered and upon reading and filing the report made by Daniel F. Hendrickson, Sheriff of the County of Gloucester, bearing date the 16th day of August, 1918, and the affidavit thereto annexed, whereby it appears that on the 16th day of August, 1918, he sold at public Vendue at the Court House in the City of Woodbury in the County of Gloucester, and State of

New Jersey, the lands and premises described in the writ of execution issued to him in above Stated cause to George G. Green, of the City of Woodbury in the County of Gloucester and State of New Jersey, for the sum of \$2000.00 he being the highest bidder therefore, and that the said lands and premises were sold at the highest and best price the same would then bring in cash, and no cause being shown or appearing to the contrary.

10 It is on this 24th day of September, 1918, ordered that the said exceptions be dismissed and the said sale be and the same is hereby confirmed as valid and effectual in law, and it is further ordered that the said Sheriff do execute a good and sufficient conveyance in the law to the said George G. Green, for the said mortgaged premises so sold.

E. R. WALKER,
C.

Respectfully advised.

20 JOHN H. BACHES,

V. C.

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

30 I, Daniel F. Hendrickson, Sheriff of the County of Gloucester, do hereby respectfully report that I did on the 16th day of August, 1918, sell at Public Vendue at the Sheriff's office in the City of Woodbury, County of Gloucester and State of New Jersey, (having first duly advertised the same) the lands and premises described in the writ of execution issued to me in the above stated cause to George G. Green, of the City of Woodbury, County of Gloucester and State of New Jer-

sey, for the sum of two thousand dollars he being the highest bidder therefore.

Respectfully submitted this 16th day of August, A. D. 1918.

DANIEL F. HENDRICKSON,
Sheriff.

STATE OF NEW JERSEY, }
GLOUCESTER COUNTY. }

Daniel F. Hendrickson of full age, being duly sworn according to law, on his oath says that the mortgaged premises mentioned and referred to in the foregoing report, were duly sold for the highest and best price the same would bring in cash at the time of sale.

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DANIEL F. HENDRICKSON.

Sworn and subscribed to before me this 16th day of August, 1918.

FRANK D. PEDRICK,
Com. of Deeds.

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OBJECTIONS TO CONFIRMATION OF SALE.
Filed September 21, 1918.

Objections to the Confirmation of the sale of the mortgaged premises in the above entitled cause, which sale was held August 16th, 1918, is hereby entered on the ground among others, that the property was sold for a grossly inadequate price and leaves a large deficiency hereafter to be paid by defendants.

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The defendants, Emma L. Chenoweth, and George D. Chenoweth, her husband file this objection through

their solicitor, Norman Grey, and ask that the confirmation of sale be withheld until the objection raised by said defendants have been disposed by the Court.

NORMAN GREY,
*Solicitor for and of Counsel with the
Defendants, Emma L. Chenoweth
and George D. Chenoweth her
husband.*

10 *To Hon. Daniel S. Hendrickson, Sheriff of Gloucester
County:*

As agent and attorney in fact for LEWIS STEELMAN, of the City of Millville, N. J., the holder of the third mortgage on house, land and premises situated at the corner of Cooper St., and Woodland Ave., Woodbury, N. J., belonging to Emma L. Chenoweth, and by you being offered for sale at public vendue this day by virtue of a writ of Fieri Facias directed to you out of the Court of Chancery, I hereby apply for a
20 postponement of said sale, on the grounds that the sale thereof, this day would be against the equitable interest of the undersigned in the premises, inasmuch as I am making arrangements to pay off the amount due under said writ, and take over the property and I formally protest against the said property being knocked down to any person under the circumstances, and respectfully ask that you exercise the discretion vested in you and adjourn the sale for the purposes above stated, and request that this notice be recorded
30 on the minutes.

Dated this sixteenth day of August, 1918.

LEWIS STEELMAN,
By SPENCER SIMPSON,
Agent and Attorney-in-Fact.

I, Lewis Steelman, of the City of Millville, County of Cumberland, State of New Jersey, do hereby submit the following exception, objection and protest against the confirmation of the sale of property the subject matter of the above suit by the Sheriff of Gloucester County, to David Watkins for \$2000.00 on the 16th day of August, 1918.

1. That I am the third mortgagee of said property for the sum of \$1900.00 and interest, and that to protect such interest I requested a postponement of said sale on the 9th August, 1918, as per written notice to the said Sheriff, and the sale was adjourned by him until the 16th of August, 1918. 10

2. That I have since the 1st day of June, 1918, been sick and under the care of physician, and unable to attend to business, and that I only heard of said sale on the 7th of August, 1918.

3. That I requested the postponement of said sale *bona fide* to enable me to raise the necessary money to pay off the complainant, and thus protect my interests, and that as the sum to be so raised is about \$16,000.00 I desired a reasonable time to do so. 20

4. That on the 16th August, 1918, my agent explained to the said Sheriff at the said sale that the time—one week from the 9th of August, 1918, had not been sufficient to complete the necessary searches on the clear property that I had agreed to pledge for the raising of the necessary funds to pay off the complainant, but the said Sheriff said he was willing to adjourn the sale, but he would not do so without the consent of David Watkins, complainant solicitor, and the pur- 30

chase to whom the property was afterwards knocked down.

The said David Watkins refused to consent, and the property was knocked down to him for \$2000.00 as above mentioned.

5. That the said property is a very valuable one, being situated in the residential section of Woodbury, N. J., and is valued by the Real Estate brokers of that neighborhood at \$25,000.00.

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6. That under the circumstances it is submitted that the Sheriff did not exercise his discretion in the matter, but delegated the question to David Watkins, who, I am credibly informed, bought in the property for George G. Green, the Assignee of the Complainant's decree, and who is very anxious to obtain the property at a bargain price to the prejudice and against the interests of the undersigned.

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7. That I object to the confirmation of the said sale as illegal, oppressive, and unequitable, and respectfully request that I shall be heard before an order for confirmation is made in the premises.

Dated this 25th day of August, 1918.

LEWIS STEELMAN.

STATE OF NEW JERSEY, }
COUNTY OF MERCER. } ss.

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Lewis Steelman, being duly sworn, says:

1. That he is the third mortgagee of the property the subject matter of this suit, and that there is the sum of \$1900.00 due to him.

2. That he is a builder and contractor, and has been in active business as such for the last 25 years, and is well acquainted with the value of Real Estate.

3. That he is well acquainted with the dwelling house, and premises erected on part of the one acre and a quarter of land comprised in the complainant's mortgage situate in the City of Woodbury, Gloucester County. That said dwelling house is at the corner of Cooper and Woodland Streets, and is built of brick, that in my judgment the actual cost of building said house 15 years ago when it was built was \$22000.00 and that at the present time said house could not be built for less than \$25000.00. 10

4. That the said house and premises are worth at a forced sale at least \$22000.00 and he is credibly informed that a rental of \$200.00 was offered for the same furnished per month.

5. That had I been able to be present at the sale by the Sheriff he would have bidden \$16000.00 and is prepared to bid said amount on a resale of the property. 20

LEWIS STEELMAN.

Sworn and subscribed before me this
24th day of September, 1918.

S. S. BERMAN,
M. C. C. of N. J.

STATE OF NEW JERSEY, }
GLOUCESTER COUNTY. } ss.

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F. L. Wilkins, being duly sworn according to law, deposes and says I reside at Woodbury, Gloucester County, New Jersey. I am a Real Estate and Insurance agent in the City of Woodbury, New Jersey. I

know the property of Emma L. Chenoweth situate at the corner of Cooper Street, and Woodland Avenue, in the City, and in my opinion the fair Market value of said property including improvement erected thereon is \$20,000 to \$24,000.

F. L. WILKINS.

Sworn and subscribed this 17th day of September, 1918.

WM. M. CARTER,
Notary Public.

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STATE OF NEW JERSEY, } ss.
GLOUCESTER COUNTY.

George E. Pierson, being duly sworn according to law, deposes and says I reside at Woodbury, Gloucester County, New Jersey. I am secretary of Woodbury Real Estate Mutual Loan Association. I am well acquainted with the value of Real Estate in the City of Woodbury, New Jersey. I know the property of Emma
20 L. Chenoweth, situate at the corner of Cooper Street and Woodland Avenue in that City, and in my opinion the fair Market value of said property at the present time including improvements erected thereon is \$25,000.00.

GEORGE E. PIERSON.

Sworn and subscribed this 16th day of September, 1918, before me.

ADA E. WITKINS,
Notary Public.

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STATE OF NEW JERSEY, } ss.
GLOUCESTER COUNTY.

Samuel A. Crist of full age, being duly sworn according to law, deposes and says I reside in the Bor-

ough of Pitman, Gloucester County, New Jersey. That I am the attorney for Edward J. Crist who has a Real Estate and Insurance Business in the City of Woodbury, County of Gloucester, and State of New Jersey. That I know the value of Real Estate and am well acquainted with the values of Real Estate in the City of Woodbury, New Jersey. I know the property of Emma L. Chenoweth, situate at the corner of Cooper Street and Woodland Avenue, in that City, and in my opinion the fair market value of said property at the present time including improvements erected thereon is twenty-five thousand dollars \$25,000.00. 10

SAMUEL A. CRIST.

Sworn and subscribed to this Sixteenth day of September, A. D. 1918, before me.

R. EDWARD KLAISZ,
Notary Public.

AFFIDAVITS OF COMPLAINANTS. 20

Filed September 24th, 1918.

IN CHANCERY OF NEW JERSEY.

STATE OF NEW JERSEY, } ss.
GLOUCESTER COUNTY.

George G. Green of full age, being duly sworn, upon his oath says, David O. Watkins, of the City of Woodbury, in the County of Gloucester and State of New Jersey, is solicitor for me in these proceedings. 30
I am 76 years of age.

That I am the holder of the first and second mortgages upon the property of Emma L. Chenoweth, and husband and that Lewis Steelman, is the holder of the

third mortgage thereon as appears by the record. That in 1915 one Anna F. Souder, the then holder of the second mortgage upon these premises had same advertised for sale under and by virtue of foreclosure proceedings. The said Emma L. Chenoweth and George D. Chenoweth her husband had been visitors at my home in a social way and they prevailed upon me to take an assignment of the decree of sale in said matter of Souder vs. Chenoweth, and of the said Bond and Mortgage which I did merely to accommodate
10 them, and to help them out of their then financial trouble. This was in October, 1915, since which time they have not paid one cent of interest on account thereof or any part of the principal on January 24th, 1918, James M. Dunlap, then the holder of the first mortgage upon the same premises, had same advertised for sale upon execution in foreclosure proceedings thereunder, and in which I was a defendant as holder of the second mortgage assigned to me by said Souder.

20 The defendants the Chenoweths then again appealed to my generosity and I again assisted them by taking an assignment of the first mortgage of the said Dunlap, which mortgage and decree together with the accompanying bond, was assigned to me on January 24th, 1918, since which time no interest has been paid to me on account of the said first mortgage nor has anything been paid on account of the principal.

30 That the said Chenoweths failing to keep their premises although I had the same so advertised under the Dunlap mortgage adjourned from week to week, until February 28th, 1918, when failing to get any satisfaction from the said Chenoweths the property was sold by the Sheriff and I was compelled to bid same in, there being no other bidders present and I paid to the Sheriff the costs due him on said sale. This sale

was objected to by the defendants Chenoweths and under promises that they would avoid further sale, I consented to the entry of a decree setting aside that sale and waited until July 11th, 1918, when this court granted me an order for execution to proceed to sell the property. The amount then due me was \$11,694.30 with interest from January 24th, 1918, court costs taxed at \$5172 with interest from January 24th, 1918, upon my first mortgage and upon my second mortgage the amount due me was \$2,059.67 with interest from July 6th, 1915, court costs taxed at \$9814 with interest 10
 from July 6th, 1915, none of which said sums have been paid me or any part thereof. The sale of this property was had on August 16th, 1918, when I bid same in at \$2000.00 there being no other bidders or persons present interested in said property. There are now taxes on the property unpaid and due the City of Woodbury for three years last past amounting to over \$1,000.00 and interest and the 1918 taxes will soon be due. The water rent due the City remains un- 20
 paid and the water has been turned off the building thereon, the property is greatly deteriorating in value, on the day advertised for the sale, to wit, on August 9th, 1918, an attorney appeared for the Chenoweths, and one Spencer Simpson appeared as attorney in fact for said Steelman, or at least he so stated, and requested an adjournment for one week, assuring my counsel and the Sheriff, that the matter would then be closed up, and I would be paid my money. The sale was adjourned for one week, but on August 16th, 30
 1918, the said Spencer Simpson presented a bond and mortgage to the Sheriff as a reason for further adjournment, which he, the said Steelman, was endeavoring to have executed in order that he could raise funds to protect his third mortgage. The mortgage

appeared to have been drawn to the name of Spencer Simpson, trustee. My counsel asked the said Simpson for whom he was trustee, and whom did he represent in the transaction. This reply was that it was none of our business. They insisted upon an adjournment, having held the first bond and mortgage since its assignment to me in February, 1918, and the said second mortgage since its assignment to me in 1915, without the payment of anything on account of the principal or interest, and the fact that the taxes were unpaid for several years past and the collector of taxes was threatening the sale of the property and had advised my solicitor that he expected to sell for taxes unless the matter was adjusted. I felt that I had waited long enough, and insisted that the sale proceed. The property was purchased for me by David O. Watkins as my solicitor and was not purchased by him for his own use or property. The said property is assessed for taxes in the City of Woodbury to its full fair value at \$15,500.00. The amount due me upon my mortgages, interest and costs is \$15,128.22.

The unpaid taxes amount with interest to about \$1,200.00 making the total amount which I am compelled to pay for said property the sum of \$16,328.22. The Sheriff used his own discretion in said sale, and he was fully informed by both complainant and defendant of the facts herein and that the property was sold for the best price that could be obtained for it in cash.

GEORGE G. GREEN.

Sworn and subscribed to before me this
4th day of September, A. D. 1918.

VIRGINIA ANDREWS,
Notary Public of New Jersey.

STATE OF NEW JERSEY, }
 GLOUCESTER COUNTY. } ss.

David O. Watkins of full age, being duly sworn according to law upon his oath, says, I am the solicitor for George G. Green, the assignee of complainant, James M. Dunlap, herein. That in July of 1915, the said George G. Green took an assignment of the decree and the bond and mortgage and execution in foreclosure proceedings brought thereunder from the said Anna F. Souder, and in January of 1918, said Green 10 took the assignment of the said Dunlap, mortgage and decree and execution in foreclosure proceedings thereunder. That no part of the principal or any interest upon either of said mortgages or decrees have been paid since the assignments thereof to the said Green. That John Boyd Avis, Esq., first represented the defendants Chenoweths, and at his request and for their benefit the sale under the said Dunlap decree was continued from week to week, until February 28th, 1918, when advised this deponent as solicitor for Green. 20

That she could not ask to have the sale further adjourned and so notified the said Chenoweths. The property was then sold, but the Chenoweths objected to the confirmation of the sale and the said George G. Green, the client of this deponent consented that a decree be entered setting aside that sale in order to give the Chenoweths further time to find some adjustment of their financial trouble, prior to this however Wilson and Carr, Esquires, who represented Lewis Steelman, the holder of the third mortgage and the 30 exceptant therein, requested this deponent as solicitor for said Green, to consent to the adjournments made as aforesaid in order to give said Steelman an opportunity to see what he could do in connection with the matter and finally about a week before the time of

sale the said Wilson and Carr telephoned to this deponent that Steelman had no further interest in this matter, and they could not ask for further adjournment. After the said sale had been set aside, the said Green waited until July 11th, 1918, when new execution was issued in these proceedings, and the property advertised for sale August 9th, 1918. On the day and at the hour fixed for the sale, further adjournment was requested by one Spencer Simpson, representing himself to be the attorney in fact for the said Steelman, and in order to give these parties an opportunity to
 10 protect themselves still further, the same was adjourned for one week, or until August 16th, 1918, when it was knocked off to the said George G. Green for \$200.00 which was the best price that could be obtained for it in cash. This deponent has no interest in the property whatever, excepting as the solicitor for the said Green, and the property was not sold to him, but to the said George G. Green. That the Sheriff of Gloucester County was thoroughly conversant with all the facts, and had the matter presented to him by the solicitor
 20 for the Chenoweths and by the attorney in fact for Steelman, and had full knowledge of the circumstances and conditions and in his discretion, proceeded with the sale. In previous proceedings to have the first sale set aside, George D. Connelly, a Counsellor of this State, represented the Chenoweths and consented in view of the fact that the said Green consented the first sale be set aside that new execution should issue as aforesaid, and said that he could ask no further
 30 favors in the matter.

DAVID O. WATKINS

Sworn and subscribed to before me this
 6th day of September, A. D. 1918.

VIRGINIA ANDREWS,
Notary Public of New Jersey.

NOTICE OF APPEAL.
Filed September 27th, 1918.

IN CHANCERY OF NEW JERSEY.

ON BILL NOTICE OF APPEAL.

Between

JAMES N. DUNLAP,

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Complainant,

and

EMMA L. CHENOWETH, et vir, et als,

Defendant.

*To David O. Watkins, Esquire, Solicitor, for and of
Counsel with George G. Green:*

The defendants, Emma L. Chenoweth, and George 20
D. Chenoweth, her husband, hereby appeal from the
order or decree of confirmation made in the Court of
Chancery of New Jersey by his Honor Edwin Robert
Walker, Chancellor of the State of New Jersey, bear-
ing date September 24th, 1918. In this particular said
order or decree of confirmation orders that certain
sale of the mortgaged premises made by the Sheriff
of the County of Gloucester on the 16th day of August,
1918, be confirmed as valid and effectual in law and
that the said Sheriff execute a good and sufficient con- 30
veyance in the law to the purchaser for the said mort-
gaged premises so sold and from the whole and every
part of the decree of confirmation made in this Court
in the above entitled cause, upon the ground the same

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

NORMAN GREY,
Solicitor for and of Counsel with
Defendants.

Dated September 24th, 1918,

EMMA L. CHENOWETH,
GEORGE D. CHENOWETH, her Husband.

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IN CHANCERY OF NEW JERSEY.

ON BILL TO FORECLOSE NOTICE OF APPEAL.

Between

JAMES M. DUNLAP,
Complainant,

and

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EMMA L. CHENOWETH, et vir, et als, and LEWIS
STEELMAN,
Defendants.

The defendant, Lewis Steelman, hereby joins in the appeal already taken in this cause by Emma L. Chenoweth and George D. Chenoweth, her husband, defendants, and with them hereby appeals from the order or decree of confirmation made in the Court of Chancery of New Jersey by his Honor Edwin C. Walker, Chancellor of the State of New Jersey, bearing date the twenty-fourth of September, 1918.

In this particular said order or decree of confirmation orders that certain sale of the mortgaged premises made by the Sheriff of the County of Gloucester, on the sixteenth day of August, 1918, be confirmed as

valid and effectual in law and that the said Sheriff execute a good and sufficient conveyance in the law to the purchaser for the said mortgaged premises so sold, and from the whole and every part of said order or decree as aforesaid upon the ground that the same is erroneous to the Court and Errors and Appeals in the last resort in all causes.

T. J. MIDDLETON,
*Solicitor of and Counsel with Defendants
and Appellants.*

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

HERBERT A. DRAKE,
Of Counsel.

PETITION OF APPEAL.

NEW JERSEY COURT OF ERRORS AND
APPEALS.

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ON BILL, &c.,

Between

JAMES M. DUNLAP,
Complainant-Respondent,
and

EMMA L. CHENOWETH and GEORGE D. CHEN-
OWETH, her Husband,

Defendants-Appellants.

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*To the Honorable, the Judges of the Court of Errors
and Appeals in the Last Resort in all Causes:*

The petition of Emma L. Chenoweth and George D. Chenoweth, her husband, defendants-petitioners in

the above matter, respectfully shows that your petitioners find themselves aggrieved by a certain decree of confirmation made in the Court of Chancery of New Jersey, by his Honor Edwin Robert Walker, Chancellor of the State of New Jersey, bearing date the twenty-fourth day of September, nineteen hundred and eighteen, in this respect; that said decree of confirmation orders that a certain sale of mortgaged premises made by the Sheriff of Gloucester County on the sixteenth day of August, nineteen hundred and
 10 eighteen, be confirmed as valid and effectual in law; and further, that the said Sheriff execute a good and sufficient conveyance in the law to the purchaser for the said mortgaged premises so sold.

And your petitioners humbly appeal from that part of the decree of the Chancellor which decrees as aforesaid upon the ground that the same is erroneous, in that the Court found on the facts that the mortgaged premises were sold by the Sheriff of Gloucester County to George G. Green (being the highest bidder there-
 20 for) for the sum of two thousand dollars (\$2,000.00), and that the said lands and premises were so sold at the highest and best price the same would then bring in cash, whereas the Court should have found on the facts that the said lands and premises were not sold at the highest and best price the same would then bring in cash.

Your petitioners therefore pray that the said decree of confirmation of the said Chancellor may be, in the particulars aforesaid, reversed and set aside. And
 30 that your petitioners may have such relief in the premises as to this Honorable Court shall seem meet.

NORMAN GREY,

*Solicitor for and of Counsel with
 Defendants-Appellants.*

PETITION OF APPEAL OF LEWIS STEELMAN.

To the Honorable Judges of the Court of Errors and Appeals in the Last Resort on all Causes:

The petition of Lewis Steelman, defendant, petitioner in above matter, respectfully shows: That your petitioner finds himself aggrieved by a certain decree of confirmation made by the Court of Chancery of New Jersey by his Honor Edwin Robert Walker, Chancellor of the State of New Jersey, bearing date the 24th day of September, nineteen hundred and eighteen, 1918, in this respect: That said decree of confirmation orders that a certain sale of mortgaged premises made by the Sheriff of Gloucester County on the 16th day of August, 1918, be confirmed as valid and effectual in law; and further, that the said Sheriff execute a good and sufficient conveyance in the law to the purchaser for the said mortgaged premises so sold and your petitioner humbly joins in the appeal already taken in this cause by Emma L. Chenoweth and George D. Chenoweth, her husband, defendants, from that part of the decree of the Chancellor which decrees said confirmation, upon the ground that the same is erroneous, in that the Court found on the facts that the mortgaged premises were sold by the Sheriff of Gloucester County to George G. Green, (being the highest bidder therefore) for the sum of two hundred dollars, and that the said lands and premises were so sold at the highest and best price the same would then bring in cash. 10 20

Whereas, the Court should have found on the facts that the said lands and premises were not sold at the highest and best price the same would then bring in cash. 30

Your petitioner therefore prays that the said decree of confirmation of said Chancellor may be in all

as well as the particulars aforesaid reversed and set aside, and that your petitioner may have such relief in the premises as shall seem meet.

T. J. MIDDLETON,
H. A. DRAKE,
*Solicitor for and of Counsel with Defendant,
Appellant, Lewis Steelman.*

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IN CHANCERY OF NEW JERSEY.

ON BILL TO FORECLOSE ORDER FOR
POSSESSION.

Between

JAMES M. DUNLAP,
Complainant,

and

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EMMA L. CHENOWETH, et als,
Defendants.

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It appearing to the Court, by the petition filed by George G. Green, and the affidavit annexed thereto, that the said George Green purchased the mortgaged premises described in the Bill of Complaint and foreclosed in the above stated cause at the sale made thereof by the Sheriff of the County of Gloucester, by virtue of the execution issued in said cause, and that the defendants, Emma L. Chenoweth and George D. Chenoweth, who at the time of filing said Bill of Complaint and making the decree in said cause, owned the equity of redemption and were in the possession of the said

mortgaged premises, are still in possession thereof and refuse to deliver up possession unto the said George G. Green, the purchaser and now owner thereof, and that the said George G. Green hath prayed the aid of this Court; and it appearing that due and legal notice of this application hath been given to the said Emma L. Chenoweth, and George D. Chenoweth:

It is, on this 26th day of November in the year of our Lord, 1918, on motion of David O. Watkins, Solicitor for petitioner, ordered that said Emma L. Chenoweth and George D. Chenoweth, defendants in this cause, on being served with a certified copy of this order, forthwith deliver up to the said George G. Green the possession of the mortgaged premises mentioned and described in the pleadings and decree in this cause, and in the deed of conveyance executed by the Sheriff of the County of Gloucester to the said George G. Green, in pursuance of said decree and execution thereon, and upon such service, accompanied with demand of possession and refusal, therefore the said George G. Green may apply for a writ of assistance, according to the course of this Court in such case, on Tuesday, December 3rd, 1918, at ten o'clock in the morning or as soon thereafter as Counsel can be heard, at the Chancery Chambers, in the State House, Trenton, New Jersey.

E. R. WALKER,

C.

Respectfully advised.

JOHN H. BARKES,
V. C.

A True Copy

ROBERT H. McADAMS,
Clerk.

IN CHANCERY OF NEW JERSEY.

ON BILL TO FORECLOSE PETITION.

Between

JAMES DUNLAP,

*Complainant,**and*

10 EMMA L. CHENOWETH, et conjux, et al,
Defendants.

*To the Honorable Edwin Robert Waliker, Chancellor
of the State of New Jersey:*

The joint and several petition of Emma L. Chenoweth and George D. Chenoweth, her husband, of the City of Woodbury, New Jersey, and Lewis Steelman, of the City of Millville, New Jersey, respectfully shows
20 that:

1. Your petitioners, Emma L. Chenoweth and George D. Chenoweth, were on October 18th, 1918, served by one Aden W. Cattell with a notice and demand for possession of the mortgaged premises, and they have not been served with a copy of a petition praying for a writ of assistance on an application to be made November 26th, 1918.

30 2. When the said Aden W. Cattell served said notice and demand, he held in his hand a paper which he said was a Sheriff's deed; whether the said paper was such Sheriff's deed or a Sheriff's deed of the mortgaged premises in this case, these petitioners, Mrs. and Mr. Chenoweth, do not know, as said Cattell never

opened said paper or exhibited to them any portion thereof, and the same remained in said Cattell's hands folded during the entire interview. Whether the said paper was a Sheriff's deed of the mortgaged premises in this case, signed and sealed by the Sheriff, with the statutory affidavit annexed thereto, these last names petitioners have no means of knowing except as aforesaid.

3. These petitioners, Mrs. and Mr. Chenoweth, say that or immediately before the purchase by the defendant, George G. Green, of the decree in favor of the complainant in this case and the consequent assignment thereof, to him, he, said Green, agreed for a good and valuable consideration to delay the Sheriff's sale under and by virtue of the said Dunlap decree and under the decree for \$2095.67 in favor of himself, said Green, until your petitioners could redeem the said mortgaged premises, that these petitioners were deprived of \$300.00 on a settlement when they gave the Souder mortgage, on which the said George G. Green, at the time of the said purchase and assignment held a decree for \$2095.67, which was recognized by the said Green as a claim on their behalf to that extent, and afterwards the said Green recognized his said agreement to give these petitioners an opportunity to redeem said mortgaged premises from the Dunlap and Souder decrees held by him, and afterwards, before your petitioners had more than a week to arrange to redeem and redeem the said premises, as they could within reasonable time have done, the said Green has proceeded in one way and another to so embarrass your petitioners as to make it impossible for them to carry through their desire and intention and undertaking to redeem the said premises within a reasonable time.

4. That the consideration moving from them, Mrs. and Mr. Chenoweth, in support of said agreement with said Green, was that they agreed to forego and did forego their claim to the said \$300., which the same had entered into and was a part of the Souder decree held by the said Green, and of which they had been deprived, as aforesaid, on the settlement relating to the said Souder mortgage.

5. Your petitioner, Lewis Steelman, says that he
10 was ill and unable to be present at the sale of the mortgaged premises on August 16th, 1918, and his request to have the same adjourned for a week was ignored, and that could he have attended said sale at the date last aforesaid or thereafter, he would have paid the sum of \$16,000. for the mortgaged premises, and he, said Steelman, is prepared to bid the sum on a re-sale of the same.

6. Your petitioners severally say the mortgaged
20 premises are worth over \$22,000. at a forced sale fairly and properly conducted with an opportunity to those interested in the decrees against the same, to bid thereon.

7. Your petitioners have taken an appeal to the Court of Errors and Appeals from the order or decree made on or about September 24th, 1918, confirming such Sheriff's sale.

30 Your petitioners therefore pray as follows, viz:—

1. For permission to answer the petition under which a writ of assistance is prayed for.

2. To vacate deed and all proceedings under decree.

3. To amend petition of appeal so as to include your petitioner Lewis Steelman.

4. To stay all proceedings consequent on order confirming said Sheriff's deed until hearing and determination of appeal on same.

5. General relief.

T. J. MIDDLETON,
Solicitor for and of Counsel with Petitioners.

10

STATE OF NEW JERSEY, } ss.
COUNTY OF CAMDEN.

Emma L. Chenoweth and George D. Chenoweth, being duly sworn on their several oaths, depose and and say that they are acquainted with the facts contained in the foregoing petition, and that the same are true, that Aden W. Cattell, the person who served the notice in the deponents, or either of them, the paper he held in his hand, alleged by him to be a Sheriff's deed, and never exhibited the same to them except as a folded paper; that since the said George G. Green, for the consideration mentioned in said petition, agreed to permit those deponents to have a full and fair opportunity to redeem the mortgaged premises from the decrees held by the said George G. Green, he has so harassed them with sales contrary to his agreement and advertising of sales that it has been impossible for them to make arrangements to raise the money to redeem said mortgaged premises from the decrees held by the said Green, amounting to at least \$14,000.; that the mortgaged premises are, in the opinion of these deponents, worth over \$24,000.; that these deponents are

acquainted with the values of other real estate in the vicinity of said mortgaged premises.

EMMA L. CHENOWETH,
GEORGE D. CHENOWETH.

Sworn and subscribed to before me this
25th day of November, A. D. 1918.

CHARLES R. HUNTER,
Notary Public of N. J.

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STATE OF NEW JERSEY, } ss.
CAMDEN COUNTY.

Lewis Steelman, being duly sworn, saith that the statements in the foregoing petition are true also that he is one of the defendants in the above stated case and the holder at the commencement of said case of a third mortgage on the mortgaged premises herein on which a decree has been herein made in the sum of
20 sixteen hundred and two dollars, \$1602.00., to which there are previous decrees amounting to about fourteen thousand dollars, \$14,000.00; that the mortgaged premises were sold August 16th, 1918, against the request of deponent and due notice thereof, of which notice of request the following is a copy.

To Hon. Daniel S. Hendrickson, Sheriff of Gloucester County:

As agent and attorney in fact for LEWIS STEEL-
30 MAN, of the City of Millville, N. J., the holder of the third mortgage on house, land and premises situated at the corner of Cooper Street and Woodland Avenue, Woodbury, N. J., belonging to Emma L. Chenoweth, and by you being offered for sale at public vendue this

day by virtue of a writ of Facias directed to you out of the Court of Chancery, I hereby apply for a postponement of said sale, on the ground that the sale thereof of this day would be against the equitable interest of the undersigned in the premises inasmuch as I am making arrangements to pay off the amount due under said writ and take over the property, and I formally protest against the said property being knocked down to any person under the circumstances and respectfully ask that you exercise the discretion vested in you and adjourn the sale for the purposes above stated and request that this notice be recorded on the minutes. 10
DATED this sixteenth day of August, 1918.

LEWIS STEELMAN,
By SPENCER SIMPSON,
Agent and Attorney in Fact.

That the facts stated in said notice are true and that said sale was made August 16th, 1918, notwithstanding service of said notice on the Sheriff of Gloucester County shortly prior to said sale, to whom it was directed, that on August 23rd, 1918, this deponent had prepared and made the following objections to the confirmation of said sale. That he employed Counsel to appear and present his objections to the confirmation of said sale and provided a fee of \$50.00 to be paid to said Counsel which this deponent is informed was duly and opportunely paid to said Counsel; that the following is a copy of said objections: 20

I, Lewis Steelman, of the City of Millville, County of Cumberland, State of New Jersey, do hereby submit the following exceptions, objection and protest against the confirmation of the sale of property the subject under the above suit by the Sheriff of Gloucester County, 30

to David Watkins for \$2000.00 on the 16th day of August, 1918.

1. That I am the third mortgagee of said property for the sum of \$1900.00 and interest and that to protect such interest I requested a postponement of said sale on the 16th day of August, 1918, as per written notice to said Sheriff.

2. That I have since the 1st day of June, 1918,
10 been sick and under the care of physicians and unable to attend to business and that I only heard of said sale on the 15th day of August, 1918.

3. That I requested the postponement of said sale *bona fide* to enable me to raise the necessary money to pay off the complainant and thus protect my interest and that as the sum to be raised is about \$16,000.00, I desired a reasonable time to do so.

20 4. That on the 16th day of August, 1918, my agent explained to the Sheriff at the said sale that the time one week from the 9th day of August, 1918, until the 16th day of August, 1918, had not been sufficient to complete the necessary searches on the clear property that I had agreed to pledge for the raising of the necessary funds to pay off the complainant. The time of one week intervening being a previous postponement allowed, but the Sheriff said he was willing to adjourn the sale but he would not do so without the consent of
30 David Watkins, complainant, solicitor and the purchaser to whom the property was afterwards knocked down to him for \$2000.00 as above mentioned.

5. That the said property is very valuable, being situated in the residential section of Woodbury, N. J.,

and is valued by the Real Estate brokers of that neighborhood at \$25,000.

6. That under the circumstances it is submitted that the Sheriff did not exercise his discretion in the matter but delegated the question to David Watkins, who I am credibly informed bought in the property for George G. Green, the assignee of the complainant's decree, and who is very anxious to obtain the property at a bargain price to the prejudice and against the interest of the undersigned.

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7. That I object to the confirmation of said sale as illegal, oppressive and unequitable and respectfully request that I shall be heard before an order for confirmation is made in the premises.

Dated this 23rd day of August, A. D. 1918.

LEWIS STEELMAN.

That the statement made in said objections regarding said mortgaged premises are true that said sale was confirmed on September 24th, 1918, notwithstanding said objections; that the Counsel whom deponent employed to resist said confirmation and present deponent's objections failed to appear and deponent lost the advantage thereof; that this deponent has since appealed from the said decree and order of confirmation of September 24th, 1918, that during the period of the advertisement of the mortgaged premises, deponent was ill with rheumatism and for that reason unable to attend said Sheriff's sale of August 16th, 1918, and present his request for postponement and attend to the raising of about \$15,000.00 to pay off the incumbrances decreed to be prior to his third mortgage and decree of \$1602.00 besides interest and cost thereon; that be-

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tween the time of said sale and confirmation this deponent negotiated a loan of \$15,000.00 on the mortgaged premises on condition that deponent have an opportunity to bid at and purchase the mortgaged premises at a new sale or at the advertised sale of August 16th, 1918, had the same been sufficiently adjourned; that owing to said confirmation this deponent dropped said negotiations but that he is abundantly able to renew, complete and consummate the same and pay to the said complainant, George G. Green, every cent of
10 his decrees, interest and costs and still requests that he have the opportunity to do so with due protection to the interest of the said Green; that the sum of \$2,000.00 mentioned in Sheriff's deed is a price for said mortgaged premises so inadequate as to be not one-tenth of the value thereof. That deponent is the third mortgagee of the property the subject matter of this suit and that there is the sum of \$1602.00 due to him; that he is a builder and contractor and has been in
20 active business as such for the last twenty-five years and is well acquainted with the value of real estate, in the vicinity of the mortgaged premises.

That he is well acquainted with the dwelling house and improvements and the one acre and one-quarter of land comprised in the mortgaged premises situate in the City of Woodbury, Gloucester County; that the said dwelling house is situated at the corner Cooper and Woodland Avenue and is built of brick; that in deponent's judgments the actual cost of building said
30 house 15 years ago when it was built was \$22,000.00 and that at the present time said house could not be built for less than \$25,000.00; that the said house and premises are worth at a forced sale at least \$23,000.00 and he is credibly informed that a rental of \$200.00 was offered for same furnished per month; that had depon-

ent been able to be present at the sale by the said Sheriff he would have bidden \$16,000.00 and is prepared to bid said amount on a re-sale of the property.

LEWIS STEELMAN.

Sworn and subscribed before me this
25th day of Nov., 1918.

CHARLES R. HUNTER,
Notary Public of New Jersey.

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IN CHANCERY OF NEW JERSEY.

CONCLUSIONS.

Between

JAMES M. DUNLAP,

Complainant, 20

and

EMMA L. CHENOWETH, et als,

Defendants.

On objections to a sale of mortgaged premises.

For the objections, MR. NORMAN GREY.

Contra. MR. DAVID O. WATKINS.

BACKS, V. C.

This matter came before me on an objection by the defendants, Chenoweths, to the confirmation of the sale of lands under these foreclosure proceedings. The Sheriff sold the mortgaged premises under a writ to execute the decree advised in 88 N. J. Eq. 496. They were struck off to Colonel George G. Green, owner of 30

the decree, and also of the decree of foreclosure of the second mortgage, Souder vs. Chenoweth, Docket 39, p. 612.

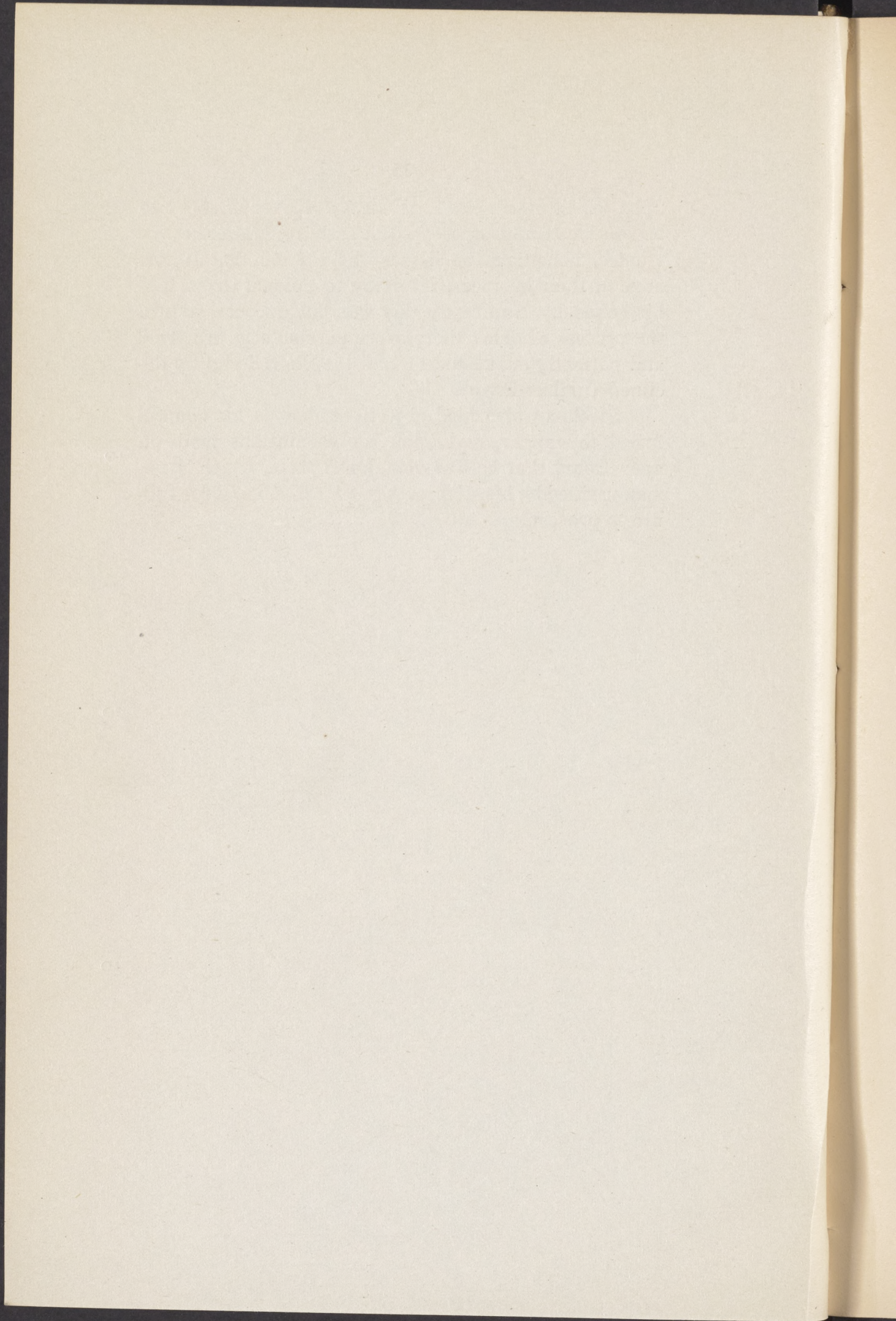
His decrees amount to \$15,128.22, and are subject to unpaid taxes on the land of \$1200. He took up the decrees to help the Chenoweth's to save their home and got himself into a pack of trouble. Appealed to in 1915, he bought the second mortgage decree under which the property was about to be sold. In January last the premises were again advertised for sale, this time under the execution on this writ, and beseeched he advanced the funds, temporarily, to give the Chenoweths a further chance to turn themselves. They were not successful in raising the money, as they had hoped and after the sale had been adjourned from week to week to February 28th, the property was put up and sold to Colonel Green, on objections to confirmation and upon a bill filed by the Chenoweths to set aside the sale, Colonel Green consented to a decree of resale on June 17th. He waited for action by the Chenoweths July 15th, when he again advertised the sale for August 9th. Upon their application a week's adjournment was granted, upon their assurance that the matter would be adjusted in the meantime. On the day of the sale another adjournment was requested and refused and the property was struck off to Colonel Green on his bid of \$2000. which was the only one made. The ground of objection is "That the property was sold for a grossly inadequate price and leaves a large deficiency hereafter to be paid by the defendants". Three real estate operators gave as their opinion that the property was worth from \$20,000. to \$25,000. The affidavit of Lewis Steelman, the holder of the third mortgage, and was cut off by the sale stated that had he been able to

be present at the sale he would have bid \$16,000. and
 that he was prepared to bid that sum at a re-sale. The
 sale was conducted fairly, and in all respects according
 to law, and the only bid submitted was that of the pur-
 chaser. The price was the best that the property
 would, at the time of the sale bring, in cash, and this
 was the only thing to be decided on, objections a con-
 firmation was advised. In *Oakley vs. Shaw*, 69 Atl.
 Rep. 462, Chancellor Walker, (then Vice Chancellor),
 held, "that the only office of a written objection to the
 confirmation of a sale in foreclosure under the Act of
 March 12, 1880, and Rule 205, (now 218) of this Court,
 is to urge the overthrow of a sale upon the sole grounds
 that the property did not bring the highest and best
 price that could be obtained for it in cash, and that an
 attack upon the sale on any other ground must be made
 the basis of an independent action, either by bill or
 petition. This practice rule was accepted with ap-
 proval by Vice Chancellor Garrison in *Cropper vs.*
Brown, 76 N. J. Eq. 406, and by Vice Chancellor Howell
 in *Koegel vs. Koegel*, 83 N. J. Eq. 179. It was not nec-
 essary to determine whether under the practice the
 Court may refuse to confirm a sale where the bid is
 so grossly inadequate as to shock the conscience. I
 have no doubt that it may, and would, in a proper case,
 but that situation was not before me. The sale not
 of a \$20,000. property for \$2,000. The bid was made to
 protect the purchaser's liens of \$15,000. plus, and the
 difference between the sum and the estimated value of
 the property is a prominent, and, most-times, and in
 this case a controlling factor on an appeal to the con-
 science on the ground of gross inadequacy of price.
 This technical rule of practice, however, would not have
 been permitted to stand in the way if there had been a
 meritorious complaint.

Confirmation would have been held and leave given to file a petition or bill. From statements made by counsel, unsupported by proof, I gathered that the best that could be put forth under correct procedure was, that Steelman, the owner of the third mortgage of \$1600.00 was ill on the day of sale and but for that he would have bid at least \$16,000. and further, according to his affidavit above referred to, he was ready to bid that sum on a resale. Such a bid would not have been sufficient to satisfy the prior liens, unless it was
 10 meant to be exclusive of the taxes, and would not at all have helped the Chenoweths unless they had had some secret understanding with Steelman, that he would hold their equity of redemption in trust. But I concluded to test Steelman's offer with the idea of suggesting a petition if it were *bona fide*,—Colonel Green's counsel having intimated that all his client desired was his money. Steelman was called upon to deposit, as I now recall, either \$500. or \$1000. with the
 20 Clerk of the Court to insure his proposed bid. This he declined to do, saying that he would not bind himself other than by the offer contained in his affidavit. The Statement by counsel that, except for illness, Steelman would have bid \$16,000.00 at the sale was highly questionable. It appeared that on the day of sale, Steelman was represented by one Spencer Simpson, a disbarred lawyer, not to bid, but to seek a further adjournment. To persuade the Sheriff that funds to pay the executions were within reach and to induce him to
 30 exercise his discretion as to an adjournment, Simpson produced a form of bond and mortgage, made out to him as trustee, evidently executed, or about to be, by the Chenoweths, on the mortgaged property or perhaps it was by Steelman on some of his property

upon which Simpson asserted the money was **about** to be raised. Simpson refused to state for whom he was trustee, resenting the inquiry by stating that it was none of their business, referring to Colonel Green and his counsel. Manifestly this was but another step in the process of delay theretofore persistently practiced and patiently submitted to, and the Sheriff rightly declined further favors.

Steelman also filed objections, but as his counsel failed to appear, and upon representations made in open Court that he had abandoned them, which Steel-¹⁰man verified by his silence, they were dismissed for failure to prosecute.



No.

March Term, 1919.

New Jersey Court of Errors and Appeals

Between	}	
James M. Dunlap,		
Complainant,		
(Geo. G. Green, Respondent,)		
and		
Emma L. Chenoweth, Geo.		On Bill to Foreclose
D. Chenoweth and		Appeal from
Lewis D. Steelman,		Court of Chancery
Defendants and		
Appellants		

BRIEF OF RESPONDENT.

This appeal brings before this Court, the sole question whether the learned Vice Chancellor erred in confirming a sale of lands and premises, after sale by the Sheriff, under foreclosure proceedings.

The affidavits of respondent, (C. p. 9 and 13) presented to the Vice Chancellor, at a hearing upon the objections then before him, and the facts presented are these: "There were three mortgages upon the property of Emma L. Chenoweth, the first held by James M. Dunlap, the second by one Anna F. Souder and the third by defendant Lewis Steelman, there were also unpaid taxes and judgments.

In 1915 Anna F. Souder holder of the second mortgage commenced foreclosure proceedings upon her mortgage, the amount due thereon on July 16th, 1915, was \$2095.67 with interest from that date, the taxed costs were \$98.14. As the property was advertised by the Sheriff for public sale under these proceedings, the Chenoweths applied to George G. Green, respondent herein, to assist them, their relations had been friendly, and Green did assist them by taking an assignment of the decree in cause of Souder vs. Chenoweth, Chancery Docket 39, page 612, and an assignment of the Souder bond and mortgage, stopped the sale and held the mortgage and still does, nothing having been paid for principal or interest since July 16th, 1915.

On January 24th, 1918, James M. Dunlap then holder of the first mortgage, began foreclosure under the title herein, and the premises were advertised by the Sheriff for sale under these proceedings, the amount due thereon, January 24th, 1918, was principal and interest \$11,964.30, costs taxed at \$15.72, the Chenoweths, although they had not kept any of the promises made to Green in inducing him to take the Souder mortgage, again applied to him for assistance, and again to save the property for his friends, Green stopped the proposed sale, by paying the above amount to Dunlap the complainant, and taking an assignment of his decree and mortgage, and the said Chenoweths have paid nothing on account of either principal or interest since January 24th, 1918.

The amount due defendant Lewis Steelman on his third mortgage on August 23rd, 1918, was principal and interest \$1,784.90 and costs taxed at \$42.87.

Taxes were due the City of Woodbury for three years amounting to \$1,000 and upwards, and those for 1918 were soon to be due in addition, making a total of more than \$1,200 for taxes, and also a large unpaid water tax, all of which were prior liens to the mortgages held by said Green and Steelman.

After taking the assignments of the Souder and Dunlap mortgages and to assist the Chenoweths to carry out their promises made to induce him to take them, Green had the sale of the property at their request publicly and adjourned by the Sheriff from week to week, until February 28th, 1918, when after notice to Counsel of the Defendants, he insisted upon the property being sold by the Sheriff, Green bid same in to protect himself, for \$1,000, he was the only bidder, no other bidders were present. This sale was objected to by the Chenoweths, and under promises made by them, that if they were given another chance, they could save their property, Green consented to the entry of a decree setting aside the sale of February 28th, 1918, and waited until July 11th, 1918, when he applied for and was granted an order for execution to sell, and finally after adjournment at request of Chenoweths, the property was sold and struck off to Green at \$2,000 on August 16th, 1918, there were no other bidders present, or bids made. The amount due Green at the time of sale was on the Dunlap mortgage for principal and interest, the sum of \$12,388.44, costs taxed \$16.46; on the Souder mortgage for principal and interest \$2,492.45, costs taxed at \$116.72, making in all the sum of \$15,014.10, taxes due the City which had to be assumed by Green, \$1,200 more, therefore the bid meant \$16,214.10 cost to Green. The amount due Steelman at time of sale, on his third

mortgage was \$1,836.77. The Solicitor for Green had been advised before the sale, that Steelman could not ask for further adjournments, and had no further interest therein, this was in response to notice of Counsel for Steelman that sale was going to be had and for them to look after their client's interest in his mortgage. (C. p. 13.)

Upon report of the sale by the Sheriff, Steelman filed what presumably was meant as objections to confirmation, (C. p. ~~13~~) no petition or bill was then filed, and all before the Vice Chancellor was simply "objections". The Court heard the objections, and read the affidavits of respondent Green and his counsel, (C. p. 9 and 13), in accordance with the rules of Chancery (Rule 218) and confirmed the sale by decree dated September 24th, 1918, (C. p. 1) and the Sheriff executed and delivered to Green, deed for the premises, dated same day and recorded in the Gloucester County Clerk's office on same day in Book 271 of Deeds, page 305, etc.

Appeal from the confirmation of this sale is made upon the point principally, that the price for the property was inadequate, and that Green did not keep a promise alleged to have been made, that he would give the appellants a chance to redeem. It will be remembered that this sale was the second sale attempted to be made, the first sale had on February 28th, 1918, when \$1,000 was the highest and in fact the only bid, and this sale was set aside not on this account, but with consent of Green, as already stated. The second sale, (the one in question) was on August 16th, 1918, when the only bid was \$2,000, made by Green, this of course meant that Green would then have owing him on his mortgage not \$14,000 or less as appellants claim in their affidavit, but the sum of

\$15,014.10 and assumption of taxes due the City of \$1,200 and upwards, making the amount as already stated upwards of \$16,214.10.

There is no attack upon the advertising, nor that all was not done that law required. Opportunity was given the appellants by legal adjournments, Green had waited for payment of his money due from July 15th, 1915, and certainly was not required to wait longer than three years for appellants to secure a purchaser for the property. A good test was made by the two sales as to the best price that could be obtained for same. The Sheriff's affidavit to his report of sale, (C. p. 3), the affidavits of solicitor of respondent, and of respondent himself, clearly state this, (C. p. 9 and 13). The assessed value of the property by the City assessment is \$15,500, which is less than the purchase price to Green, (C. p. 12). As to Steelman's contention that he would have bid \$16,000 had he attended the sale, at the hearing before the Vice Chancellor, when counsel for Green intimated that all Green wanted was the money he had in the property, Steelman's good faith was put to the test, by the Vice Chancellor calling upon him to make a deposit to show his good faith and to insure his bid in case a re-sale was ordered, but he refused to do so, and in fact would do nothing but repeat the contents of his affidavit, (C. p. 34). He was not at the sale but was represented by one Spencer Simpson, a former lawyer, and the Vice Chancellor in his conclusions filed herein states Steelman's and Simpson's actions fully, (C. p. 31). The joint petition of appellants objecting to the sale, was not presented to the Vice Chancellor until after November 25th, 1918, (C. p. 22), or more than two months after the sale had been confirmed and deed delivered to respondent.

The objection to confirmation was simply a written notice objecting to the sale because of inadequacy of price.

"The only office of a written objection to confirmation is to urge the overthrow of the sale upon the ground that the property did not bring the highest and best price that could be obtained for it in cash."

Oakley et al vs. Shaw, 49 Atl. 462.

The Court below disposed of this contention under rule 218 of Chancery. (Formerly rule 205.)

"An attack on the sale on any other ground must be made the basis of an independent action by bill or petition, etc."

Cropper vs. Brown, 76 N. J. Eq. 406.

And it is suggested this must be done before confirmation, by petition filed before the date fixed for confirmation.

"In the absence of fraud, accident or mistake, such sale will not be set aside for inadequacy of price unless it is so gross as to justify an inference of fraud, especially where the witnesses did not testify that the land would bring more at another sale, and no bond guaranteeing that upon a re-sale it would bring more was offered."

Krieger vs. Scheur, 86 Atlantic 534.

Appellant Steelman was offered the opportunity by the Vice Chancellor to make a deposit to insure his bid at a re-sale, but he declined to do so. (C. p. 34).

"A sale will not be set aside because of a subsequent offer of a higher price by another bidder."

Krieger vs. Scheur.

"Where real estate estimated, by several persons to be worth \$25,000 is sold at Sheriff's sale on foreclosure of mortgages for \$19,475 and an advance offer of \$1,000 is made by one person, the sale will not be set aside for inadequacy of price."

Bliss vs. N. J. Life Insurance Co., 51 N. J. Equity 630.

"In **Rowan vs. Congdon, 53 N. J. Eq. 385**, the premises were bought in by the mortgagee for \$10,041.06, the balance due on her decree, the mortgagor had actually paid in cash \$4,698 in fruitless endeavors to save her property, and some proof was offered that but for a **misapprehension** as to the time of sale, a purchaser who was willing to give \$25,000 for the property could have been had, and the Court made an order 'that the decree of the Chancellor be affirmed, unless within thirty days, a prospective purchaser enter into bond with security satisfactory to the Chancellor, that in event of a re-sale the sum of \$25,000 will be bid, in which case a re-sale will be directed by the Chancellor.'"

There was no misrepresentation, accident, fraud, or mistake, in the present instance, and it was upon the misapprehension alleged in the last cited case that gave the opportunity for a re-sale.

The property cost the respondent about one thousand dollars more than it is assessed for, and

within nearly the amount named by Wilkins, whose affidavit is attached to Appellant's objections, (C. p. 7), and the only one of the three engaged personally in the real estate business in Woodbury.

There was no reason why respondent should bid more than the best cash bid, at the sale, simply to pay the Sheriff more commissions, or to protect the Chenoweth's more than he had, by carrying the property for them, for three years and longer, to assist them in procuring a purchaser. It was their duty to protect their bond and respondent had done all that should be asked to assist them in doing so.

Steelman had ample time, if sincere, to arrange for a higher bid, or to protect his mortgage debt, the sale had been legally advertised, he had full notice, and it was adjourned once to assist him, but the actions of himself, through his counsel, one Spencer Simpson, (C. p. 34 and 35) showed lack of good faith, in refusing, the information asked for by respondent, (C. p. 35) and by his actions also at the hearing before the Vice Chancellor, (C. p. 34).

It is respectfully submitted the order confirming the sale, appealed from, should be affirmed.

DAVID O. WATKINS,
Solicitor for and
of Counsel with Respondent.

New Jersey Court of Errors and Appeals.

Case No. 22. March Term, 1919.

ON APPEAL FROM CHANCERY BACKES V. C. SAT BELOW. 10

Between

JAMES M. DUNLAP,

Complainant,

GEORGE G. GREEN,

Assignee and Appellee,

and

EMMA L. CHENOWETH AND GEORGE D. CHEN- 20
OWETH HER HUSBAND, AND LEWIS STEEL-
MAN,

Defendants-Appellants.

BRIEF FOR APPELLANTS.

STATEMENTS OF FACTS.

Real estate, worth \$24,000.00 was advertised to be
sold at Sheriff's sale, on mortgage foreclosure decrees,
held by George G. Green, amounting with taxes to
\$16,000.00 prior to a decree for \$1602.00 held by Steel-
man appellant on a third mortgage, on the same land.

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On Steelman's application, but in his absence the sale was postponed from its advertised day, August 9, 1918, for one week. On August 16, 1918, the first postpone day, application was again made by the attorney in fact Simpson in behalf of Steelman, and in the absence of Steelman, detained away by illness, for a further postponement of a week. His ground was that he was making arrangements to pay off the amount due under the Green decrees and would bid (case p. 32, L. 4) \$15,128.22 and take over the property. (Case p. 4 LL. 20-25, p. 32, L. 32). According to Green's affidavit (p. 11, LL. 30), Steelman presented a bond and mortgage to the Sheriff as the ground work for this further postponement and as evidence that he was qualifying himself to make a bid for \$15,128.22 on August 23, 1918.

The Sheriff referred the application for postponement to the counsel for Green, then present and he promptly rejected it, and the Sheriff on the surrender of the Sheriff's function and discretion to the opposing counsel, denied the application for postponement.

The sale was held and the mortgaged premises were struck off to Green the appellee for \$2000.00. In his report of the sale thereof the Sheriff, by his affidavit, swore that they "were duly sold for the highest and best price the same would bring in cash at the time of sale." (P. 3, L. 14.) The defendants, Steelman and the Chenoweths, filed objections to the confirmation of the sale and supported their objections by affidavits (Case pp. 3-9.) Steelman paid Hon. John W. Wescott a retainer of \$50.00 to attend and oppose the confirmation and Mr. Wescott failed to appear.

The objections to confirmation were heard and decided for the appellee against the defendants and ap-

pellants. On November 26, 1918, the appellee obtained an order for possession. Before this was executed, the appellants perfected their appeal and the order for possession was not executed.

Writ of assistance was withheld. The conclusions of Vice Chancellor Backes are printed on pp. 31-35.

ARGUMENT FOR APPELLANTS.

POINT 1. The Sheriff's affidavit is untrue, if not in letter at least in substance. He had an opportunity 10 to get a better bid "then" viz: a week hence, which was practically at the time of the sale. With Steelman's evident intention to bid, a week hence, confronting the Sheriff, he could not truly say that the best price he could get in cash at the time of sale was \$2000.00. A week hence was substantially at the time of sale. See Point 2.

POINT 2. The statute which controls is section 94 of the Chancery Act of 1902. (P. L. 1902, p. 541, 1. 20 Comp.-Stat. 447 Section 94.) The statute used the word "then" as indicating what the Sheriff calls "at the time of sale". "At the time of sale" is a mere point of time "Then" has a wider signification; for instance, "Now I know in part, but then shall I know even as also I am known", "Then", the word of the statute, would embrace and include the week hence sought for by the Chenoweths and Steelman for the benefit of Steelman, and the Chenoweths.

POINT 3. Rule 218 seems to have been framed on 30 the statute as it existed prior to the Chancery act of 1902. The prior statute provided "That the property has been sold at the highest and best price the same

would then bring in cash''. (P. L. 1890, p. 139, Gen. Stat. p. 402 Section 164). Rule 218, referred to in the conclusions of the learned Vice Chancellor, and the Sheriff's affidavit follow the Act of 1880 as amended by the Act of 1890.

POINT 4. The statute referred to in Point 2, 1 Comp.-Stat. 447, being Section 94, in the Chancery Act of 1902 P. L. 541, makes no reference to cash. It provided that "No such sale shall be confirmed until the
 10 Court is satisfied by evidence that the lands or interest therein have been sold at the highest and best price the same would then bring, and such evidence may be in the form of affidavits''. The case which should have been before the Court and the evidence supporting it, should have related not to the best price, the property would then bring or brought cash, but to the best price the property would bring irrespective of cash, if the statute be of higher authority than Rule 218.

20 POINT 5. There was no occasion, so far as Green was concerned, of requiring a bid in cash. Green was there with a credit on his decree of \$15,128.22. There are more or less abuses following the erroneous practice under Rule 218, that these bids shall be in cash as verified in the Sheriff's report of sale. Parties having decrees of sale of this sort, bid a small sum and take the property at the bid, and can go out and sue on the bond for deficiency. The suit for deficiency is
 30 founded on the idea that the property being sold at public sale, by the Sheriff, brought its full market value, while the complainant or person holding the decree bids a very small part of it. At the same time the buried proof exists that these mortgagees, holding their decrees, knew the property was worth much more than these cash bids, or they never would have ac-

cepted as security for the loans the land which these decrees direct to be sold.

POINT 6. It was not reasonable to require Steelman (as if he were a mere outsider) to put up security for \$500.00 or \$1,000.00 as forfeit for not making a new bid. There was a margin of \$8,000.00 in the property or 50% over and above what Green had against it. The property is worth \$24,000.00. Green's claims amount to \$15,128.22. A further reason is that Steelman's decree of \$1602.00 (by 10 appellee's brief \$1827.77) was security that he would bid to save his decree, if he had the opportunity, a week hence, to obtain a property which would net him \$6,000.00 over a bid covering his decree.

Construing Green's decree including taxes to have been substantially \$16,000.00, with Steelman endeavoring to protect the rights of himself and Mr. and Mrs. Chenoweth, the sale was confirmed, it is respectfully submitted, at a price \$2,000.00 so grossly inadequate that it should have shocked the conscience of the Court. 20 When it is further considered that the bid of the appellee was only \$2,000.00, and the County of Gloucester obliged to lose commissions on Green's decree alone of \$70.64, the inequity and injustice of the decree of confirmation is the more surprising. Manifestly, Green, the appellee, who is a rich man, desired and now desires the property, and not his money; of money he has plenty. The only evidence that Green desires his money only and not the property, is that his counsel intimated 30 "that all his client desired was his money." (See conclusions of the Vice Chancellor, p. 34, line 16.) Against this mere intimation the evidence is that Green, if all he desired was his money, would have given Steelman a week's leeway from August 16 to August 23, 1918,

and the opportunity thus arising to Steelman to purchase the property. Green's desire for the property is shown on p. 29, line 8, namely, that Green desires the property and not his money only. This desire of Green to obtain the property at a bargain price to the prejudice and against the interest of Steelman makes the property of more value to him than it otherwise would be (see p. 29, lines 8-10).

POINT 7. It was unreasonable in Green, when he
 10 had, as a social obligation, taken up the case of the Chenoweths to give them an opportunity to redeem their property then to repudiate that obligation by refusing, to a man of Steelman's ability, an opportunity to bid a week hence. The point made is, that obligation had not ceased.

POINT 8. The Chenoweths also claim that the decree for \$2095.67, on the Souder mortgage, which Green took over and holds as a part of his encum-
 20 brance on the mortgaged premises, was charged with a rebate of \$300.00 in Mrs. Chenoweth's favor, and that she abandoned and gave this up to Green as consideration for his obtaining for her, an opportunity to redeem. (pp. 23-24.)

It is not made to appear on the record how Green could repudiate this bargain at his own choice or that he has lawfully repudiated it.

POINT 9. Referring especially to Steelman, the
 30 conclusions of the learned Vice Chancellor are as follows:

"Steeleman also filed objections, but as his counsel failed to appear, and upon representations made in open Court that he had abandoned them,

which Steelman verified by his silence, they were dismissed for failure to prosecute."

(case, p. 35.1.8.) It is respectfully submitted in this connection that Steelman's silence was misconstrued. He was present before the Court in support of his objections in the absence of counsel whom he had retained and paid. The absence of counsel was not the fault of Steelman, and confused him.

In the absence of counsel, Steelman was silent because he did not know what to say or do, except as his objections had spoken for him. These, it is submitted, stood. Any withdrawal of them should have been positive and in writing. 10

Steeleman's silence was not a withdrawal of his objections nor an acquiescence in their dismissal. Under these circumstances it is claimed that Steelman has the same right now as if counsel had appeared and spoken in support of the objections against confirmation. Steelman can not be made to suffer, it is submitted, for the default of his counsel. 20

POINT 10. The conclusions in respect of the Chenoweths in this case are based upon the lack of merit in the Chenoweth complaint or objections. The statement of the learned Vice Chancellor is that a technical rule of practice would not have been permitted to stand in the way if there was a meritorious complaint. (p. 33, L. 33.) It is submitted that under the circumstances of this case, the complaint of the Chenoweths is meritorious. 30

POINT 11. The facts which are misstated in the brief for appellee, are, in fact, that the decree on the Souder mortgage, was paid by Mrs. Chenoweth's check

Oct. 1, 1915, out of the proceeds of a promissory note of hers, discounted by the Central Trust Co., on Green's endorsement and an assignment of the Souder decree.

This note was kept renewed and the discount paid by Mrs. Chenoweth, until Oct. 11, 1916, when Green refused further endorsement and requested Mrs. Chenoweth to let the note go to protest. On August 11th, 1917, the first time Green's money entered into this decree, he paid the note and took an assignment of the
 10 Souder decree, without consultation with and in disregard of, Mrs. Chenoweth. Only from August 11th, 1917, is there any interest due Green on this Souder decree. On that decree the Chenoweths were entitled to a usurious rebate of \$300.00.

POINT 12. The foreclosure of the Dunlap mortgage, having begun October 23, 1915, was concluded in January, 1918, and resulted in a reduction of the Dunlap decree for usury (confirmed by appellees brief
 20 showing costs of only \$15.72, p. 2, L. 22) obtained by Mrs. Chenoweth of \$2700., besides costs of solicitor's counsel, all of which appreciated Green's Souder decree by that sum. Green promised that if the Chenoweths would assist him to obtain an assignment of the Dunlap decree he would return its execution and stop the sale then advertised under it.

POINT 13. The Chenoweths were insisting on their \$300.00 reduction on the Souder decree, for which
 30 a broker who controlled the Dunlap decree, was personally liable to them. This broker would not assign the Dunlap decree, which Green was anxious to obtain, until the Chenoweths abandoned their claim of \$300.00. On Green's promise to return the Dunlap execution

and stop the sale under it, the Chenoweths abandoned their \$300.00 claim to him.

POINT 14. As already stated Green failed to keep his promise to stop the sale. He sold and that sale was afterwards set aside on Green's consent for fraud and trespass, because Green put his daughter into possession of the mortgaged premises and was proceeding to use the property as his own.

A bill in Chancery filed by the Chenoweths resulted in Green's consenting to set aside the deed of February 1918, and to surrender his daughter's possession of the mortgaged premises. 10

POINT 15. On mortgaged premises of the value, as assessed by the City of Woodbury of \$15,500.00, for which the Chenoweths paid Green \$3200.00 twenty years ago, and have since paid \$1290.00 in street improvements and have built a \$22,000.00 house thereon, greatly increasing Green's neighboring property, he, Green buys the whole thing back for \$2,000.00, (if the decree of confirmation be affirmed), and still holds against the Chenoweth's and claims by his counsel's brief, that the Chenoweths still owe him "the sum of \$15,014.10 and assumption of taxes due the City of \$1,200.00 and upwards making the amount as already 'stated' upwards of \$16,214.10." (See brief of appellee, page 5, line 1.) It thus appears, that the intimation of Green's counsel that Green wants only his money is untrue. What he intends is to have both his money, and the property. In Rowan v. Congdon, 53 Eq. 385, (to which counsel kindly refers us by his brief), opportunity for a resale subject to conditions, was given a mortgagor against a mortgagee, where the mortgagee bid the whole amount of her decree. Again 20 30

we claim that the Chenoweth objections embraced a meritorious complaint. In their efforts to reduce usurious decrees of which Green got the benefit and to obtain for Green his pretended desire for his money only, there is here it is submitted much to arrest the attention of the Court, as in Rowan vs. Congdon.

POINT 16. It is further submitted that Steelman's complaint and objections are of a meritorious character. They appear on pages 6-7. The case fails
10 to show that he was in laches prior to August 9, 1918. He owned a decree for \$1602.00 (by appellee's brief \$1827.77) which is now, if confirmation is affirmed, destroyed as an encumbrance on an equity worth \$8000.00 above incumbrance. He gave every evidence as to his sincere desire and full ability to bid a week later on August 23, 1918.

POINT 17. It was Steelman's illness which kept him away and delayed his preparation for bidding to
20 August 23, 1918.

Similar sales have been set aside. See Raphael v. Zehner, 56 Eq. 836 Linde Paper Co. v. Gebert, 105 Atl. Rep. 447.

POINT 18. It was competent for Steelman to employ Spencer Simpson, a real estate broker, not as his counsel but as his attorney in fact. As Steelman's financial ability was the question to be considered by the Sheriff, the name of Steelman's mortgagee was
30 immaterial to the Sheriff, and no harm was done by Simpson's withholding it.

POINT 19. Steelman's proposed bill of August 23, 1918, had no reference to taxes. The property was

sold subject to taxes, which did not enter into the bid at the Sheriff's sale at all.

POINT 20. Steelman has joined in the appeal of Mr. and Mrs. Chenoweth. He is here on the appeal, now pending in this Court. It is claimed that he is here rightfully and that his complaint is meritorious and that his objections are entitled to be considered and upheld.

In conclusion, it is submitted, on behalf of all the appellants, Mr. Steelman, Mr. and Mrs. Chenoweth, 10 that the evidence before the Court in the Sheriff's affidavit is valueless as being

(a) Merely perfunctory and devoid of probative force.

(b) In conflict with section 94 of the Chancery act of 1902, and

(c) As showing a sale not fairly or legally conducted. 20

Also it is claimed that the postponement of one week applied for, was injudiciously and indiscreetly refused; that the promised competition of a week later, was improperly and inexcusably suppressed, and that the price obtained was a mere bagatelle of what it should have been or would have been at the postponement day of a week later applied for. The Court is moved to reverse.

Respectfully submitted.

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