

COURT OF ERRORS AND APPEALS.

THOMAS S. RUDDEROW, ET

ALS.,

Appellants,

AND

EDWARD DUDLEY,

Appellee.

On Appeal
from Decree in
Chancery.
Brief.

JOHN W. WARTMAN AND

LEMUEL J. POTTS,

Attorneys for Appellants.

DAVID J. PANCOAST,

Attorney for Respondents. 10

Appellants' counsel insist :

1st. That the public advertisements were not set up as by law required.

2nd. That the law requires five public advertisements at least be set up at five or more public places in the county, one where of shall be in the township where such real estate is situate, of the time and place of such sale, at least two months next before the time so appointed, &c., and that the evidence of appellants that one of said posters or advertisements was not set up in the

township where the real estate is situate for at least two months next before the time appointed for the sale, stands wholly uncontradicted.

The petition does not show when the four advertising posters other than the one in the township where the real estate was situate were set up; nor is the fact that the four posters other than the one in the township where the real estate is situate disputed by the petition. We have no proof, in fact, more than that of
 10 John F. Harned, a witness for respondent, that they were set up by him on the thirteenth day of April, A. D. 1885. His testimony as to when he set up the said four posters is vacillating. At one time he says that he set them up on Friday, the tenth day of April, A. D. 1885, and uses his diary as a memoranda of the time of setting them up; and later on, finding that the posters were not printed at the time he said he had set them up, he then swears that he must have made a mistake in his entry in his diary, and becomes quite as positive that he set them up on
 20 Monday, the thirteenth, as before he was certain that he set them up on the preceding Friday, the tenth day of April. It is also to be observed that the said Harned was the only witness on the part of the defendant that swore that any posters were set up, and that he did not pretend to say that said posters were put up in the township within the time required by law, but that he had entrusted the putting up of said posters in the township to one Levi O. Rudderow, who emphatically says that he did not put up the posters until the seventeenth day of April, A. D. 1885, and several days less than two months before the day on which said sale took place, and said Levi O. Rudderow (testimony,
 30 page 6, l. 16 and 17) was not informed by any one when the said posters in the township should be set up. Therefore, accepting the position tendered by respondent there is no pretension that the posters were put up as required by law, or that more than four of the five posters were set up; and that there is no proof on the part of the respondents that any advertisement at all was set up in the township where the real estate is situate. Such is the case made out

by the respondent, if the whole case rested alone on the testimony adduced by him. This is not necessary. The testimony of appellants is abundant, showing the want of proper advertisement.

It may with propriety be asserted that the affirmative of the case was with the petitioners below, and the appellants here. That is, that the burden was on the appellants to prove that the public advertisements were not set up at five or more public places in the county, one whereof shall be in the township where such real estate is situate, of the time and place of such sale, at least two months next before the time so appointed, &c. The affidavits to the bill were made evidence on the hearing before the Vice-Chancellor, by the offer to produce the witnesses and repeat the substance of their affidavits (they being in court at the time) that the Chancellor, for the purpose of expediting the business of the court, accepted them as evidence, and refused to hear the said witnesses unless respondent desired to cross-examine; that respondent, by his counsel, expressed himself as having no questions to ask, and appellants then proceeded with their witnesses not sworn to the petition. Levi O. Rudderow, one of the appellants, says (Ev. p. 6, ls. 18 and 19) that "he did not set up any of the posters until Friday, the 17th day of April, A. D., 1885." It will be noticed that the bill set out (Book, p. 3, ls. 3 and 4) that John F. Harned left five posters at Levi O. Rudderow's house on the 14th day of April, A. D. 1885, to be set up by him in the township, and that the posters he did not set up until the seventeenth were these. Harned's testimony (Ev., p. 12, ls. 18 and 19): "I put none up in the township; to do that I trusted to Levi O. Rudderow." There is no dispute as to the dependence on Levi O. Rudderow to put up the required notice in the township as required, nor is there any pretension that any one else put up said notice in the township, if Levi O. Rudderow did not. There is some dispute as to when the posters were left at the house of Levi O. Rudderow. Says (Ev. p. 6, ls. 14 and 15) "that said five posters were received by him on the 14th day of April, A. D. 1885." Laura Rudderow says (Ev. p. 11, ls. 9, 10 and 12) "he called at my father's house Monday

evening about a quarter of eight o'clock. He told me he had some bills for my father. He did not leave them." Sarah J. Rudderow says (Ev. p. 11, ls. 26, 27 and 28; p. 12, ls. 1 and 2) "John F. Harned called at our house on a Monday evening. I know Mr. Harned. I fixed it Monday evening because we had been washing and were folding our clothes. Mr. Harned left without leaving anything. He called about eight o'clock the next morning. He then left the posters. My husband was there." This is disputed by Harned (Ev. p. 13, ls. 24 and 25),

10 "I am certain he got his posters on the morning of the 13th." The evidence of the three witnesses on this point certainly preponderates over the evidence of Harned. The witness swears that he called in the evening with the posters, and the three swear that they were not delivered until the following morning, being Tuesday, the 14th day of April, A.D. 1885.

Their testimony is in no wise impeached. They know he called in the evening with the posters, and that they were not left until the following morning; that a night intervened between the time of printing them and when Levi O. Rudderow

20 received his copies to put in the township, is most assuredly proved. If a night intervened, it could have been no other night than Monday or some other night later in the week, as the posters were not printed before the 13th day of April, A. D. 1885. Testimony of the printer, S. Chew (Ev. p. 8, l. 11), "The posters were printed on the 13th day of April, 1885." This would be of little importance but for the conclusion that must necessarily follow, that is that unless the respondent can show that the said Levi O. Rudderow had those posters and an opportunity to put them up on the 13th of said April, that they

30 could not in the course of events have been put up in time by said Levi O. Rudderow. He says (page 3, ls. 7 and 8), "he was not out of the city of Camden until the fifteenth day of April, A. D. 1885."

Sarah J. Rudderow, his wife, says (Ev. p. 12, ls. 3 & 4): "My husband was home all that day, Tuesday, the day he received the posters," and I most respectfully submit that the evidence not only preponderates, but every attendant circumstance confirms it

in its conclusiveness. Further, the testimony of Levi O. Rudderow is that the said poster in the said township was not set up by him until Friday, the seventeenth day of April, A. D. 1885, when he took the five notices to the place to be sold, and gave three to Walter Rudderow, a nephew, &c. (Ev. p. 6, ls. 18 to 25); also the testimony of Walter Rudderow, that he received the three on the evening of the 17th of April, and set them up as requested by his uncle, Levi O. Rudderow (Ev. p. 7, ls. 21 to 26).

I can but consider it useless to quote further from the evidence 10
or offer stronger proof of a want of observance of statutory requisites to the validity of a sale. It is positively proven, and no pretension to denial, that no poster was set up in the township, where the real estate is situate, of the time and place of such sale, at least two months next before the time so appointed. That proceeding by petition proper cannot be disputed, it was adopted into the practice by those eminent jurists, W. Halsted and J. H. Williamson, in the case of *Cox vs. Halsted et al.*, 1 Gr. Chan. 312, and no objection was taken by their no less distinguished 20
opponent, H. W. Green.

That the sale of land by the Court of Chancery is regulated 20
by statute. That without an observance of the spirit, if not the letter, of the statute, the court is without jurisdiction, cannot be disputed. Nothing that could be said could strike more directly at the pith of this case than the language of the learned Chancellor Green, "The evidence justifies the belief that one of the advertisements was not set up the time required by law, and that the title in the hands of the purchaser would be worthless on that account." *Cummins vs. Little*, 1 C. E. Gr. 58.

We most respectfully submit that the said sale should be set 30
aside with costs.

JOHN W. WARTMAN, AND
LEMUEL J. POTTS,
Attorneys for Appellants.

in its conclusiveness. Further, the testimony of Lewis Rodden
ow is that the said parcel in the said township was not sold by
him until Friday, the seventeenth day of April A.D. 1888,
when he took the five notices on the place to be sold, and gave
them to Walter Rodden, a nephew of the said Lewis Rodden,
(25) also the testimony of Walter Rodden, that he received
the first of the notices of the sale of the said parcel in
evidence by the order of Lewis Rodden (Ex. p. 11, 12, 13,
14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30)

I can but consider it useless to quote further from the evidence
or other stronger proof of a want of observance of statutory re-
quirements to the validity of the sale. It is a statutory provision, and the
provision is general, that no power was set up in the township
where the sale was made, of the time and place of such sale,
at least two months next before the first sale, provided. This
proceeding by petition paper cannot be dispensed with, as
into the proceedings those statutory provisions, W. H. H. and J. H.
Williams, in the case of Cox vs. Williams et al., 10 Gr. Cas.
174, and an objection was taken by them as has been
pointed out by the Court in the case of Williams vs. Williams
20

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and that the title is in the hands of the purchaser would be worth-
less on that account." *Cummins vs. Lewis*, 1 C. C. 60, 61.

We most respectfully submit that the said sale should be set
aside with costs.

JOHN W. WARTMAN, atty.
DEWEY J. FORTY,
attorneys for appellants.

New Jersey Court of Errors and Appeals

THOMAS S. RUDDEROW, and

others,

Appellants,

and

EDWARD DUDLEY, WILLIAM S.

RUDDEROW and others,

Respondents. }

ON MOTION FOR

REHEARING.

In this case, under certain proceedings in the Court of Chancery for partition, &c., the lands described in the bill of complaint, consisting of a house and lot in the city of Camden and a tract of about seventy-six acres in the township of Delaware, in the county of Camden, were ordered to be sold by a Special Master of the Court of Chancery, and were sold at public vendue on the 13th of June, 1885.

The tract of land in Delaware township was set up 10 and a bid of \$25 per acre was made by one of the heirs, and the petitioner Dudley then bid \$30 per acre for it, at which price it was struck off and sold to him.

The Master reported the sale to the Court of Chancery, on the 15th day of June, 1885, with copies of the adver-

tisements and affidavits of their being published and put up, &c. The sale of the house and lot in the city of Camden was confirmed June 23, 1885. Objections were made to the confirmation of the sale of the land in Delaware township. July 6th, 1885, the Court of Chancery granted an order or rule to show cause why the sale of said lands should not be confirmed, to be heard July 21, 1885. See p. 6, of papers annexed to petition.

- 10 At the hearing of this rule to show cause, July 21, 1885, before Vice Chancellor Bird, the appellants, the complainants in the Court of Chancery, were represented by Howard J. Stanger, Esquire, and John F. Harned, their solicitor in the Court of Chancery, and the petitioner, Edward Dudley, by David J. Pancoast. The Vice Chancellor heard the testimony of Levi O. Rudderow, one of the appellants, and John F. Harned, given orally before him, and had the affidavits filed with the the Master's report of the sale, and of Edward Burrough, before him.—See p. 7. After hearing this testimony
- 20 and examining the affidavits and papers, Master's report, &c., before him, the Vice Chancellor advised a decree or order confirming said sale, which was made on the 21st, of July, 1885, and signed and filed in the Court of Chancery.—See p. 9. Under this order the Master conveyed the land to the petitioner, by his deed dated July 23, 1885, and the petitioner paid the purchase money and recorded his deed on the day of the date thereof. This order has never been in any way changed, reversed or appealed from. Proceeding under this order the
- 30 Master reported the purchase money had been received, and the Court of Chancery, on motion of solicitor of the complainants, on the 6th day of October, 1885, made an order or decree directing the Master to make distribution of the moneys received from the sale of all said lands, less the amount paid by the Master under the order of the

Court, to satisfy a mortgage incumbrance on part of said lands, the taxed costs, counsel fees and expenses and commissions of the Master allowed by the rules of the Court. And proceeding under said last mentioned order or decree, the Master paid to the appellants, or their solicitor, their respective shares of the proceeds of the sale of said premises.

After the above order or decree confirming said sale, made by the Court of Chancery on the 21st of July, 1885, and the delivery of the deed on the 23d of July, 1885, and on the 1st day of August, 1885, Vice Chancellor Bird, on the presentation of a petition to him, apparently on behalf of the appellants, charging fraudulent actions against the solicitor of the appellants, and fraudulent combination between him and the petitioner to effect the sale of the land, advised a rule or order requiring the petitioner, Edward Dudley, to show cause on the 18th day of August, 1885, why the deed made to him, and order of confirmation and sale, should not be set aside and new sale ordered. See petition and order to show cause, appellants case, p. 1 & 9. 10 20

On the hearing of this order, or rule to show cause, Sept. 1, 1885, the appellants, or some of them, were present and were represented by their counsel, John W. Wartman and Lemuel J. Potts, Esquires, and the petitioner, Edward Dudley, was present with his counsel, David J. Pancoast, Esquire, the Vice Chancellor stated that he would not take testimony as to the putting up the advertisements of the sale of the premises, as that had been fully determined at the hearing of the former rule to show cause, (July 21, 1885,) but would only hear testimony as to the fraud charged in the petition. Laura and Sarah J. Rudderow were examined on the part of the appellants, and John F. Harned and Charles I. Wooster and the petitioner, Edward Dudley, on the part of the 30

petitioner, and the Vice Chancellor advised a decree or order dismissing the rule or order to show cause, and stating as a reason for the same that the appellants had utterly failed to prove the fraud charged in the petition.

See testimony and order, appellant's case, p. 11 and 16.

From this decree dismissing the order or rule to show cause granted August 1, 1885, the appellants appealed; and in their state of the case or printed book for hearing in this Court, the appellants have omitted and failed to
 10 show or in any way inform the Court of the fact that the order to show cause why the sale should not be confirmed, granted on the 6th of July, was heard on the 21st of July, 1885, when the Court of Chancery, by its decree or order, confirmed said sale, (which decree or order has not been in any way appealed from,) or the affidavits and testimony heard and used by said Court at the hearing of said order or rule to show cause, or the decree or order of the Court directing the distribution of said proceeds of said lands by said Master; and also the reasons
 20 of the Vice Chancellor for advising the decree dismissing the petition of the appellants, which shows that the petition was dismissed only because the appellants failed to prove the fraud charged in said petition, all of which, we submit, were necessary and requisite to a proper and intelligent hearing of said cause.

From the reasons given by the Vice Chancellor for advising the decree appealed from, it is apparent that at that hearing nothing was considered but the fraud or fraudulent conduct charged against two reputable members of the bar. There was no evidence whatever of the
 30 fraud charged in the petition, or any fraud, produced against them or either of them. The petition charged fraud, it is true, but the petition is not, like an answer, evidence of the facts charged therein. On every hearing on such petition the facts charged must be proved by legal evidence.

- Coxe v. Halsted, 1 Gr. Ch., 311.
 Crane v. Bingham, 3 Stock., 29.
 McPherson vs. Housel, 2 Beas., 35, 36.
 Carpenter vs. Mutchmore, 2 McCar, 123.
 Dinsmore vs. Wescott, 10 C. E. Gr., 305.

The Vice Chancellor's conclusion on this hearing, as to the fraud, could not have been otherwise than it was.

If this Court had heard this case only on the question of fraud charged in the petition, which was the only question examined by the Vice Chancellor at the time he made the decree appealed from, it is not probable that this Court would have come to a different conclusion from that advised by the Vice Chancellor. If in the hearing of this cause this Court could have had before it the decree confirming the sale, made on the 21st of July, 1885, which was never appealed from, and the affidavits and testimony produced before the Court of Chancery, proving to the satisfaction of the Court, and conclusively that the advertisements of the sale had been duly put up and advertised, it is not conceivable that this Court would have reversed the decree or order appealed from.

The decision of this Court, made under the circumstances of the case, without a knowledge of the facts of the case, casts a cloud up on two very reputable members of the bar, which we believe will be removed if this Court will hear this case upon all the pleadings, proofs and reasons having reference to the matter, and which were not contained in the appellant's printed case presented to this Court.

The power to order a re-argument of the cause by this Court cannot be questioned, and it is right that such power should be used sparingly.

- King v. Ruckman, 7 C. E. Gr., 551.
 Cassady v. Bigelow, 12 C. E. Gr., 505.
 Mayor, &c., of Newark v. Schuh, 7 Stewart, 262.
 Summerbell v. Summerbell, 9 Stewart, 292.

When there is a mistake, or judgment is procured by fraud, the Court may set it aside or order a re-argument, if the papers in the cause have not been remitted.

Sydney on Appeals, 31, 32.

McQueen's Pr. House Lords, 436, 438, 448, 450, &c.

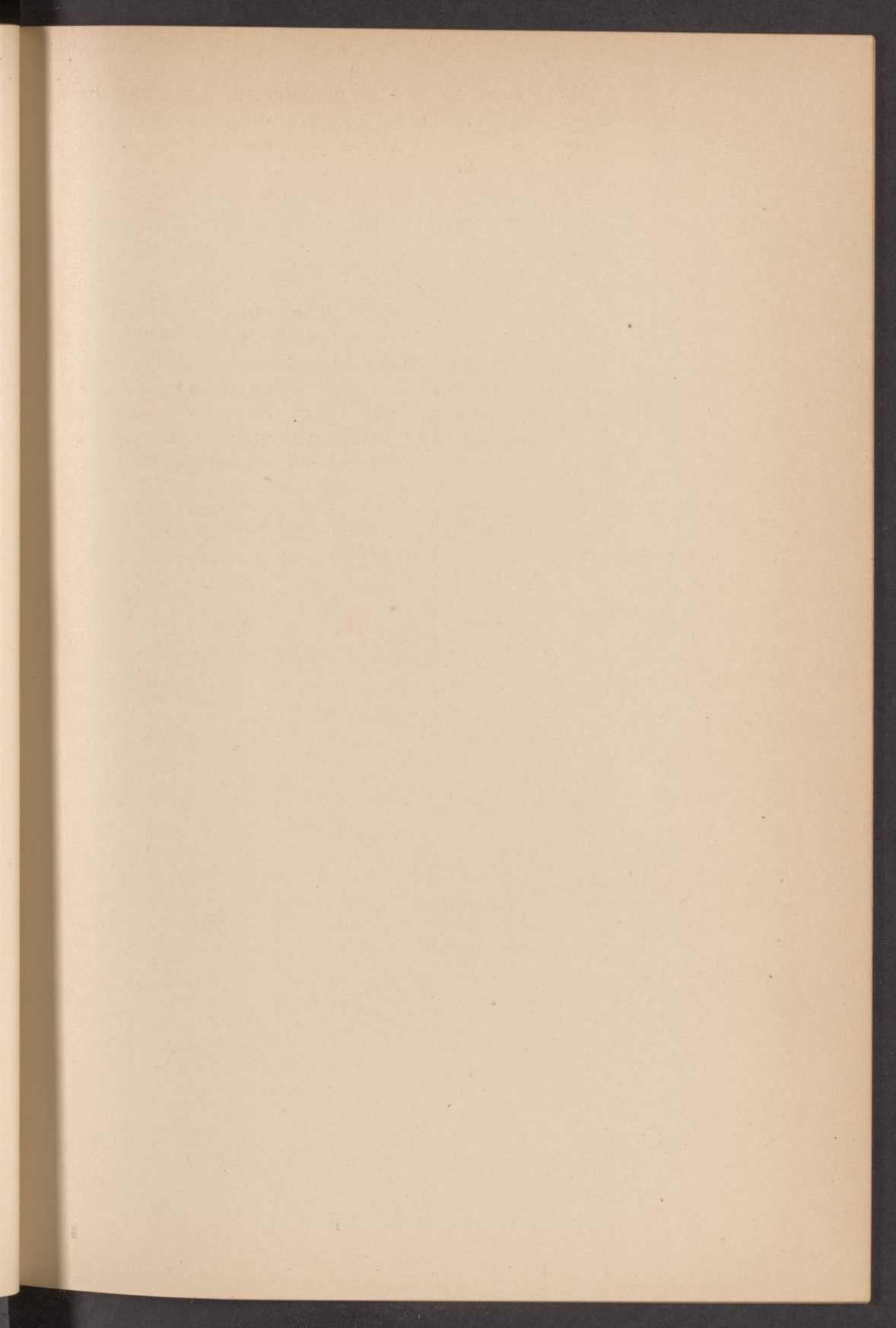
Luttrell vs. Lord Iruham, cited; Sydney on Appeals, p. 32.

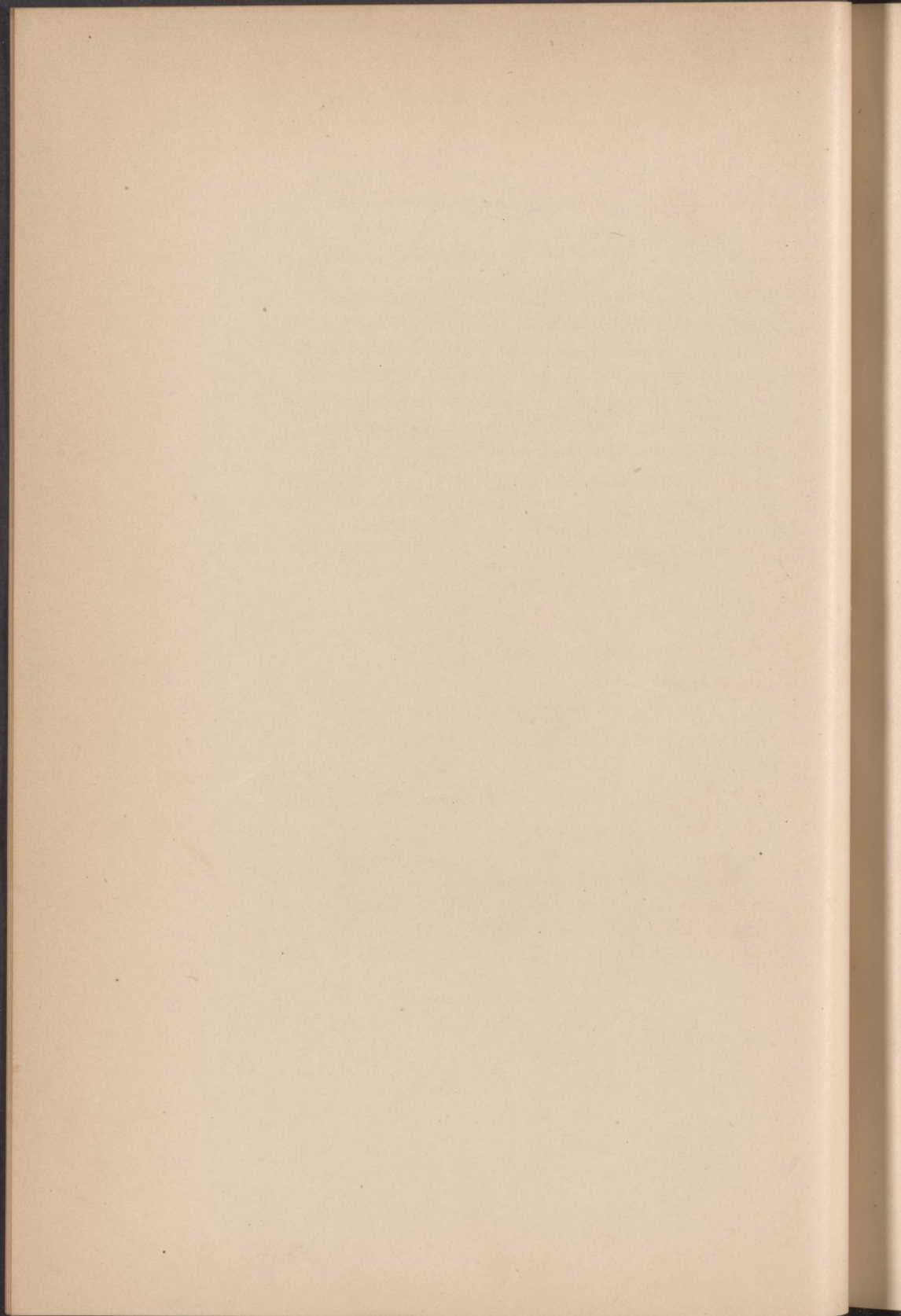
King v. Ruckman, 7 C. E. Gr., 551.

10 In this case, by the order of the Court, the papers have been retained in this Court to give time to inquire whether there should be a re-argument.

Submit that this is a case in which there should be a re-argument, upon all the pleadings and proofs in the case and reasons given for the decree appealed from, and in which the Court should order a re-argument and re-hearing.

P. L. VOORHEES,
Counsel for Edward Dudley.





IN CHANCERY OF NEW JERSEY.

Between

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

Complainants,

and

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

Defendants.

On Bill for Parti-
tion, &c.

Petition for Rule to
Show Cause why
Sale should not be ¹⁰
set aside.

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

Your petitioners, Thomas S. Rudderow, Barzillai A. Rudderow, Lemuel H. Rudderow, Levi O. Rudderow, Sarah A. Rudderow, Mary A. Gross, Annie Rudderow, Allen Rudderow, Benjamin Rudderow, Mary Anna Epley, Nancy Rowan, Sarah Ella ²⁰

Watson and Benjamin R. Epley, respectfully show unto your honor that they were complainants, and parties interested as next of kin in a bill of partition, lately filed in this honorable court, in which William S. Rudderow and others were defendants. That the sheriff returning on the writ that a number of the defendants in said writ named were not to be found in his county, and on diligent inquiry he was informed that they lived out of the State. Two several orders of publication were made, noticing the defendants in each to appear and plead, answer or demur

10 before the twenty-fourth day of November, A. D. 1884, in one, and on the thirteenth day of December, of the same year, in the other. That an interlocutory decree was taken on said bill against the said defendants, and the matter referred to Edward Dudley, Esq., a Special Master, to report on the same. That his report advised a sale of the premises mentioned in said bill, and that an order was made that the property be sold, and appointing Marmaduke Taylor, Esq., a Special Master of this court, to be present, and that said sale should be made under his direction.

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

And your petitioners further show that the said Master having fixed the thirteenth day of June, 1885, as the day for the sale of the said premises, notice of the sale should have been set up in five or more public places in the county at least two months before the day fixed for said sale. But your petitioners aver the truth to be that said notices, nor either of them, were set up two months before the day fixed for said sale, but declare the truth to be that John F. Harned, Esq., solicitor of complainants on

30 Bill for Partition, came to the residence of Levi O. Rudderow, one of your petitioners, in his absence on the evening of the thirteenth day of April, A. D. 1885, with a roll of papers resembling the five posters to be put up by him. That said Harned

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

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

anxious to purchase said property at a very much higher price per acre than the said sum offered by your petitioners as a first bid. And your petitioners further show unto your honor that the said Edward Dudley, the Special Master to report to this court the right, title and interest of the respective parties, and also to report whether partition could be made of the premises or not, was the purchaser at the said sale, and that he fraudulently conspired with John F. Harned, Esquire, solicitor of complainants, to prevent competition in bidding; and that said Dudley was the only bidder; and that after said sale and before the same was confirmed, and for the purpose of obtaining a confirmation by this court, said Harned presented an affidavit of proof of setting up posters of advertisement of sale, and that Levi O. Rudderow refused to make said affidavit for the reason that the date of setting up said posters was absolutely false; that afterwards the said John F. Harned importuned and insisted on the said Levi O. Rudderow to sign said affidavit without making the correction in the date to correspond with the fact, urging that the sale would not be confirmed unless such fact was established; that when said Harned discovered that urging was of no avail, he then said that Levi O. Rudderow must sign it as there was a hundred dollars in it for him (Harned); he then told him, the said Levi O. Rudderow, that if he would sign it he would get more out of Dudley for doing so than he would receive as his proportion of the advance on a re-sale of the premises. And your petitioners further say that when they were informed that a hearing was to be had on Tuesday, the twenty-first day of July, instant, on a Rule to Show Cause why said sale should not be confirmed, your petitioners urged on their solicitor the importance of having Walter Rudderow as a witness, he having put up three of said advertising posters; that he was fully prepared and qualified to swear that said three posters were not given him to put up until the seventeenth day of April, A. D. 1885, and four days too late under the law for the setting of said posters.

And your petitioners show that Laura Rudderow, a daughter of Levi O. Rudderow, was home and responded to the bell on Monday evening, April the thirteenth, 1885, and that John F.

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

And your petitioners further say that their solicitor, the said John F. Harned, informed them that such proof was not necessary in order to set aside the said sale or prevent its confirmation by this honorable court. And your petitioners charge the truth to be that said Harned gave such advice for the sole and exclusive purpose of securing the confirmation of said sale in the interest of the purchaser, Edward Dudley, in pursuance of agreements existing, as your petitioners believe, between their said solicitor and Edward Dudley. 10

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

And your petitioners will ever pray, &c.

LEMUEL J. POTTS AND

JOHN W. WARTMAN,

Solicitors and of Counsel with Petitioners.

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

Levi O. Rudderow, of full age, being duly sworn according to law, on his oath deposeth and saith: That he is one of the petitioners named in the foregoing petition; that he is one of the next of kin, and interested in the premises referred to in the above petition, and desires to see said property bring a fair price; that he has heard the above petition read, and knows the contents thereof, and that the petition, so far as relates to his own
 10 acts and doings, are true, and so far as relates to the acts and doings of others he believes them to be true; and especially is it true that the said advertising posters of the sale of said properties to be set up in the county two months at least before the day of said sale, was not up two months; that said five posters were received by him on the fourteenth day of April, A. D. eighteen hundred and eighty-five; that he was not informed by any one or by any means whatever when said posters should be set up; that deponent did not set up any of said posters until Friday, the seventeenth day of April, A. D. eighteen hundred and
 20 eighty-five, four days too late under the law, on which day he set up two of said posters on the premises to be sold, consisting of seventy-six acres of land; that deponent on the same day, Friday, gave the balance of the five posters, three, to Walter Rudderow, a nephew, directing the places at which said posters should be set up. And deponent further says that it is true that John Harned, Esq., urged him to swear to the affidavit containing the false date of setting up said posters, and that deponent refused to do so; that thereupon the said John F. Harned declared that deponent must sign said affidavit; that there was one
 30 hundred dollars in it for him if he had said sale confirmed; and that deponent still refusing, said Harned assured deponent that he would receive more from Dudley by having the sale confirmed than his proportion of the advance on a re-sale would amount to. And that deponent believes that said John F. Harned fraudulently conspired with the said Edward Dudley to defeat the interest of your petitioners by a sale of the property at a grossly inadequate price, and by falsely attempting to have said sale con-

firmed. And your petitioner, the deponent, further says that he is willing to give forty-five dollars per acre as a first bid for said land; and that he will give and secure to this court the said sum per acre as this court may direct for said first bid; and that there are other persons anxious and ready to purchase said land at a price much in advance of the forty-five dollars offered as a first bid by this deponent.

Sworn and subscribed before }
 me, this 23d day of July, } LEVI O. RUDDEROW.
 A. D. 1885. } 10

F. T. BOARDMAN.

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

Walter Rudderow, of full age, being duly sworn according to law, upon his oath, says that he has heard the above petition read, and that he knows the contents thereof. That the facts, as far as they relate to his own acts and doings, are true, and that as far as relates to the acts and doings of others, he believes them to be true. And especially is it true that the said three posters were given to this deponent on Friday, the seventeenth day of April, A. D., 1885, by his uncle, Levi O. Rudderow, with directions as to where said posters should be set up, and that this deponent set up the three notices given him, in the places designated by Levi O. Rudderow, on the evening of the seventeenth day of April, and several days less than two months before the premises described in said posters were sold. 20

Sworn and subscribed before }
 me this 23d day of July, } WALTER RUDDEROW.
 1885. } 30

Merchantville. Personally appeared before me, the subscriber, Walter Rudderow, and made oath that the above petition is true and correct to the best of his knowledge and belief. }

E. L. SHINN, *Justice.*

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

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

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

SINNICKSON CHEW.

SAMUEL P. JONES, *M. C. C.*

IN CHANCERY OF NEW JERSEY.

Between

THOMAS S. RUDDEROW, ET ALS.,

Compl'ts,

AND

EDWARD DUDLEY, WILLIAM S. RUD-

DEROW, ET ALS.,

Dfndts.

On Petition, &c.

Rule to Show Cause,
and Injunction.

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

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

And it is further ordered, that the said Edward Dudley, in the meantime, and until the further order of this court, be restrained

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

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

THEODORE RUNYON.

Respectfully advised.

JOHN T. BIRD, *V. C.*

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

THOMAS S. RUDDEROW, ET ALS.,
 AND
 WILLIAM S. RUDDEROW, ET ALS. } On Petition.

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

Laura Rudderow, having first been duly sworn according to law, upon her oath says: I reside at 606 South Seventh street, Camden, New Jersey, with Mr. Chapin. In April last I resided with my father. I know John F. Harned; he called at my father's house on Monday evening about a quarter of eight o'clock; I responded to the door bell; Mr. Harned told me he had some bills for my father; he did not leave them; he came next morning; father was not there that night; the next night I asked father if John Harned had been there, and he said he had; I asked him because when I told him that John Harned had been there, he said he ought to have left them. I went to the rink that night, and I never went any night but Saturday night except that once, and mother was washing that day. 10

And being cross-examined says: I heard father talk about putting up the notice; I heard him talk about putting up posters on Monday; I heard him say they should be put up on Monday. 20

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

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

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

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

10

Whereupon the petitioner declares his case is rested.

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

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

refused on the ground that the price was not sufficient. Two or three days afterwards I learned from his brother Thomas that there was some question as to when he put up the notices; I sent for Levi and asked him when he put them up, and he said he could not remember the date, but that it was three or four days after I gave them to him. This was the first time that it was suggested to me that the notices were not put up in time. I told him that if the statements were true the court would not confirm the sale, and that I would submit the matter to the court. I then in his presence tore the affidavit which I had prepared for 10
 him to sign, in half, just as it is here, and threw it in the paper basket. He was never again asked to sign that affidavit, or any other. Then, as his solicitor, I presented the matter to the court; it was presented twice to the court; but Mr. Stanger represented him at the second hearing. I never heard of the two witnesses presented here to-day. He said that Walter Rudderow saw him putting up the notices; I told him he was a material witness, but afterwards he said he had forgotten. I remember distinctly putting up the notices in Camden on the 13th of April, because I was here in Trenton arguing a cause on the 20
 14th, and I am sure the notices were put up before that; Mr. Rudderow was often at my office; I really can't say that I went to his house on the 14th, before I came here to Trenton; I was often at his house; I am certain that he got his posters on the morning of the 13th. I never made any inducement to Levi Rudderow to sign that affidavit; I think that I have stated all that passed; except when Brown came and offered five dollars per acre more, and then I figured up what he would make by that, and told him that he would lose more by that, because of his complication of other matters, than he would gain by the 30
 advance in price. Mr. Brown was at the sale. I never entered into any arrangement with Mr. Dudley to have this sale confirmed, and never knew that he was going to bid until he bid. I never suggested to Levi O. Rudderow that the proof he suggested would not be needed, only in the case of Walter Rudderow, and as to that I said his testimony was not material. I did everything in my power to make this property bring a good price

at the sale. I caused one hundred posters to be printed and posted in various places and in the neighborhood of the land, putting them up myself in conspicuous places, and wrote to a number of persons who I thought would bid. I urged upon the heirs-at-law, the tenants in common, the ones named in this petition, and others, to do all they could to prevent a sacrifice of the land. A week before the sale I hired a horse and carriage to go and see them, and to consider the best method of selling the land; I was at Levi's house, and it was agreed to sell the
 10 land as it was afterwards sold. At the sale I urged those present to bid, and requested the crier to go slowly and give them every opportunity. The sale was well attended; there were two bids; there were no objections to its being struck off. Mr. Worcester, our deputy sheriff, cried the sale.

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

have left notices there on a Tuesday morning as well as Monday; quite possible that I left them on both occasions.

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

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

Edward Dudley, a witness produced on his own behalf, being 20- duly sworn according to law, on his oath saith: I never had any conversation with John F. Harned about this property, or the sale of it until after the sale. I did not know it was for sale until I got there that day. Amos Rudderow bid twenty-five dollars, and then Mr. Bergen said to me, you are foolish not to buy it, and then he asked Isaac and John Rudderow why they didn't buy it, and they said they didn't want it. I then bid thirty dollars an acre, and it was struck down to me. I never offered Mr. Harned anything in any way; I have had conversations with him about confirming the sale. 30-

IN CHANCERY OF NEW JERSEY.

Between

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

Compl'ts,

and

Edward Dudley, and others,

Def'ts.

On Bill for Partition.

Order Dismissing
 Order to Show
 Cause, &c.

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

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

THEODORE RUNYON, C.

Respectfully advised.

JOHN T. BIRD, V. C.

IN CHANCERY OF NEW JERSEY.

Between

THOMAS S. RUDDEROW, ET AL.,

Compl'ts.

AND

EDWARD DUDLEY,

Dfndt.

On Petition, &c.

Notice of Appeal.

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

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

LEMUEL J. POTTS AND
 JOHN W. WARTMAN,

Solicitors for and of Counsel with Complainants.

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

LEMUEL J. POTTS AND
 JOHN W. WARTMAN,

Of Counsel with Petitioners.

IN CHANCERY OF NEW JERSEY.

Between

Thomas S. Rudderow, Barzillai A.

Rudderow, Lemuel H. Rudder-

ow, Levi O. Rudderow, Sarah A.

Rudderow, Mary A. Groves, An-

nie Rudderow, Allen Rudderow,

Benjamin Rudderow, Mary Anna

Epley, Nancy Rowan, Sarah Ella

Watson, Benjamin R. Epley, et

al.,

Petitioners,

and

Edward Dudley,

Defndt.

On Petition, &c.

Petition of Appeal

to the

Court of Appeals. 10

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

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

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

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

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

LEMUEL J. POTTS AND
 JOHN W. WARTMAN,
Solicitors for and of Counsel with Appellants.

COURT OF ERRORS AND APPEALS.

Between

THOMAS S. RUDDEROW, ET ALS.,

Appellants,

AND

EDWARD DUDLEY,

Respondent.

On Petition, &c.

Answer to Petition of
Appeal.

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

This respondent, not acknowledging all or any of the matters, which in the said petition of appeal are contained, to be true, for answer thereto, nevertheless, says and admits that a decree or order was on the first day of September last past made and entered in the Court of Chancery in the cause for that purpose mentioned in the said petition, as is therein stated ; but as to the substance and form thereof this respondent prays to refer thereto when the same shall be produced. 10

And this respondent is advised and believes that the said decree or order is agreeable to equity, and he prays that the same may be affirmed with costs to be adjudged to this respondent. 20

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

COURT OF ERRORS AND APPEALS.

between

THOMAS B. KENNEDY, ET AL,

On Petition,

Respondent,

Answer to Petition of

AND

EDWARD BROWN,

Appellant.

The object of the above named respondent to the petition of the appellant of the above named respondent.

The respondent, the appellant, and the respondent, all of the nature of which in the said petition of the respondent to the petition of the appellant, are stated, and which are stated that a decree or order was made on the 20th day of September last, and entered in the Court of Chancery in the cause for that purpose then pending in the said petition, as a certain order; but as to the substance and effect thereof, the respondent says that there is what the same shall be proved.

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

DAVID J. BANGORST,
Solicitor General of Maryland.