Index.

Final Decree.

Docket #105-130.

Filed Dec. 3, 1934.

10

IN CHANCERY OF NEW JERSEY.

Between WALTER YUCIUS, Complainant, and JOSEPH GOODLICH, Defendant.	On Bill to Foreclose. Final Decree.

20

This cause coming on to be heard in the presence of William P. Murphy, Solicitor for and of Counsel with the Complainant, Walter Yucius, and it appearing that the Complainant's bill having heretofore been taken as confessed as against the defendant, Joseph Goodlich; whereupon and upon reading the report on file made by John F. Faughnan, bearing date of November 26, 1934, from all of which it appears that there was due to the complainant, on the day of the making of the said report, for principal, interest and insurance premium, on his said mortgage, the sum of $1,659.60; and no cause being shown or appearing to the contrary,

30

It is thereupon on this 30th day of November, 1934, by Honorable Luther A. Campbell, Chancellor of the State of New Jersey, ordered, adjudged and decreed, and the said Chancellor doth, by virtue of the power and authority of this Court, hereby order, adjudge and decree

40

that the said report, and all the matters and things therein contained do stand ratified and confirmed, and that the said mortgaged premises be sold to raise and satisfy the said sum of $1,659.60, due the complainant, together with lawful interest thereon to be computed from the 26th day of November, 1934, being the date of the Master's report, and costs in this suit to be taxed, raised and paid out of the mortgaged premises, and to complainant a counsel fee of $33.00/100; and that a writ of *fieri facias* do issue for that purpose out of this Court, directed to the Sheriff of the County of Hudson, commanding him to make sale, according to law, of the said mortgaged premises, and that out of the money arising from such sale, be paid to the complainant or his solicitor said debt, interest and costs, and in case more money should be raised by the said sale than shall be sufficient to answer to such payment, that such surplus be brought into this Court, to abide the further order of this Court; and that the said Sheriff make return without delay of his proceedings by virtue of the said writ.

And It Is Further Ordered, adjudged and decreed, that the defendant stand absolutely debarred and foreclosed from all equity of redemption of, in and to the said mortgaged premises when sold as aforesaid by virtue of this decree.

LUTHER A. CAMPBELL,

C.

Respectfully advised.

Wm. J. Backes,

A. M.

Order.

Filed Jan. 28, 1935.

IN CHANCERY OF NEW JERSEY.

Between WALTER YUCIUS, Complainant, and JOSEPH GOODLICH, Defendant.	Order Confirming Sale of Mortgaged Premises, etc.

10

Upon reading and filing a report made by Joseph E. Colford, Sheriff of the County of Hudson, bearing date the 17th day of January, 1935, he sold at public Vendue, at the Court House, Jersey City (having first duly advertised the same), the lands and premises described in the Writ of Execution issued to him in the above stated cause, to Walter Yucius of the City of Newark, County of Essex and State of New Jersey, for the sum of One Hundred ($100.00) Dollars, and being the highest bidder therefor, and that the said lands and premises were sold at the highest and best price the sale would bring in cash and no cause being shown or appearing to the contrary;

20

30

It is on this 28th day of January, 1935, Ordered that 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 purchaser or his assigns for the said mortgaged premises so sold.

40

LUTHER A. CAMPBELL,
C.

Memorandum.

In conformity with the aforesaid order of confirmation, Joseph E. Colford, Sheriff of Hudson County, executed and delivered to complainant-appellant, Walter Yucius, his deed covering the aforementioned premises and dated January 30, 1935, which said deed was recorded on February 7, 1935, in the Office of the Register of Hudson County in book 1851 of Deeds for said County, on page 353.

Amended Petition.

IN CHANCERY OF NEW JERSEY.

105-130.

Between: WALTER YUCIUS, Complainant, and JOSEPH GOODLICH, Defendant.	On Bill, etc. Amended Petition.

To the Honorable Luther A. Campbell, Chancellor of the State of New Jersey:

The amended petition of Joseph Goodlich of the Town of Kearny, County of Hudson and State of New Jersey, respectfully shows unto your Honor that:

1. Your petitioner is the defendant in the

above captioned cause of action which was filed to foreclose a certain mortgage on lands and premises belonging to your petitioner, which lands and premises are hereinafter described.

2. By deed dated May 28th, 1923, and recorded on June 14th, 1923, in the Register's Office of the County of Hudson in Book 1481 of Deeds for said County on page 483, etc., your petitioner acquired title in fee simple to a certain tract of land located on the northerly side of Bergen Avenue, in the Town of Kearny, County of Hudson and State of New Jersey, the said property having a frontage of 73.50 feet on Bergen Avenue by a depth of 100 feet. The said lands are more particularly described as follows:

BEGINNING in the northerly line of Bergen Avenue, at a point therein distant one hundred feet and fourteen hundredths of a foot easterly from the northeasterly corner of Bergen Avenue and Ivy Street, as laid down on a "Map of a portion of the Property belonging to the Kearney L and Co., situated in the Township of Kearny, Hudson County, N. J. Prepared by Van Duyne & Young, Surveyors, February, 1888." Thence running (1st) northerly, at right angles to Bergen Avenue, one hundred feet; thence (2nd) easterly, parallel with Bergen Avenue, seventy-three feet and fifty hundredths of a foot; thence (3rd) southerly, and at right angles to Bergen Avenue, one hundred feet; and thence (4th) westerly, along Bergen Avenue, seventy-three feet and fifty hundredths of a foot to the place of BEGINNING.

Being the westerly twenty-three and one-half

feet of Lot No. 2 and Lots Nos. 3 and 4 in Block No. 69 on the aforesaid Map.

And being Lots Nos. 26 and 27 and the westerly twenty-three and one-half feet of Lot No. 28 in Block No. 224 on the Tax Map of the Town of Kearny.

3. Immediately upon acquiring title to the said lands as aforesaid, your petitioner caused to be erected thereon a two story frame house on the first floor of which there is a store, three rooms and toilet in the rear thereof and on the second floor of which there are six rooms and toilet. From the time that the said house was constructed your petitioner moved into the second floor thereof and from then on has continued to reside therein.

The purchase price of the land and the construction of the building thereon was $12,000.00.

4. Shortly after the construction of the house hereinbefore mentioned, viz: September, 1923, your petitioner secured a mortgage from the Sons of Lithuanian Benefit Association of Kearny, New Jersey, for $2,000.00, which mortgage is recorded in Book 1191 of Mortgages for Hudson County on page 526, etc. The said sum of $2,000.00 was applied for the payment of the purchase price of the said land and the building thereon. The balance of the purchase price of the said land and the cost of the construction of the building, to wit, the sum of $10,000.00 was paid by your petitioner out of his own funds. In addition thereto your petitioner has since paid grading and sewer assessments in connection with the said premises amounting to $720.00.

5. Between September, 1923, and May 1st, 1933, your petitioner paid $1,000.00 on account of the principal amount of the mortgage hereinbefore mentioned and at that time, that is to say, on May 1st, 1933, your petitioner secured a mortgage on the above described premises from one Walter Yucius, the complainant herein, for $1,500.00. With this amount, your petitioner paid off the balance due on the mortgage of the Sons of Lithuanian Benefit Association, which mortgage was then discharged of record and at that time also paid taxes for the years 1931 and 1932 which were then outstanding.

6. Your petitioner, about four or five months ago, was informed by the said complainant that he had foreclosed on the mortgage given to him by your petitioner and had bought in said premises at the foreclosure sale for $100.00 and your petitioner was told that unless he removed from the premises, he would be bodily evicted therefrom.

7. Your petitioner has been informed that process of service is alleged to have been made upon him on October 27th, 1934, by causing service of a subpoena *ad respondendum* to be made upon a member of his family over the age of fourteen years, as shown by the return on the subpoena filed in the said cause.

8. Your petitioner further says that up until approximately November, 1933, he resided on the second floor of the premises described together with his only child, a son named Bruno Goodlich, your petitioner's wife having died several years ago. Approximately in the month of November, 1933, the said Bruno Goodlich left

the home of your petitioner and has not returned to live with your petitioner since that time. Your petitioner has resided alone on the second floor of the premises hereinbefore mentioned from approximately the month of November, 1933, up until the present time.

9. Your petitioner further says that the entire first floor of the premises hereinbefore described has, ever since the construction of the building thereon, been occupied by a person or persons in nowise related to your petitioner.

10. Your petitioner does further say that the return made on the subpoena *ad respondendum* alleged to have been served upon a member of your petitioner's family is untrue in that on the date of alleged service of the said subpoena, viz: October 27th, 1934, your petitioner resided alone, no member of his family living there with him.

11. Your petitioner does further say that process of service as shown by the return on the aforesaid subpoena is illegal and void in that due and proper service was not made upon him as required by the rules of this Court.

12. Your petitioner further says that he had no knowledge of the pendency of said foreclosure proceedings nor had anyone informed him that foreclosure proceedings had been taken against him until possession of the said premises was demanded of your petitioner by the complainant herein after the Sheriff's Sale.

13. Your petitioner further says that approximately in the beginning of the month of May, 1935, upon arriving at his home one evening

found a paper tacked onto his door. Your petitioner, because of the fact that he has had no education and is unable to read, write or understand the English language, had the said paper read and interpreted to him and thus learned that it was an order issued out of the District Court of the Second Judicial District of the County of Hudson ordering him to deliver up possession of the premises occupied by him to the complainant herein.

14. Your petitioner is seventy-one years of age and is feeble in mind. For the past several years he has had no income, has become wholly destitute and at the present time is dependent upon his friends for maintenance. Your petitioner has become greatly worried and concerned over his financial embarrassment and his lack of means of support.

15. Your petitioner has invested in the aforesaid premises approximately the sum of $11,185.00 and does further say that the said premises constitute his entire assets and that the amount invested therein represents his entire life's savings.

16. Immediately upon learning that the said complainant had foreclosed upon his property, your petitioner offered to repay to the said complainant the full amount due on his bond and mortgage, together with all the expenses incurred by him in connection therewith but he, the said complainant, refused and does still refuse to reconvey the said property to your petitioner unless he is paid a substantial profit.

17. For the several months last past, the said

complainant has collected the rents and income from the said premises and appropriated them to his own use.

18. Your petitioner further says that the fair market value of the said lands and premises, even today, under adverse economic conditions, is approximately $8,000.00. In view of the fact that the amount due to the said complainant is approximately $2,000.00, or less, your petitioner has been definitely assured that a mortgage in an amount sufficiently large to pay the said complainant the indebtedness due him will be granted your petitioner in the event that the said complainant reconveys the said premises to your petitioner and discharges the said mortgage of record. Your petitioner further says that he is ready, able and willing to procure a mortgage for the purpose of paying the complainant the indebtedness due him.

19. The said complainant has instituted dispossess proceedings against your petitioner in the District Court of the Second Judicial District of the County of Hudson which proceedings have resulted in the aforesaid Dispossess Order and your petitioner has been threatened by the said complainant that unless he removes from the premises, he will be ejected therefrom.

20. If the said complainant is permitted to proceed with his dispossess proceedings, your petitioner herein will be deprived of the use of his property and will be without shelter or home and must necessarily become a public burden and a charge.

Your petitioner therefore prays:

Amended Petition

1. That an order to show cause may issue, requiring the said complainant to show cause why the said foreclosure proceedings hereinbefore mentioned should not be opened and the return of the Subpoena, Interlocutory Decree, Master's Report, Final Decree, the Sheriff's Sale and the Confirmation of said Sale made in connection with the said cause be vacated, set aside and for nothing holden.

2. That the respective rights, titles and interest of your petitioner and the complainant herein, in and to the said lands and premises, may be determined and decreed by this Court, and that the said complainant, upon being paid the sum due to him under the terms of his said bond and mortgage, be required and directed by this Court to reconvey by proper conveyance the said lands and premises to your petitioner herein, free and clear of the said bond and mortgage.

3. That the said complainant be permanently enjoined and restrained from proceeding with the dispossess proceedings now pending in the District Court of the Second Judicial District of the County of Hudson, wherein the said Walter Yucius is the plaintiff and your petitioner, Joseph Goodlich, is the defendant.

4. That the said complainant, his attorneys or agents, be restrained and enjoined from disposing or encumbering the said lands and premises and to abide by such decree as this Court may make in the premises.

5. That your petitioner may have such further relief in the premises as the nature of the

cause may require and as may be agreeable to equity and good conscience.

And your petitioner will ever pray, etc.

RUSSEL E. GRECO,
10 Solicitor for and of Counsel with the Petitioner.

State of New Jersey,
County of Hudson, ss:

Joseph Goodlich, of full age, being duly sworn according to law, upon his oath deposes and says
20 that:

1. By deed dated May 28th, 1923, and recorded in the Register's Office of the County of Hudson on June 14th, 1923, in Book 1481 of Deeds for said County on page 483, etc., I acquired title in fee simple to a certain tract of land located on the northerly side of Bergen Avenue, in the Town of Kearny, County of Hudson and State of New Jersey, the said property having a
30 frontage of 73.50 feet on Bergen Avenue by a depth of 100 feet. The said lands are more particularly described as follows:

Beginning in the northerly line of Bergen Avenue, at a point therein distant one hundred feet and fourteen hundredths of a foot easterly from the northeasterly corner of Bergen Avenue and Ivy Street, as laid down on a "Map of a portion of the Property belonging to the Kearny
40 Land Co., situated in the Township of Kearny, Hudson County, N. J. Prepared by Van Duyne & Young, Surveyors, February, 1888." Thence

running (1st) northerly, at right angles to Bergen Avenue, one hundred feet; thence (2nd) easterly, parallel with Bergen Avenue, seventy-three feet and fifty hundredths of a foot; thence (3rd) southerly, and at right angles to Bergen Avenue, one hundred feet; and thence (4th) westerly, along Bergen Avenue, seventy-three feet and fifty hundredths of a foot to the place of BEGINNING.

Being the westerly twenty-three and one-half feet of Lot No. 2 and Lots Nos. 3 and 4 in Block No. 69 on the aforesaid Map.

And being Lots Nos. 26 and 27 and the westerly twenty-three and one-half feet of Lot No. 28 in Block No. 224 on the Tax Map of the Town of Kearny.

2. Immediately upon acquiring title to the said lands as aforesaid, I caused to be erected thereon a two story frame dwelling house on the first floor of which there is a large store and three rooms in the rear thereof and on the second floor of which there are six rooms. From the time that the said house was constructed I moved into it and from then on I have continued to reside therein.

The purchase price of the land and the construction of the building thereon was $12,000.00.

3. Shortly after the construction of the house hereinbefore mentioned, viz: September, 1923, I secured a mortgage from the Sons of Lithuanian Benefit Association of Kearny, New Jersey, for $2,000.00, which mortgage is recorded in Book 1191 of Mortgages for Hudson County on page 526, etc. The said sum of $2,000.00 was applied

for the payment of the purchase price of the said land and the building thereon. The balance of the purchase price of the said land and the cost of the construction of the building, to wit, the sum of $10,000.00 was paid by me out of my own funds. In addition thereto I have since paid grading and sewer assessments in connection with the said premises amounting to $720.00.

4. Between September, 1923, and May 1st, 1933, I paid $1,000.00 on account of the principal amount of the mortgage hereinbefore mentioned and at that time, that is to say, on May 1st, 1933, I secured a mortgage on the above described premises from one Walter Yucius, the complainant herein, for $1,500.00. With this amount, I paid off the balance due on the mortgage of the Sons of Lithuanian Benefit Association, which mortgage was then discharged of record and at that time also paid taxes for the years 1931 and 1932 which were then outstanding.

5. About four or five months ago, I was informed by the said complainant that he had foreclosed on the mortgage given to him by me and had bought in said premises at the foreclosure sale for $100.00 and I was told that unless I removed from the premises, I would be bodily evicted therefrom.

6. I have been informed that process of service is alleged to have been made upon me on October 27th, 1934, by causing service of a subpoena *ad respondendum* to be made upon a member of my family over the age of fourteen years, as shown by the return on the subpoena filed in the said cause.

7. Until approximately November, 1933, I resided on the second floor of the premises described together with my only child, a son named Bruno Goodlich, my wife having died several years ago. Approximately in the month of November, 1933, my son, Bruno Goodlich, left my home and has not returned to live with me since that time. I have resided alone on the second floor of the premises hereinbefore mentioned from approximately the month of November, 1933, up until the present time.

8. I further say that the entire first floor of the premises hereinbefore described has, ever since the construction of the building thereon, been occupied by a person or persons in nowise related to me.

9. I do further say that the return made on the subpoena *ad respondendum* alleged to have been served upon a member of my family is untrue in that on the date of alleged service of the said subpoena, viz: October 27th, 1934, I resided alone, no member of my family living there with me.

10. I do further say that process of service as shown by the return on the aforesaid subpoena is illegal and void in that due and proper service was not made upon me as required by the rule of this Court.

11. I do further say that I had no knowledge of the pendency of said foreclosure proceedings nor had anyone informed me that foreclosure proceedings had been taken against me until possession of the said premises was demanded of me by the complainant herein after the Sheriff's Sale.

12. I do further say that approximately in the beginning of the month of May, 1935, upon arriving at my home one evening I found a paper tacked onto my door. Because of the fact that I have had no education and am unable to read, write or understand the English language, I had the said paper read and interpreted to me and thus learned that it was an order issued out of the District Court of the Second Judicial District of the County of Hudson ordering me to deliver up possession of the premises occupied by me to the complainant herein.

13. I am seventy-one years of age. For the past several years I have had no income, am wholly destitute and at the present time I am dependent upon my friends for maintenance. I am greatly worried and concerned over my financial embarrassment and my lack of means of support.

14. I have invested in the aforesaid premises approximately the sum of $11,185.00 and do further say that the said premises constitute my entire assets and that the amount invested therein represents my entire life's savings.

15. Immediately upon learning that the said complainant had foreclosed upon my property, I offered to repay to the said complainant the full amount due on his bond and mortgage, together with all the expenses incurred by him in connection therewith but he, the said complainant, refused and does still refuse to reconvey the said property to me unless he is paid a substantial profit.

16. For the several months last past, the said complainant has collected the rents and income

from the said premises and appropriated them to his own use.

17. I do further say that the fair market value of the said lands and premises, even today, under adverse economic conditions, is approximately $8,000.00. In view of the fact that the amount due to the complainant is approximately $2,000.00, or less, I have been definitely assured that a mortgage in an amount sufficiently large to pay the said complainant the indebtedness due him will be granted to me in the event that the said complainant reconveys the said premises to me and discharges the said mortgage of record. I do further say that I am ready, able and willing to procure a mortgage for the purpose of paying the complainant the indebtedness due him.

18. The said complainant has instituted dispossess proceedings against me in the District Court of the Second Judicial District of the County of Hudson which proceedings have resulted in the aforesaid dispossess order and I have been threatened by the said complainant that unless I remove from the premises, I will be ejected therefrom.

19. If the said complainant is permitted to proceed with his dispossess proceedings, I will be deprived of the use of my property and will be without shelter or home and must necessarily become a public burden and a charge.

20. I have had the annexed amended petition read and interpreted to me and the statements therein contained are true.

JOSEPH GOODLICH.

Sworn and subscribed to before me this
24th day of June, 1935.
Anthony C. Okuniewicz,
Notary Public of New Jersey.

State of New Jersey,
County of Hudson, ss:

Anthony C. Okuniewicz, of full age, being duly sworn, according to law, deposes and says that:

1. I am a Notary Public and reside at No. 56 Patterson Street, Kearny, New Jersey.

2. On June 20th, 1935, I was requested by Russell E. Greco, solicitor for Joseph Goodlich, the defendant in the foregoing cause of action, to accompany him to No. 77 Eagle Street, North Arlington, New Jersey, wherein resides one Bruno Goodlich, the son of Joseph Goodlich, the said defendant. Mr. Greco informed me that he was about to ask the said Bruno Goodlich to sign an affidavit for him in connection with this cause of action and requested me to accompany him for the purpose of notarizing the said affidavit.

3. Upon arriving at the said address Mr. Greco asked the said Bruno Goodlich whether he had been served on October 27th, 1934, with a subpoena or other process of service in connection with a foreclosure action wherein Walter Yucius was the complainant and Joseph Goodlich was the defendant. The said Bruno Goodlich informed Mr. Greco in my presence that at no time had he ever been served with any such paper and upon being requested to sign an affidavit to that effect, the said Bruno Goodlich refused to do so unless he were paid for doing so and upon being asked by Mr. Greco how much he wanted, he waived the question aside. The said Bruno Goodlich was very bitter towards his father and time and time again said that he

did not wish to have anything to do with his father and if subpoenaed to testify in connection with the said cause of action, he would be glad to testify against his father.

ANTHONY C. OKUNIEWICZ.

Sworn and subscribed to before me this
24th day of June, 1935.
Leo J. Michnevich,
Attorney-at-Law of New Jersey.

Affidavit of Anthony C. Okuniewicz.

IN CHANCERY OF NEW JERSEY.

105-130.

Between WALTER YUCIUS, Complainant, and JOSEPH GOODLICH, Defendant.	On Bill, Etc. Affidavit.

State of New Jersey,
County of Hudson, ss:

Anthony C. Okuniewicz, of full age, being duly sworn, according to law, upon his oath, deposes and says that:

1. I am the secretary of the Eagle Investment Company, a corporation of New Jersey, with offices at No. 506 North Fourth Street in

the Town of Harrison, County of Hudson and State of New Jersey.

2. I have been engaged in the real estate business for the past nine years and I am familiar with the valuation of properties located in Kearny, Harrison and East Newark, New Jersey; I have sold a great number of properties in the above mentioned locations and have also appraised properties in the same vicinities for the Belgrove Building and Loan Association, Criterion Building and Loan Association, the West Hudson Mortgage Company and other associations.

3. On June 10th, 1935, I examined premises commonly known and designated as No. 281 Bergen Avenue, Town of Kearny, County of Hudson and State of New Jersey and find the same to be as follows:

Known in the tax book of the Town of Kearny, Hudson County, New Jersey, as Lots 26, 27 and 28, Block 224, having a frontage of 73.50 feet and a depth of 100 feet.

Building assessed by the Town of Kearny at	$2,500.00
Land assessed by the Town of Kearny at	1,500.00
Total	$4,000.00

There is erected upon the property a two-story frame dwelling house the first floor of which consists of a store, three rooms and a toilet in the rear thereof. On the second floor there are six rooms and a toilet. The building is only twelve years old and is in a fair condition. The

first floor is occupied by a tenant who uses the the store for tavern purposes and lives in the rear thereof. The second floor is occupied by Joseph Goodlich, the complainant in this action. The property is located on the northerly side of Bergen Avenue, Town of Kearny, County of Hudson and State of New Jersey. The house itself is 22 feet wide by approximately 48 feet long and is located in the center of the property, leaving one vacant lot on either side of it. The neighborhood is semi-commercial, there being a good many stores surrounding it.

4. I have personally examined the above described premises and this is to certify that I have no interest therein and that in my opinion the valuation of this property as of June 10th, 1935, is $4,600.00 for the building and $3,300.00 for the land, making a total of $7,900.00.

It must be understood that the value given above is for a property free and clear of all assessments, restrictions and rights of way. The said premises have been appraised at a fair market value with reference to the most advantageous uses to which they can be put by private person or corporations. By "market value" is meant the price the property would sell for in cash, or on terms equivalent to cash, when offered for sale by one who desires but is not obliged to sell, to one who desires but is not obliged to buy.

ANTHONY C. OKUNIEWICZ.

Sworn and subscribed to before me this
24th day of June, 1935.

Leo J. Michinevich,
Attorney at Law of New Jersey.

Affidavit of James V. Capobianco.

Filed June 25, 1935.

State of New Jersey,
County of Hudson, ss:

10 James Capobianco, of full age, being duly sworn, according to law, on his oath, deposes and says that:

1. I am the president of the Arlington Real Estate Company, a corporation of the State of New Jersey, with offices at No. 151 Midland Avenue, Town of Kearny, County of Hudson and State of New Jersey.

2. I have been engaged in the real estate business for the past ten years and I am familiar with the valuation of properties located in Kearny, North Arlington, Harrison and Lyndhurst, New Jersey; I have sold for my company a great number of properties in the above mentioned locations, and also appraised properties in the same vicinity for Building and Loan Association and financial institutions. I have also appraised properties for the Arlington-Kearny Real Estate Board of which I was president for the year 1932-1933. My services as expert appraiser for properties in this vicinity was retained by the Courts of the State of New Jersey for condemnation proceedings. At the present time I am one of the appraisers for the Home Owners' Loan Corporation to appraise properties in this vicinity.

3. On June 19th, 1935, I personally examined the premises commonly known and designated as No. 281 Bergen Avenue, Kearny, New Jersey, which property consists of a plot of land 73.50 feet wide by 100 feet deep, located on the northerly side of Bergen Avenue near Schuyler Avenue in the Town of Kearny, County

of Hudson and State of New Jersey, upon which there is erected a two-story frame dwelling house 22 feet wide by approximately 48 feet long, on the first story of the said house there is one store with three rooms and bath in the in the rear thereof; on the second floor there are six rooms and a bath. The house is in a good condition of repair. The neighborhood is quasi-commercial, there being a number of stores in the immediate vicinity of the said premises. The said premises are assessed by the Town of Kearny for $4,000.00.

4. In my opinion the present fair market value of the said land and premises is $8,000.00 it being understood that the value given above is for property free and clear of all assessments, restrictions and rights of way. The said premises have been appraised at a fair market value with reference to the most advantageous uses to which it may be put by a private person or corporation, and by "market value" is meant the price the property would sell for in cash, or on terms equivalent to cash, when offered for sale by one who desires but is not obliged to sell, to one who desires but is not obliged to buy.

JAMES V. CAPOBIANCO.

Sworn and subscribed to before me this
4th day of June, 1935.
Anthony C. Okuniewicz,
Notary Public of New Jersey.

Order to Show Cause.

Filed June 24, 1935.

IN CHANCERY OF NEW JERSEY.

105-130.

10

Between: WALTER YUCIUS, Complainant, and JOSEPH GOODLICH, Defendant.	On Bill, Etc. Order to Show Cause.

20

A petition having been filed herein by Joseph Goodlich, the defendant in the above-entitled suit, wherein it is alleged that he is a resident of the Town of Kearny, County of Hudson and State of New Jersey, and that said suit was brought against him for the purpose of foreclosing on a certain mortgage given by the said defendant to the complainant; that process of subpoena is alleged to have been issued against him and that service thereof is alleged to have been made upon a member of his family over the age of fourteen years on October 27th, 1934, whereas in fact the said petitioner has for the past two years resided alone at the address wherein said service is alleged to have been made and that the said petitioner had no knowledge whatever of the existence of said suit, and it further appearing that the said complainant has instituted proceedings in the District Court of the Second Judicial District of

30

40

the County of Hudson to dispossess the petitioner from the lands and premises mentioned and described in the bill of complaint hereinbefore filed in this cause, and the Court having read the said petition and the affidavits annexed thereto; 10

It is, thereupon, on this 24th day of June, 1935, Ordered that Walter Yucius, the above named complainant, show cause before the Chancellor, on the 1st day of July, 1935, at the Chancery Chambers, in the City of Jersey City, at the hour of ten o'clock in the forenoon, or as soon thereafter as counsel can be heard, why the foreclosure proceedings hereinbefore mentioned should not be opened and the return of 20 the Subpoena, Interlocutory Decree, Master's Report, Final Decree, Sheriff's Sale and the Confirmation of said Sale made in connection with the said cause, be vacated, set aside and for nothing holden.

It is further Ordered that the said complainant, Walter Yucius, his attorney or agents, in the meantime and until the further order of this Court in the premises, desist and refrain from proceeding further with his dispossess 30 proceedings in the District Court of the Second Judicial District of the County of Hudson, and from disposing or encumbering the premises described in the said petition.

It is further Ordered that true but uncertified copies of this order and of the petition and affidavits upon which the same is founded, be served on the said complainant or his attorney, within 2 days from the date hereof. 40

Respectfully advised,

LUTHER A. CAMPBELL,
C.

JAMES F. FIELDER,
V. C.

Substitution of Attorney.

Filed Aug. 9, 1935.

IN CHANCERY OF NEW JERSEY.

105-130.

10

Between WALTER YUCIUS, Complainant, and JOSEPH GOODLICH, Defendant.	On Bill, etc. Substitution of Attorney.

20

It is hereby stipulated and agreed by and between William P. Murphy, Esquire, and Perry E. Belfatto, Esquire, that the said Perry E. Belfatto, Esquire, be and he is hereby substituted as attorney for Walter Yucius, complainant, in the above-entitled matter.

WILLIAM P. MURPHY,
PERRY E. BELFATTO.

30

40

Stipulation.

Filed July 3, 1935.

IN CHANCERY OF NEW JERSEY.

105-130.

10

Between WALTER YUCIUS, Complainant, and JOSEPH GOODLICH, Defendant.	On Bill, etc. Stipulation.

20

It is hereby stipulated and agreed by and between Russel E. Greco, Solicitor for the defendant Joseph Goodlich and Perry E. Belfatto, Solicitor for the complainant Walter Yucius, that the amended petition herein filed on June 25, 1935, be taken, considered and recognized as the basis of the order to show cause in this matter which was signed by Honorable James F. Fielder, Vice Chancellor, on June 24, 1935.

The said Perry E. Belfatto hereby acknowledges service of the order to show cause, together with the original petition filed in this cause on June 24, 1935, and the said amended petition.

30

PERRY F. BELFATTO,
Solicitor for Complainant.
RUSSEL E. GRECO,
Solicitor for Defendant.

Dated June 26, 1935.

40

Affidavit of Frank J. Huber.

Filed Aug. 9, 1935.

IN CHANCERY OF NEW JERSEY.
105-130.

10

Between WALTER YUCIUS, Complainant, and JOSEPH GOODLICH, Defendant.	On Bill, etc. Affidavits.

State of New Jersey,
20 County of Essex, ss:

Frank J. Huber, of full age, being duly sworn, according to law, upon my oath, depose and say that:

1. My office address is 19 Kensington Avenue, in the City of Jersey City, County of Hudson and State of New Jersey and I have operated actively in the real estate and real es-
30 tate appraisal field for the past twelve years. I have made appraisals for the Sinclair Oil Refining Company, Drake Colleges, J. I. Kislick, Inc., and many other large companies and I have frequently testified as an expert in the Court of this State.

2. I am thoroughly familiar with real estate values in the Town of Kearny, County of Hudson and State of New Jersey.

40 3. On June 27, 1935, at the request of Perry E. Belfatto, I appraised property located at 281 Bergen Avenue, in the Town of Kearny, County

of Hudson and State of New Jersey. The appraisal is as follows:

APPRAISAL

LOCATION 10

#279-81-82 Bergen Avenue, Kearny, New Jersey, in City Block, No. 224; County No. 1529.

Lots: 26, 27 and 28.

Assessed (1935)	Land	$1500.00
	Bldg.	$2500.00
	Total	$4000.00

20

LAND

73.59x100 (Approx.) on the north side of Bergen Avenue, 100′ east of Ivy Street and 148.96′ West of Schuyler Avenue. (See Diagram accompanying.)

IMPROVEMENTS.

Conventional

Two story Frame Clapboard Building 22′x42″x-25″ containing one store and three rooms, 2 lavatories, no bath, in the rear; occupied at present as a Tavern. 2nd Floor consists of 5 rooms and kitchen, lavatory, no bath. Occupied as dwelling. Cellar is approximately 6′ in height cement floor no heating plant. Flat Roof, 2 or 3 ply, composition coating, 5 to 10 year type. 30

Features: Plumbing, Galvanized Piping, White Enamel. 40

Fixtures: Floor of Y. Pine painted, walls, ceil-

ings, plaster and plaster board, painted; Trim of W. Pine painted. Gas and electric facilities in. General Construction is of 3rd class quality, materials the same and the general condition of the premises at present may be considered only fair.

Bergen Avenue is concrete paved, regular curbing, sewers and water facilities; cement sidewalks. Adjacent improvements are conventional 1 and 2 family types, several altered to provide for neighborhood stores. Bus line and public school about one block distant. The immediate vicinity is about 60% improved. The majority of buildings as referred above being about 10 years old or more.

The building referred to in this Appraisal is about 15 years old and subject to a depreciation and absolescence rate of 5% by virtue of its type, grade of construction.

The trend indicated in this section is to one and two family type of dwelling of low price of ordinary construction. The rate of this trend which at present is static may be mainly influenced by any industrial development on adjacent vacant land which this section lends itself to rather than to a desirable residential or business section.

Affidavit of Frank J. Huber

In the opinion of the undersigned this property as herein described has a present fair value of			$3,105.00
of which $1,950.00 is allocated to present land value, based on the following:			
Area: 23,100 cu. ft. @ replacement cost of construction @ $.20¢ per cu. ft.		$4,620.00	
Less depreciation and absolescence for 15 years @ 5% per yr.		3,465.00	
Depreciated Production Cost		1,155.00	
Plus present value of land		1,950.00	3,105.00
Capitalized Value Based on Income:			
Store @ $25.00 per mon.		$300.00	
Dwelling @ $15.00 per mon.		180.00	
Total (est.)		$480.00	
Less Taxes	$164.44		
Insurance, Water, Maintenance (est.)	$125.00	$289.44	
Net Income		$190.56	
Capitalized at 6% indicates a value of			$3,176.00

I, the undersigned, do hereby certify that I have inspected the property hereinbefore referred to, that to the best of my knowledge and belief the statements made herein are correct, that I have no personal interest, present or prospective in this property and that in my opinion a fair value of this property is $3,105.00

June 28th, 1935.

FRANK J. HUBER.

Sworn to and subscribed before me
this 28th day of June, 1935.
Bernard Cherny,
An Attorney at Law of
New Jersey.

Affidavit of Frank S. Overman.

Filed Aug. 9, 1935.

State of New Jersey,
County of Essex, ss:

10 Frank S. Overman, of full age, being duly sworn according to law, upon my oath, depose and say that:

1. My business is at 18 Enos Place, in the City of Jersey City, County of Hudson and State of New Jersey.

2. I have been actively engaged in the real estate business and real estate appraisal business for the past thirteen years and I have made
20 many appraisals throughout the County of Hudson for many large corporations including Sinclair Oil Company, Gulf Refining Co., Trust Company of New Jersey and others. I have testified as a real estate expert in court matters in this state.

3. I am thoroughly familiar with real estate values in the Town of Kearny, County of Hudson and State of New Jersey.

30 4. On June 27, 1935, at the request of Perry E. Belfatto, I appraised property located at 281 Bergen Avenue, in the Town of Kearny, County of Hudson and State of New Jersey. The Appraisal is as follows:

40

Affidavit of Frank S. Overman

APPRAISAL

LOCATION:

#279-81-83 Bergen Avenue, Kearny, New Jersey, in City Block, No. 224: County No. 1529. 10
Lots: 26, 27 and 28

Assessed (1935)	Land	$1500.00
	Bldg.	$2500.00
	Total	$4000.00

LAND: 73.59x100 (approx.) situated on the north side of Bergen Avenue, 100′ east of Ivy Street and 148.96′ west of Schuyler Avenue. (See drawing attached.) 20

IMPROVEMENTS: The building is a two story fram clapboard structure about 22′x42′x25′ on the ground floor of which is a store with 3 rooms and 2 lavatories in the rear occupied as a Tavern. Section floor consists of 5 rooms and kitchen and lavatory. No baths on either floor. The upper floor is occupied as a dwelling. Building is on a concrete foundation, 6′ cellar, cement floor; no heating 30 plant. Flat roof two or three ply five to ten year type. Plumbing is of galvanized piping, white enamel fixtures; flooring and trim of yellow pine painted and white pine painted respectively. Walls and ceilings are plaster and plaster board painted. Premises are supplied with gas and electric. Third class contruction and quality of materials is indicated and the general condition of interior 40 and exterior is fair.

Bergen Avenue is a concrete street, with regu-

lar curb, sewers and water facilities; surrounding properties are conventional one and two families style, several of which have been altered into small retail stores. The majority of buildings in this section are ten years old or more.

The building referred to above is approximately 15 years old and a rate of 5% per year to cover depreciation and obsolescence is indicated based on the type of building, character of construction and its maintenance.

The trend of this section runs to one and two family type of dwelling of low cost. The rate of this trend at the present time is slow but any industrial development in this area would influence development to low priced dwellings.

In the opinion of the undersigned this property as herein described has a present fair value of $2,770.50

which $1,500.00 is applied to present value of land, based on the following:

Area 23,100 cu. ft. @ replacement cost of construction @ 22¢ per cu. ft.	$5,082.00	
Less depreciation and obsolescence for 15 years @ 5% per yr.	3,811.50	
Depreciated reproduction cost	$1,270.50	
Plus present value of land	1,500.00	$2,770.50

Capitalized Value Based on Income:

Store @ $25.00 per mon.		$300.00	
Dwelling @ $18.00 per mon.		216.00	
Total (est.)		$516.00	
Less Taxed	$164.44		
Insurance, Water, Maintenance (est.)	$180.00	$344.44	
Net Income		$171.56	
Capitalized at 6% indicates a value of			$2,859.33

I, the undersigned, do hereby certify that I have inspected the property hereinbefore referred to, that to the best of my knowledge and belief the statements made herein are correct, that I have no personal interest, present or prospective in this property and that in my opinion a fair value of this property is $2,770.50

FRANK S. OVERMAN.

Sworn to and subscribed before
me this 28th day of June, 1935.
Bernard Cherny,
An Attorney at Law of
New Jersey.

Filed August 9, 1935.

Affidavit of Adolph Compos.

Filed Aug. 9, 1935.

State of New Jersey,
County of Essex, ss:

10 Adolph Compos, being duly sworn, according to law upon his oath deposes and says:

1. I board with one James Doran and reside with him at #281 Bergen Avenue in the town of Kearny, County of Hudson and State of New Jersey and I have lived there since approximately August, 1934.

2. I know Joseph Goodlich, who resides in the same house as I do and I also know his son,
20 Bruno Goodlich and I know that the said Bruno Goodlich lived with his father from at least August, 1934, up until a very few days before Christmas in December, 1934.

ADOLPH COMPOS.

Sworn and subscribed to before
me this 29th day of June, 1935.
Bernard Cherny,
30 An Attorney at Law of
New Jersey.

40

Affidavit of William P. Murphy.

Filed Aug. 9, 1935.

IN CHANCERY OF NEW JERSEY.

Between WALTER YUCIUS, Complainant, and JOSEPH GOODLICH, Defendant.	On Bill, etc. Affidavit.

10

State of New Jersey,
County of Essex, ss:

20

I, William P. Murphy, of full age, being duly sworn according to law, upon my oath, depose and say:

1. I am a Master in Chancery and I represented Walter Yucius, the defendant in the above entitled cause, in a matter in this court between Walter Yucius, complainant and Joseph Goodlich, defendant, docket number 105, page 130, which was a foreclosure matter.

30

2. The said foreclosure was instituted early in the fall of 1934, and was terminated early in the year 1935.

3. Prior to and during the pendency of the said foreclosure action, I wrote six letters to the said Joseph Goodlich requesting adjustment of the matter and also informed him of the progress of the foreclosure case.

40

4. The said Joseph Goodlich was in my office on one or two occasions and I know of my own

knowledge that he knew that a foreclosure proceeding was pending against him.

5. During the period in which the said foreclosure case was in suit, various attorneys communicated with me in behalf of the said Joseph Goodlich with regard to adjusting the foreclosure case and with regard to getting the property back.

WILLIAM P. MURPHY.

Sworn to and subscribed before
me this 7th day of June, 1935.
Bernard Cherny,
An Attorney of Law of the
State of New Jersey.

Certificate.

DISTRICT COURT OF THE 2ND JUDICIAL DISTRICT, KEARNEY, N. J.

WALTER YUCIUS vs. JOSEPH GOODLICH.	On Dispossession.

Summons issued 3/11/35. Returnable 3/18/35. Judgment entered 5/17/35. Possession. Judgment for possession.

Costs, $3.30.
Execution,
Interest,
Levy,
Dollarage,

Certificate

I do hereby certify that the above is a true Statement of the Judgment and Costs obtained in this Court in the above named Suit.

JAMES A. KELLY,
Clerk, District Court of
the 3rd Judicial District. 10

(Seal.)

Affidavit of Walter Yucius.

Filed Aug. 9, 1935.

State of New Jersey, 20
County of Essex, ss:

Walter Yucius, of full age, being duly sworn, according to law, upon my oath, depose and say:

1. I, reside at 124 Gotthart Street, in the City of Newark, County of Essex and State of New Jersey.

2. I am the defendant in this cause and I am 30 the Walter Yucius who held a mortgage on the property of the complainant herein and who foreclosed said mortgage and purchased same at the Sheriff's sale.

3. I know that Mr. Goodlich knew, prior to the time that I started foreclosure suit, that I was going to start such suit unless he paid me the money that he owed me and I know that after I started suit, while the case was in prog- 40 ress in this court, that Mr. Goodlich knew that such was the case and I know that Mr. Goodlich likewise knew that his property was sold by the Sheriff of Hudson County and that I purchased it.

4. For many months prior to September, 1934, when the foreclosure suit was started. I had made it my business to see Mr. Goodlich at least once a month and requested that he pay me what was due on the mortgage and I continually threatened to foreclose the mortgage and take the property away unless he did pay me.

5. In November, 1934, I saw Mr. Goodlich and told him that I had already instituted foreclosure proceedings and he answered that he knew it.

6. I saw Mr. Goodlich again in January, 1935, and I told him that his property was about to be sold by the Sheriff of Hudson County and Mr. Goodlich was likewise familiar with this fact.

7. Somewhere around February, 1935, I again saw Mr. Goodlich and showed him the deed which I had received for the property which I purchased from the Sheriff of Hudson County.

8. All my conversations with Mr. Goodlich were in Lithuanian which language both he and I understood and spoke very well. I know Mr. Goodlich for about two years now and he always seem to understand what I was saying to him and he answered me intelligently.

WALTER YUCIUS.

Sworn to and subscribed before me
this 5th day June, 1935.
Bernard Cherny,
An Attorney at Law
of New Jersey.

Affidavit of Joseph Gurskis.

Filed Aug. 9, 1935.

State of New Jersey,
County of Essex, ss:

Joseph Gurskis, of full age, being duly sworn according to law, upon my oath, depose and say: 10

1. I reside at 178 Davis Avenue, in the City of Kearney, County of Hudson and State of New Jersey, and I have known Joseph Goodlich for about the last ten years.

2. In the summer of 1934, Mr. Goodlich came to me and told me that he was in financial difficulties because he could not pay off a mortgage on his house which was held by Walter Yucius, whom I also know. 20

3. I suggested that he apply for a HOLC loan and I accompanied him to their office but the loan was denied because Mr. Goodlich was considered too old and too bad a risk for the government.

4. Subsequently in the fall of 1934 somewhere I think around September or October, Mr. Goodlich again came to me and told me that he had received a letter from a Mr. Murphy, a Newark lawyer who represented Mr. Yucius. Mr. Goodlich informed me that Yucius was going to foreclose the mortgage and take the property away from him unless he could raise the money to pay off the mortgage. I negotiated with Mr. Goodlich for a period and we came to a tentative verbal agreement whereby I was to purchase the property from Mr. Goodlich and pay off the Yucius mortgage. 30 40

This deal was never consummated, notwithstanding that I was ready, willing and able to perform my part of the agreement with Goodlich.

10 5. Subsequently early in January, 1935, shortly after New Year's Day, I noticed among the classified advertisements in a newspaper, that Mr. Goodlich's property was being advertised for sale by the Sheriff of Hudson County. I communicated with Mr. Goodlich and informed him of this fact. Mr. Goodlich told me that he knew that fact and he said something about raising some money to pay off the mortgage.

20 6. All my conversations with Mr. Goodlich were in Lithuanian which language we both understood and spoke very well and which he always seem to understand and always answered me intelligently.

7. I have read the above affidavit and all the facts contained therein are true to the best of my knowledge and belief.

JOSEPH GURSKIS.

30

Sworn to and subscribed before me
this 4th day of June, 1935.
Bernard Cherny,
An Attorney at Law of
New Jersey.

40

Memorandum.

The Court will please take note of typographical error in the affidavits of William P. Murphy, Esquire, Walter Yucius and Joseph Gurskis, wherein Walter Yucius is designated as defendant instead of as complainant and wherein Joseph Goodlich is designated as complainant instead of defendant. 10

Affidavit of Walter Yucius.

Filed Aug. 9, 1935.

IN CHANCERY OF NEW JERSEY. 20

Between WALTER YUCIUS, Complainant, and JOSEPH GOODLICH, Defendant.	On Bill, etc.

30

State of New Jersey,
County of Essex, ss:

Walter Yucius, being of full age, and being duly sworn according to law, upon his oath, deposes and says:

1. I am the complainant in the above-entitled cause.

2. Since receiving the deed from the Sheriff of Hudson County, in the above-entitled cause, on January 30, 1935, I have paid out the following 40

payments in connection with the premises more particularly described in the Bill of Complaint herein.

3. On January 30, 1935, I paid to the Collector of Taxes of the Town of Kearny, the sum of $76.22 on account of 1933 taxes.

4. On February 2, 1935, I paid to the Tax Collector of the Town of Kearny, the sum of $74.15, balance due on 1933 taxes.

5. On June 3, 1935, I paid to the Tax Collector of the Town of Kearny, the sum of $140 for 1934 taxes.

6. On February 2, 1935, I paid to the Tax Collector of the Town of Kearny, the sum of $18.16 representing water rents for the year 1934 and part of 1933.

7. On December 19, 1934, I paid to the Sheriff of Hudson County the sum of $50 and on December 24, 1934, the sum of $25, which sums were the Sheriff's fee for advertising the foreclosure sale herein and on January 17, 1935, I paid to the said Sheriff the sum of $29.77, which sum represents the Sheriff's commissions for the foreclosure sale herein.

8. On or about February 21, 1935, I paid to the National Liberty Insurance Company of America, the sum of $18.60 as a premium on a $3,000 fire insurance policy on the premises herein.

9. In addition I spent the sum of $10 for materials in repairing the said house and either I or a carpenter, one Beeny Cotton, worked and rendered labor and services on the said

premises for a total of approximately 64 1/2 hours for which labor and services the sum of $40.50 is most reasonable.

WALTER YUCIUS.

Sworn to and subscribed before me 10
this 26th day of July, 1935.
Bernard Cherny,
An Attorney at Law of New Jersey.
Filed August 9, 1935.

Conclusions of Vice Chancellor.

20

IN CHANCERY OF NEW JERSEY.

105-130.

Between WALTER YUCIUS, Complainant, and JOSEPH GOODLICH, Defendant.	On Bill, &c. On Order to Show Cause.

30

Before his Honor James F. Fielder, July 1, 1935, at Chancery Chambers, Jersey City, on return of order to show cause why foreclosure proceedings should not be reopened.

Russell E. Greco, Esq., for the motion.

Bernard Cherny, Esq., for Perry E. Belfatto, 40
Esq., contra.

The Court (orally after argument of counsel):

My conclusion in this matter is this: Here is the petitioner, an uneducated and unfortunate old man of foreign birth, who has nothing except the interest he may have in the real estate described in his petition. He has lost that interest, on the record at least, either because he did not get notice of the proceedings to foreclose, or if he did, because he was too ignorant to understand what the notice meant. Upon considering the affidavits read here touching on his knowledge of the foreclosure and considering also the return of service of the subpoena to answer, I think he had legal notice that foreclosure proceedings had been begun and that he did know that some sort of action was pending to collect the amount due on his mortgage, but through stupidity and ignorance and lack of knowledge of the law, he failed to consult a competent adviser but let the matter run and he now finds his home has been sold away from him. I have sufficient doubt of the accuracy of his claim that he was never served with subpoena, to be unwilling to grant him relief on that ground, but I do think that when his property was sold for only $100, when according to the affidavits for the complainant in foreclosure, it was worth close to $3,000 and according to affidavits submitted on behalf of the petitioner, it was worth much more than that, the property brought a most inadequate price and was sold to the complainant for a sum which, under the circumstances, shocks the Court's conscience. It seems to be certain that there is an equity in the property for the petitioner over the amount of the foreclosure and it is said in his behalf that he can raise and

will pay to the complainant the full amount of the foreclosure decree with interest and all costs and expenses, if complainant will reconvey, but complainant's solicitor has declined to accept the offer and refuses to make reconveyances, except upon usurious terms. The petitioner should be given the opportunity to protect his equity by having the property offered again at public sale to see if it will not bring sufficient to satisfy the complainant's decree and costs.

Having doubt, as I have said, that the petitioner was not given legal notice that foreclosure had been commenced, I am unwilling to grant his counsel's plea that the whole proceeding be set aside and that a new subpoena *ad respondendum* be issued and time to answer be allowed before a decree for sale be entered. I shall allow the decree to stand and will merely set aside the sale and order a resale. The resale will be for the amount of the decree, interest from the date of the decree, taxed costs and sheriff's fees on the first sale. I shall stay proceedings for a resale for one month in order to give the petitioner an opportunity to secure the new loan which his counsel assures me he can get, to discharge his indebtedness to the complainant.

Mr. Cherny: Readvertised and resold?

The Court: Yes.

Mr. Cherney: For the amount of the decree plus interest?

The Court: Decree, interest from date of decree and costs.

Mr. Cherny: Do you mean costs on this proceeding?

The Court: No; not costs on this proceeding. Also the Sheriff's fees.

Mr. Cherny: Who is to advance the fees for the Sheriff's sale?

The Court: You are. Get together on the form of the order and submit it to me for my signature.

10 Mr. Cherny: May I ask for the allowance of a counsel fee in this proceeding?

The Court: You certainly may ask, but none will be allowed. I think a fair offer was made to your client which he should have entertained to take the entire amount due him to be raised by a new mortgage on the property.

20

Order.

Filed July 30, 1935.

IN CHANCERY OF NEW JERSEY.

105-130.

30 Between WALTER YUCIUS, Complainant, and JOSEPH GOODLICH, Defendant.	On Bill, etc. Order.

This matter being opened to the court by
40 Russell E. Greco, solicitor for the petitioner Joseph Goodlich, in the presence of Bernard Cherny, appearing for Perry E. Belfatto, solici-

tor of the complainant, Walter Yucius, and the court having read and considered the petition and affidavits of the said petitioner and the answering affidavits of the said complainant; and it appearing that the order to show cause made in this matter has been served in the manner therein directed; and the court having heard and considered the argument of counsel; and it appearing to the satisfaction of the court that there is equitably due from said petitioner to said complainant the sum of $1,659.50, being the amount of the final decree herein, entered on November 26, 1934, together with interest from said date; together with taxed costs in connection therewith amounting to $147.76 and interest from November 26, 1934; together with the sum of $50.00 plus interest from December 19, 1934, and the sum of $25.00 plus interest from December 24, 1934, and the sum of $29.77 plus interest from January 17th, 1935, being the Sheriff's fees incurred by said complainant in connection with the sale of the lands and premises hereinafter more particularly described; together with the sum of $18.16 plus interest from February 2, 1935, representing water rents paid by the complainant; together with the sum of $76.22 plus interest from January 30, 1935, and the sum of $74.15 plus interest from February 2, 1935, and the sum of $140.00 plus interest from June 3, 1935, being the amount of taxes paid by the complainant to the Tax Collector of the Town of Kearny; together with the sum of $18.60 plus interest from February 21, 1935, representing a fire insurance policy premium paid by the complainant herein; and it further appearing

that complainant has secured a judgment for possession in the District Court of the Second Judicial District of Hudson County against the said petitioner;

And it further appearing that said lands and premises were sold by the Sheriff of the County of Hudson to the complainant herein for the sum of $100.00 which said sum the Court hereby deems to be inadequate;

It is on this 30th day of July, 1935, Ordered that the said Sheriff's Sale and the confirmation thereof together with the deed given by the said Sheriff to the said complainant, which deed is dated January 30, 1935, and recorded in the Register's Office of the County of Hudson in Book 1851 of deeds for said County on page 353 etc., be and the same are hereby opened, set aside, vacated and for nothing holden.

And it is further Ordered that the said petitioner do have until August 15, 1935, within which to pay to the complainant herein the sum of $1,659.50 plus interest from November 26, 1934, together with the sum of $147.76 plus interest from November 26, 1934, together with the sum of $50.00 plus interest from December 19, 1934, and the sum of $25.00 plus interest from December 24, 1934, and the sum of $29.77 plus interest from January 17, 1935, together with the sum of $18.16 plus interest from February 2, 1935, together with the sum of $76.22 plus interest from January 30, 1935, and the sum of $74.15 plus interest from February 2, 1935, and the sum of $140.00 plus interest from June 3, 1935, together with the sum of $18.60 plus interest from February 21, 1935, less the sum of $150.00, rents collected by the said com-

plainant from the said premises and that upon the payment of the said sums of money by the petitioner to the complainant, he, the said complainant, forthwith reconvey to the said petitioner by a bargain and sale deed, the lands and premises hereinafter described; and further that the said complainant deliver to the said petitioner a discharge of *lis pendens* hereinbefore filed by the complainant in the Register's Office of Hudson County against the lands and premises hereinafter described.

It is further Ordered that upon the failure of the petitioner to pay to the complainant the aforesaid sums of money by August 15, 1935, as aforesaid, the complainant shall be entitled to cause a writ of *Fieri Facias* to be issued directed to the Sheriff of Hudson County ordering him to make sale of the said lands and premises.

It is further Ordered that the said complainant be and he is hereby restrained and enjoined from disposing or encumbering the lands and premises or any part thereof except to convey the same to the defendant in accordance with this order.

It is further Ordered that the said complainant, his attorney or agents, be and they and each and every one of them are hereby enjoined and commanded to desist and refrain from proceeding further with the aforesaid judgment in the District Court of the Second Judicial District of the County of Hudson wherein the said Walter Yucius is plaintiff and the said Joseph Goodlich is defendant.

The said lands and premises are described as follows:

Order

All those certain tracts or parcels of land and premises, hereinafter particularly described, situate, lying and being in the Town of Kearny, County of Hudson and State of New Jersey.

10 BEGINNING in the northerly line of Bergen Avenue, at a point therein distant one hundred feet and fourteen hundredths of a foot easterly from the northeasterly corner of Bergen Avenue and Ivy Street, as laid down on a "Map of a portion of the Property belonging to the Kearny Land Co., situated in the Township of Kearny, Hudson County, N. J. Prepared by Van Duyne & Young, Surveyors, February, 1888." Thence running (1st) northerly, at 20 right angles to Bergen Avenue, one hundred feet; thence (2nd) easterly, parallel with Bergen Avenue seventy-three feet and fifty hundredths of a foot; thence (3rd) southerly, and at right angles to Bergen Avenue, one hundred feet; and thence (4th) westerly, along Bergen Avenue, seventy-three feet and fifty hundredths of a foot to the place of BEGINNING.

Being the westerly twenty-three and one-half 30 feet of Lot No. 2 and Lots Nos. 3 and 4 in Block No. 69 on the aforesaid Map.

And being Lots Nos. 26 & 27 and the westerly twenty-three and one-half feet of Lot No. 28 in Block No. 224 on the Tax Map of the Town of Kearny.

It is further Ordered that said petitioner serve a true copy of this order upon the complainant, Walter Yucius, or his solicitor within 40 3 days from the date hereof.

(Signed) LUTHER A. CAMPBELL,
C.

Respectfully advised,
(Signed) James F. Fielder,
V. C.

Notice of Appeal.

Filed Aug. 9, 1935.

IN CHANCERY OF NEW JERSEY.

Between WALTER YUCIUS, Complainant, and JOSEPH GOODLICH, Defendant.	On Bill, etc. Notice of Appeal.

10

The complainant, Walter Yucius, hereby appeals from an order made in the above entitled cause on July 30, 1935, by the Honorable Luther A. Campbell, Chancellor of the State of New Jersey, on the advice of Honorable James F. Fielder, Vice Chancellor, and said complainant hereby appeals from the whole and every part of said order to the Court of Errors and Appeals in the Last Resort in All Causes.

20

Dated: August 8, 1935.

PERRY E. BELFATTO,
Solicitor for and of counsel
with the Complainant Walter Yucius.

30

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

PERRY E. BELFATTO,
Of counsel with Complainant
Walter Yucius.

40

Affidavit of Service.

Filed Aug. 9, 1935.

IN CHANCERY OF NEW JERSEY.

Between WALTER YUCIUS, Complainant, and JOSEPH GOODLICH, Defendant.	On Bill, etc. Affidavit.

State of New Jersey,
County of Essex, ss:

Bernard Cherny, of full age, being duly sworn according to law, upon his oath, deposes and says that:

1. At the request of Perry E. Belfatto, Esquire, solicitor of the complainant in the above-entitled cause I served a copy of the annexed notice of appeal upon Russel E. Greco, Esquire, by leaving a true copy thereof at his office at 506 North Fourth Street, in the Town of Harrison, County of Hudson and State of New Jersey, on August 8, 1935, between the hours of nine a. m. and four p. m.

BERNARD CHERNY.

Sworn to and subscribed before me
this 8th day of August, 1935.
Albert H. Bierman,
A Master in Chancery of N. J.
Filed August 9, 1935.

Petition of Appeal.

Filed Aug. 23, 1935.

NEW JERSEY COURT OF ERRORS AND APPEALS.

Between WALTER YUCIUS, Complainant-Appellant, and JOSEPH GOODLICH, Defendant-Respondent.	On Bill, etc. On Appeal From the Court of Chancery. Petition of Appeal.

10

20

To the Honorables, the Judges of the New Jersey Court of Errors and Appeals, in the Last Resort in all Causes:

The petitioner, Walter Yucius, the appellant in the above entitled cause, respectfully shows that:

Your petitioner finds himself aggrieved by an order made in the Court of Chancery by the Honorable Luther A. Campbell, Chancellor of the State of New Jersey, on the advice of His Honor James F. Fielder, Vice Chancellor, bearing date July 30, 1935, in a certain cause in said Court of Chancery wherein the said Walter Yucius was complainant and the said Joseph Goodlich was defendant in this respect, to wit, sale and confirmation thereof, and the Sheriff's sale and confirmation thereof, adn the Sheriff's deed; and in this respect, to wit, that the said order allows the said Joseph Goodlich until August 15, 1935, within which to pay to said

30

40

Walter Yucius the sum of $1,659.50, plus interest from November 26, 1934; together with the sum of $147.76, plus interest from November 26, 1934; together with the sum of $50, plus interest from December 19, 1934; together with the sum of $25, plus interest from December 24, 1934; together with the sum of $29.77, plus interest from January 17, 1935; together with the sum of $18.16, plus interest from February 2, 1935; together with the sum of $76.22, plus interest from January 30, 1935; together with the sum of $74.15, plus interest from February 2, 1935; together with the sum of $140, plus interest from June 3, 1935; together with the sum of $18.60, plus interest from February 21, 1935; less the sum of $150, and said order directs that upon the payment of said sums of moneys the said Walter Yucius is to reconvey the said premises to said Joseph Goodlich to pay said moneys by August 15, 1935, said Walter Yucius shall be entitled to cause a Writ of *Fieri Facias* to be issued for the resale of the premises; and further in this respect, to wit, the said order enjoins the said Walter Yucius from disposing of or encumbering the said premises; and further in this respect to wit, that said order enjoins Walter Yucius from proceeding with a judgment for possession obtained by him against the said Joseph Goodlich in the Second Judicial District Court of Hudson County.

And petitioner appeals from the said order of the Chancellor, which adjudges as aforesaid, upon the ground that the same is erroneous in that mere inadequacy of purchase price is insufficient reason for reopening a foreclosure case

and setting aside a Sheriff's sale, and the confirmation thereof and the Sheriff's deed, and for reopening the equity of redemption of the said Walter Yucius and for ordering further in the premises as the Court of Chancery has done above.

Petitioner therefore prays that the said order of the said Chancellor made be wholly reversed, set aside and for nothing holden, and that petitioner may have such other relief in the premises as to this court shall seem proper.

PERRY E. BELFATTO,
Solicitor for and of
Counsel with Appellant.

Affidavit of Service.

Filed September 20, 1935.

NEW JERSEY COURT OF ERRORS AND APPEALS.

10

Between WALTER YUCIUS, Complainant-Appellant, and JOSEPH GOODLICH, Defendant-Respondent.	On Appeal From the Court of Chancery.

20 State of New Jersey,
County of Essex, ss:

Bernard Cherny, of full age, being duly sworn upon his oath, according to law, deposes and says that:

On August 26, 1935, at the request of Perry E. Belfatto, Esquire, solicitor for and of counsel with the complainant-appellant in the above
30 entitled cause, I served upon Russel E. Greco, Esquire, personally, solicitor for and of counsel with the defendant-respondent Joseph Goodlich, a true copy of the Petition of Appeal in the above entitled cause heretofore filed with the Clerk of the above court.

BERNARD CHERNY.

Sworn to and subscribed before me
this 19th day of September, 1935.
40 Theodore Ehren,
An Attorney at Law of New Jersey.

Notice of Argument.

Filed Sept. 23, 1935.

NEW JERSEY COURT OF ERRORS AND APPEALS.

10

Between WALTER YUCIUS, Complainant-Appellant, and JOSEPH GOODLICH, Defendant-Respondent.	On Bill, etc. On Appeal From Court of Chancery. Notice of Argument.

20

To: Russell E. Greco, Esq.
Attorney for Defendant-Respondent
506 North Fourth Street
Harrison, New Jersey

Dear Sir:

Please Take Notice of the argument of the issue joined in this case before the New Jersey Court of Errors and Appeals in the last resort in all causes to be held on the third Tuesday of October next, at ten o'clock in the forenoon, or as soon thereafter as the said court can attend to the same.

30

Dated: September 18, 1935.

Yours respectfully,

PERRY E. BELFATTO,
Solicitor for Complainant-Appellant.

40

Service acknowledged on September 18, 1935, by Russel E. Greco, Solicitor of Defendant-Respondent.

New Jersey Court of Errors and Appeals

Between WALTER YUCIUS, Complainant-Appellant, and JOSEPH GOODLICH, Defendant-Respondent.	On Appeal from the Court of Chancery.

BRIEF OF COMPLAINANT-APPELLANT.

This matter is before the Court on appeal from an order made in the Court of Chancery by Honorable Luther A. Campbell, Chancellor of the State of New Jersey, on advice of his Honor James F. Fielder, Vice Chancellor, bearing date July 30, 1935, in a certain cause in said Court of Chancery wherein the said Walter Yucius was complainant and the said Joseph Goodlich was defendant.

The aforesaid order provided that, in the foregoing cause (an action for the foreclosure of the equity of redemption of mortgaged lands and premises), the sheriff's sale and the confirmation thereof, together with the deed given by the Sheriff of Hudson County to the complainant, be opened, set aside, vacated and for nothing holden, on the ground that the sum of $100, the purchase price of said lands and premises paid by the foreclosing mortgagee, was inadequate.

Statement of Facts.

On April 21, 1933, the defendant-respondent, owner of certain premises in the Town of Kearny, County of Hudson and State of New Jersey, mortgaged said lands and premises to the complainant-appellant for the sum of $1,500, and the defendant-respondent being in default of the provisions of the said mortgage and proceedings for the foreclosure of the equity of redemption having been instituted by the complainant-appellant, it was on December 10, 1934, decreed that said mortgaged lands and premises be sold to satisfy the lien of the complainant-appellant. Thereupon to wit: on January 17, 1935, the Sheriff of Hudson County did expose for sale the said mortgaged lands and premises at public vendue and by virtue of the Writ of Fieri Facias in said case, and complainant-appellant having bid $100 and no other person bidding as much the said Sheriff did then and there openly and publicly in due form of law between the hours of twelve and five in the afternoon strike off and sell the aforesaid lands and premises to the complainant-appellant for the sum of $100, this complainant-appellant being then and there the highest bidder for the same.

On January 17, 1935, the sale was reported to the Chancellor who by his order dated January 28, 1935, did confirm the same and directed the said Sheriff to execute a good and sufficient conveyance in law to the complainant-appellant.

On January 30, 1935, said Sheriff of Hudson County executed and delivered to the complainant-appellant a deed for said premises which deed was received in the Register's Office in the

County of Hudson on February 7, 1935, at 10:43 o'clock A. M. and recorded the same day in book 1851 of deeds for said county on page 353.

Subsequently to wit: on June 24, 1935, the defendant-respondent filed a petition entitled in the above stated cause of foreclosure, praying that the complainant-appellant, upon being paid the sum due to him under the terms of bond and mortgage of April 21, 1933, be required and directed to reconvey by proper conveyance the said lands and premises to the defendant-respondent free from and clear of said bond and mortgage, on the alleged ground that defendant-respondent had never been served with process in said foreclosure action.

On July 30, 1935, on the advice of his Honor James F. Fielder, Vice Chancellor, it was found by the Honorable Luther A. Campbell, Chancellor of the State of New Jersey, that the defendant-respondent had been properly served, but it was ordered that the defendant-respondent have until August 15, 1935, within which time to pay to the complainant-appellant the sum of $1,659.50, being the amount of the final decree herein entered on November 26, 1934, together with interest from said date; together with taxed costs in connection therewith amounting to $147.76 and interest from November 26, 1934; together with the sum of $50 plus interest from December 19, 1934, and the sum of $25 plus interest from December 24, 1934, and the sum of $29.77 plus interest from January 17, 1935, being the Sheriff's fees incurred by said complainant-appellant in connection with the sale of the lands and premises herein involved; together with the sum of $18.16 plus interest from

February 2, 1935, representing water rents paid by the complainant-appellant; together with the sum of $76.22 plus interest from January 30, 1935, and the sum of $74.15 plus interest from February 2, 1935, and the sum of $140 plus interest from January 3, 1935, being the amount of taxes paid by the complainant-appellant to the Tax Collector of the Town of Kearny; together with the sum of $18.60 plus interest from February 21, 1935, representing a fire insurance policy premium paid by the complainant-appellant herein, less the sum of $150 rents collected by the complainant-appellant from the premises herein involved. The basis of this order was the sum of $100 paid at the Sheriff's sale by the complainant-appellant was deemed inadequate by the Court of Chancery.

It was further ordered that upon the failure of the defendant-respondent to pay to the complainant-appellant the aforesaid sum or sums of money by August 15, 1935, as aforesaid, the complainant-appellant should be entitled to cause a Writ of Fieri Facias to be issued directed to the Sheriff of Hudson County to make sale of the said lands and premises.

Defendant-respondent tendered said sum or sums of money, a total of $2,173.18, to the complainant-appellant, who refused to accept the same and who has appealed herein from the order aforesaid.

POINT ONE.

The Court erred in ordering that the Sheriff's sale and the confirmation thereof together with the deed given by the Sheriff to a foreclosing mortgagee be opened, set aside, vacated and for nothing holden, on the sole ground that the Court deemed $100 the purchase price at said sale to be inadequate, where the final decree established the mortgagee's interest at $1,659.50, together with taxed costs amounting to $147.76, together with the sum of $104.77 being Sheriff's fees and where no suit for a deficiency on the bond had been instituted and where as a matter of fact the statutory time for instituting such suit had already expired.

The rule of law has been for a long time well established in New Jersey that inadequacy of purchase price at a Sheriff's sale is not sufficient reason for setting aside the sale and the conveyance thereunder, unless the inadequacy be accompanied by fraud, mistake, illegality or surprise.

The complainant-appellant desires to call the Court's attention to the fact that, in the Vice Chancellor's conclusions and in the order of the Court of Chancery from which this appeal is taken, neither fraud nor mistake nor illegality nor surprise was given as the ground for the relief granted, but merely inadequacy of purchase price. In short the sole basis for the order appealed from was mere inadequacy of purchase price.

In the case of *Smith vs. Duncan,* 16 NJE 240,

(1863), Chancellor Green held that gross inadequacy of price, in the absence of fraud, mistake, illegality or surprise, is not sufficient reason to set aside a Sheriff's sale and conveyance under an execution of law. In that case the property was struck off by the Sheriff for $25 and sold immediately thereafter for $1,500. The application to set aside the sale was dismissed.

In *Kloepping vs. Stellmacher,* 21 NJE 328, the Court found that the property sold by the Sheriff for $52 was worth over $1,500. The Court specifically stated that no inference of fraud could be drawn but ordered a reconveyance on other grounds (mistake). Chancellor Zabriskie said:

> "Inadequacy of price is not sufficient ground to set aside a conveyance, nor is it, *per se,* proof of fraud."

In *Boyd vs. The Hudson City Academical Society,* 24 NJE 349 (1874), property worth $11,000 or $12,000 sold at a foreclosure sale for $7,000. Chancellor Runyon held that the sale could not be set aside on the ground of mere inadequacy of purchase price.

In *White vs. Zust,* 28 NJE 108 (1877), property worth $7,000 for $4,100 only. Chancellor Runyon said:

> "In the case under consideration the property appears to have been fairly sold, and though the price at which it was sold is below its value, that consideration, it is hardly necessary to say, is not of itself, under the circumstances, sufficient to induce the Court to set aside the sale. The motion will be denied."

The case of *Morrisse vs. Inglis,* 46 NJE 306,

decided by the Court of Errors and Appeals, is a leading case on the subject and is quoted and cited with approval in numerous subsequent decisions. There, property sold by the Sheriff for $28,570 was found to be worth considerably more and the sum of $31,500 was offered for the same. Justice Magie speaking for our highest Court said (page 308):

> "It has long been the settled doctrine and practice of the Courts of this State, that judicial sales, made without irregularity or fraud and not affected by accident or mistake, will not be set aside for mere inadequacy of price."

And at page 309, he said:

> "The interest of owners in particular cases must give way to the maintenance of a practice which, in general, is in the highest degree beneficial."

Chancellor McGill approves of the opinion in the *Morrisse* case, *supra,* in *Bethlehem Iron Co. vs. Philadelphia and Sea Shore Railway Co.,* 49 NJE 356. There, property worth about $400,000 was sold by the Sheriff for $185,000. A new bid for $225,000 was offered. The Chancellor said:

> "It is plain, under the circumstances, that, however much I may desire to secure the additional $40,000 for distribution among the creditors of the insolvent company, I can not refuse to confirm the sale."

In *Leary's* case, 50 NJE 383 (1892), Vice Chancellor Green cites and quotes from *Morrisse vs. Inglis, supra,* with approval.

The New Jersey Court of Errors and Ap-

peals, by a *per curiam* opinion, affirms a decision and opinion by Vice Chancellor Pitney in *Bliss vs. New York Life Insurance Co.,* 51 NJE 630. On the application to set aside a foreclosure sale the Vice Chancellor said:

> "The sale can not be disturbed by reason of any inadequacy of price."

In *Rogers vs. Rogers Locomotive Co.,* 62 NJE 12, application to reopen a sale was made and a new bid, $53,000 higher than the old, was offered. The Court denied the application following the rule set down in *Morrisse vs. Inglis, supra; Bethlehem Iron Co. vs. Philadelphia and Sea Shore Railway Co., supra; Bliss vs. New York Life Insurance Co., supra;* and *Leary's* case, *supra.*

In *Hoffman vs. Godfrey,* 79 NJE 617, the property sold for $78,000. A new bid of $115,000 was offered. The Court of Errors and Appeals in this case again held that inadequacy of purchase price was not sufficient reason to disturb the Sheriff's sale.

In *Fleming vs. Fleming Hotel Co.,* 70 NJE 509, Chancellor Bergen said:

> "The price obtained was $6,000, and if inadequacy of price was the sole ground upon which objection was based it would not in my judgment justify me in refusing to confirm this sale, notwithstanding the fact that on the hearing a purchaser was tendered who is now willing to bid $8,000 and to give security for the faithful performance of his offer."

In *Palladino vs. Hulpert,* 72 NJE 270 (1906), Vice Chancellor Garrison stated (page 279) on a motion to set aside a Sheriff's sale:

> "There are many jurisdictions in which one whose land has been sold by judicial process has a certain length of time within which to redeem the same. This right is created and regulated by statute. There is no such statute in New Jersey. The Court can not legislate. The complainant herein, in my view of the circumstances and the law, is seeking nothing more or less than the right to redeem. He does not show any existing equity, but does disclose a situation which demonstrates, perhaps, the advisability of the creation of a new equity, namely, the right to redeem property sold by judicial process. I can not find any authority in our law establishing such right."

In *Knickerbocker Trust Co. vs. Carteret Steel Co.,* 81 NJE 130 (1912), Vice Chancellor Howell followed the general rule relating to inadequacy of purchase price, and his holding was affirmed by the Court of Errors and Appeals, 81 NJE 518.

In *Hurley vs. Pottash,* 93 NJE 167 (1921), property worth about $18,000 brought only $7,-200 at the Sheriff's sale. Amount of complainant's decree was $14,250. A new bid of $15,000 was offered and Vice Chancellor Leaming ordered a resale, refusing confirmation. The Court of Errors and Appeals reversed the decision and sent the case back to the Chancery Court with instructions to confirm the sale. Justice Bergen speaking for the Court of Errors and Appeals said:

> "The only unqualified offer to bid at a resale of the mortgaged premises is about $750 below the amount due on complainant's mortgage, and as he was the purchaser, he, in effect, took the premises to

> protect his debt, and, under such circumstances, the inadequacy in price was not so gross as to permit an inference of fraud."

In the case of *Ridgelawn Cemetery vs. Jacobs,* 105 NJE 579 (1930), the bill recites that in 1926 the defendant secured judgment against the complainant for $475 and that more than two years later the said defendant issued execution upon lands owned by the complainant and worth $24,000 and the defendant bought in said lands for said execution sale for the sum of $150. The bill of complaint prayed for a redemption of the property, the complainant having offered due equity. Vice Chancellor Bentley dismissed the bill, saying (page 581):

> "There can be no doubt but that the complainant in this case will suffer hardship, but it is not within the power of this Court to afford relief in every case of hardship."

And at page 582, he said:

> "Our policy seems to be that one against whom a judgment is taken shall protect himself as best he can when his property is legally offered for sale under execution. It should have been previously said that the judgment has not been attached and that there is no reflection upon the manner in which this sale was held. In view of these facts, it seems to me that it would be most improper for this Court to interfere. I can conceive of no equity rule which could be laid down to govern a case like this which would comply with the prayer of the bill."

In *Hecht vs. Hoogmoed,* 110 NJE 163, on a bill to set aside a Sheriff's sale, Vice Chancellor Lewis said:

> "It is claimed that the accounts receivable and other assets bought by Peters at the Sheriff's sale for $250 were actually worth $12,000, and that this disproportion is itself proof of fraud. It has, however, been well settled that mere inadequacy of sale price is not sufficient in itself to invalidate the sale."

This case was affirmed by the Court of Errors and Appeals in 111 NJE 331.

In *Federal Title, etc., Guaranty Co. vs. Lowenstein,* 113 NJE 200 (1933), Vice Chancellor Berry said that he would withhold confirmation of the foreclosure sale unless the complainant stipulates that if there is a deficiency suit on the bond, it, the complainant, will credit the defendant with the fair value of the mortgaged premises.

The Court will please consider that, in the instant case, there is no question whatsoever regarding any deficiency suit, as the time for starting same had elapsed before application by the defendant-respondent herein was made to set aside the sale, and this fact was brought out in open court. At the Sheriff's sale herein complainant-appellant bid the sum of $100 for the mortgaged premises herein, there being no other bidders. The amount of the final decree, taxed costs and Sheriff's costs however is $1,-912.03. In view, however, of the fact that there was no deficiency suit involved, the purchase price to the complainant-appellant was really $1,912.03 and not the mere nominal sum of $100. The Court no doubt will take judicial notice of the fact that it is customary at foreclosure sales where there is no competitive bidding for the complainant to bid a nominal sum in order

to avoid additional Sheriff's fees. The fact that the complainant-appellant in the case at bar bid only $100 instead of $1,912.03 certainly did not harm the defendant-respondent nor did it effect any disadvantage to him. It is only reasonable and fair then to assume that the purchase price herein was not the sum of $100 but the sum of $1,912.03. *Vide, Hurley vs. Pottash, supra.*

The Vice Chancellor below, however, seems to base his conclusions upon the fact that only $100 was bid at the Sheriff's sale and that because the affidavits of the complainant-appellant himself admit that the property is worth about $3,000, therefore the price is inadequate and the sale should be set aside. The lower Court made no finding of fraud or any other additional element but based its ruling on the sole ground of inadequacy of purchase price. The affidavits of the defendant-respondent set the value of the property at approximately $8,000. It should be remembered however, that the Court of Chancery made no finding of value but seems to have concluded that even if the value was $3,000 the price paid was still inadequate.

From the affidavits submitted on both sides in the Court below the difference between the purchase price and the value of the property is somewhere between $1,000 and $6,000. The complainant-appellant wishes to point out the difference between value and purchase price in some of the previous decisions (all previously cited), in all of which the sales where upheld or if set aside were done so on grounds other than inadequacy of price:

Case	*Difference Between Value and Purchase Price*
Smith vs. Duncan	$ 1,475.00
Kloepping vs. Stellmacher	1,448.00
Boyd vs. The Hudson City Academical Society	$4,000 or 5,000.00
Morrisse vs. Inglis	2,930.00
White vs. Zust	2,900.00
Bethlehem Iron Co. vs. Philadelphia Sea Shore Railway Co.	215,000.00
Rogers vs. Rogers Locomotive Co.	53,000.00
Hoffman vs. Godfrey	37,000.00
Fleming vs. Fleming Hotel Co.	2,000.00
Hurley vs. Pottash	10,800.00
West Ridgelawn Cemetery vs. Jacobs	23,850.00
Hecht vs. Hoogmoed	11,750.00

Complainant-appellant wishes also to point out from previous cases all above cited the percentage of true value paid and in each case upheld, or if set aside, set aside on grounds other than inadequacy of purchase price. In the instant case the purchase price (assuming same to be $1,912.03), was, according to affidavits submitted on both sides in the Court below, between 25% and 66 2/3%. In other cases the percentages paid are as follows:

Case	*Approximate Percentage of True Value Paid*
Smith vs. Duncan	1 2/3
Kloepping vs. Stellmacher	3 1/2
Boyd vs. The Hudson City Academical Society	58 1/3
White vs. Zust	58 1/2
Morrisse vs. Inglis	90 2/3
Bethlehem Iron Co. vs. Philadelphia Sea Shore Railway Co.	46 1/4
Hoffman vs. Godfrey	68
Fleming vs. Fleming Hotel Co.	75
Hurley vs. Pottash	40
West Ridgelawn Cemetery vs. Jacobs	5/8
Hecht vs. Hoogmoed	2

The Court below therefore erred in ordering that the Sheriff's sale and the confirmation thereof, together with the deed given by the Sheriff to the complainant-appellant, a foreclosing mortgagee be opened, set aside, vacated and for nothing holden.

It is herefore respectfully urged for the reasons set forth above that the order of the Chancellor be reversed.

PERRY E. BELFATTO,
Solicitor for and of counsel with
Complainant-Appellant.

New Jersey Court of Errors and Appeals

Between: WALTER YUCIUS, Complainant-Appellant, and JOSEPH GOODLICH, Defendant-Respondent.	On Appeal from the Court of Chancery.

BRIEF FOR DEFENDANT-RESPONDENT.

Facts.

The facts as set out in the brief of the complainant-appellant are substantially correct except wherein it is stated that the order made by the Court of Chancery bearing date July 30th, 1935, setting aside the sheriff's sale and the confirmation thereof was predicated *solely* upon the fact that the sum of $100 paid at the sheriff's sale by the complainant-appellant was deemed inadequate by the Court of Chancery.

It is not denied that the defendant-respondent, a man of seventy-one years of age, uneducated; unable to understand the English language; destitute and having no knowledge of the law, suddenly found that his home, his only asset, had been sold away and that he was about to be ejected therefrom. Upon being made aware of that fact, he immediately

offered to repay to the complainant-appellant the indebtedness due him, together with all of the expenses incurred by him in connection with the foreclosure. The complainant-appellant refused the offer whereupon the defendant-respondent filed a petition in the Court of Chancery and obtained a rule to show cause why the sale should not be set aside. On the return date of the rule to show cause, the matter was argued by counsel and his Honor, James F. Fielder, Vice Chancellor, who heard the motion, concluded that the sheriff's sale, confirmation thereof, together with the deed given by the sheriff to the complainant-appellant should be set aside and for nothing holden on the ground that because of the defendant-respondent's stupidity, ignorance and lack of knowledge of the law the property at the sale brought a most inadequate price and was sold to the complainant-appellant for a sum which, under the circumstances, shocked the Court's conscience (see page 46 of State of Case, lines 1 to 39).

In compliance with the order subsequently made by the Court of Chancery, on July 30th, 1935, the defendant-respondent tendered to the complainant-appellant the sum of $2,173.18 (which sum was stipulated by counsel for the respective parties to be correct under the terms of the said order) but the complainant-appellant refused to accept the said sum of money but expressed his willingness to reconvey the premises to the defendant-respondent for $3,500.

ANSWER TO POINT ONE.

(a) The Court did not err in ordering that the Sheriff's sale and the confirmation thereof, together with the deed given by the Sheriff be set aside, vacated and for nothing holden because where the price obtained at a judicial sale is so GROSSLY INADEQUATE as to shock the Court's conscience, the Court of Chancery has the inherent right to order that the sale be set aside.

What may be considered inadequate or what facts may shock the Court's conscience must necessarily depend upon the peculiar circumstances of each individual case. Those facts that may shock the conscience of the Court in one case may be so justly proper as to bar relief in another case involving different circumstances. The fatal weakness of the appellant's reasoning lies in that he completely overlooks that the Chancery Court found as a FACT that its conscience had been shocked by the INADEQUACY OF PRICE and by this appeal seeks a review of said order for the mere purpose of substituting the discretion of this Court for that of the Court of Chancery.

The complainant-appellant cites *Smith v. Duncan,* 16 N. J. Equity, page 240. While it is true that the Court in that case dismissed the application to set aside the sale, relief was denied because of the complainant's negligence. Chancellor Green said (page 242):

> "The evidence presents a case of inexcusable negligence and inattention to his interest, on the part of the complainant."

Furthermore, in that case relief was sought against a third party who had purchased the premises at the judicial sale for a valuable consideration.

The complainant-appellant also cites the case of *Kloepping v. Stellmacher,* 21 N. J. Equity, page 328, in which case the Court ordered a reconveyance. Chancellor Zabriskie in that case said (page 329):

> "* * * but when such gross inadequacy is combined with fraud or mistake, or any other ground of relief, in equity it will incline the court strongly to afford such relief. The sale in this case is a great oppression on the complainants. They are ignorant, stupid, perverse and poor. They lose by it all their property, and are ill fitted to acquire more. They are such as this court should incline to protect, notwithstanding perverseness."

And at page 330, he said:

> "But a court of equity will set aside a sheriff's sale, even if there has been no fraud, where there is a gross inadequacy of price, and the party, by reason of mistake or misapprehension, did not attend the sale and the sacrifice was caused by such mistake or misapprehension. In this case the sacrifice is so great, and its consequences to persons in the condition of the complainants so important, that I cannot believe that they comprehended and believed the fact, that this property was to be sold by the Sheriff for this debt, at the time when it was sold. They were both foreigners, spoke and understood the English language badly."

The above case is very nearly on all fours with the case at bar. In the present case the defendant-respondent, because of his stupidity and lack of understanding, either had no knowledge of the pendency of foreclosure proceedings or misapprehended the notice thereof served upon him and as a result thereof, his property was sacrificed and sold at a grossly inadequate price (see pages 8 and 9 of State of Case).

The complainant-appellant also cites the case of *Morrisse v. Inglis,* 46 N. J. Equity, page 306, in which case relief was sought against a third bona fide purchaser. Mr. Justice Magie, speaking for Court of Errors and Appeals, at page 308, said:

> "Whether a gross inadequacy of price will, of itself, be considered proof of fraud, or justify interference, has elicited somewhat variant views from the court of chancery. But here there was no gross inadequacy of price.
>
> "The later offer for the land exceeded the amount produced by the sale by only ten and twenty-five hundredths per cent thereof."

The complainant-appellant also cites the case of *Bethlehem Iron Co. v. Philadelphia and Sea Shore Railway Co.,* 49 N. J. Equity, page 356. In that case the Court found as a fact that the offer made by the objectors to the sale was not so much below the price obtained at the sale and Chancellor McGill at page 361, said:

> "* * * for it cannot be said that the price bid by Mr. Garrison, $185,000, is so much below the value offered by the objectors, $225,000, as to shock the conscience. The objectors offer an advance

> of twenty-one per cent. If their offer be taken as the value of the property, it exhibits that Mr. Garrison's bid was more than four-fifths of that value. Such a bid, at a fair public sale, does not shock the conscience."

The complainant-appellant also cites *Leary's* case, 50 N. J. Equity, page 383. Vice Chancellor Green in that case discharged the order to show cause why sale should not be set aside because the offer and the amount produced at the sale was but a fraction over six per cent. The property had been sold for $3,300 and an offer of $3,500 was later made.

The appellant in his brief also cites the case of *Bliss v. New York Life Insurance Company,* 51 N. J. Equity, page 630. In that case property worth $25,000 was sold for $19,475. Vice Chancellor Pitney said (page 631):

> "If, however, the sale was so managed as to discourage bidders and to result in a considerable sacrifice, that circumstance might, as it seems to me, justify the court in setting aside the sale, even though the purchaser (as is the case here) had nothing to do with such mismanagement."

The complainant-appellant also cites the case of *Rogers v. Rogers Locomotive Co.,* 62 N. J. Equity, page 111. The Court in that case dismissed the application to set the sale aside on various grounds. Vice Chancellor Emery, at page 119, points out:

> "In the present case the increase offered was $53,000 in cash payment (less than ten per cent), the other terms of the contract not being proposed to be changed."

And at page 122, he further says:

> "The change in the situation of the purchasers and of the receivers since the confirmation, and the delay of the petitioner in making his application to set aside the order, are sufficient reasons for refusing to disturb the order."

The complainant-appellant also relies upon the case of *Palladino v. Hilpert,* 72 N. J. Equity, page 270. In that case Vice Chancellor Green stated (page 276):

> "It is not disputed that at the time of the sale there were, including the mortgage debt, encumbrances amounting to $13,049.78. If to this is added the $600 bid by Scutellero at the sale, we have a total of $13,649.78. So that even if the complainant's value be taken as the true one, it cannot be said that there was any gross inadequacy of price, or, in fine, any inadequacy whatever."

The appellant also relies upon the case of *Knickerbocker Trust Co. v. Carteret Steel Co.,* 81 N. J. Equity, page 130, and *Hurley v. Pottash,* 93 N. J. Equity, page 167. The Court in those cases found as a fact that the amount bid for the property was not grossly inadequate or that there was any inadequacy at all.

The complainant-appellant also cites the case of *Ridgelawn Cemetery v. Jacobs,* 105 N. J. Equity, page 579. Vice Chancellor Bentley in that case dismissed the bill on the ground that the defendant had violated no equitable principle or doctrine in having waited two years before taking steps to provide for the satisfaction of his judgment. In that case a judg-

ment at law had been secured against the complainant, and the defendant waited two years before taking steps to satisfy his judgment. The Vice Chancellor refused to interfere with the orderly process of another court.

Complainant-appellant also cites the case of *Hecht v. Hoogmoed,* 110 N. J. Equity, page 163. That case was appealed to the Court of Errors and Appeals, *vide Hecht v. Hoogmoed,* 111 N. J. Equity, page 331, in which Mr. Justice Wells, speaking for our highest court, at page 333 says:

> "It is equally well settled that a judicial sale, resulting from proceedings entirely regular will be set aside even if there has been no fraud where there is gross inadequacy of price, combined with mistake, surprise, misapprehension or accident, as a result of which the party complaining has been prevented from attending the sale and protecting his interests."

The complainant-appellant also cites the case of *Federal Title, etc., Guaranty Co. v. Lowenstein,* 113 Equity, page 200. In that case Vice Chancellor Berry (at page 204) said:

> "While ordinarily confirmation of a judicial sale will not be refused because of mere inadequacy of price, slight circumstances in addition thereto, as shown by a long line of cases will suffice to move the conscience of the Court to refuse confirmation; and gross inadequacy of price sufficient to shock the conscience of the Court compels an inference of fraud."

In 35 Corpus Juris, page 103, it is stated that:

> "The general rule against setting aside or vacating a sale for inadequacy of price does not apply where in connection with the inadequacy of price, there are other circumstances having a tendency to cause such inadequacy or any apparent unfairness or impropriety. Even though such additional circumstances are slight, and if unaccompanied by inadequacy of price, might not furnish sufficient ground for vacating the sale, they furnish the ground when coupled with inadequacy."

In *Howell v. Hester,* 4 N. J. Equity, page 266 (1843), property worth $500 was sold for $125. The Chancellor in that case set the sale aside on the ground that the petitioner, who was old and infirm, did not understand business and that her son, whom she had entrusted to attend the sale, mistook the date and was not present.

In the case of *Campbell v. Gardner,* 11 N. J. Equity, page 423 (1857), property worth $3,500 was sold for $500. Chancellor Williamson at page 429 said:

> "I think, after carefully examining the evidence, I may state the case to be this: The subpoena was served according to the statute; but although the defendant had legal notice, through some mishap, she was prevented having actual notice of the contents of the process. In this case her property was sacrificed. It was worth $3,500. It was sold for $500. The case is not a strong one, but there are some considerations to which I have not alluded, which incline me to regard the case with indulgence. The defendant is a woman advanced in life. She was the sole defendant in the suit, and, as the evidence shows, had no one upon whom she

> could rely for aid and advice with any confidence. This is a matter deserving some consideration, for it may be said, that it was culpable negligence in her not to attend to the notice that was served upon her, and that, while the Court may properly aid a party who has been innocently misled, it will extend no indulgence to one to whom culpable negligence can be attributed. This is certainly correct, and it is therefore proper to look at the character and situation of the party in order to ascertain what degree of negligence is properly to be imputed."

And at page 429, he further says:

> "There is another consideration. The purchaser is the mortgagee, and not a stranger. I think, where the mortgagee is the purchaser, and the party applying to open the sale offers to pay all the money due upon the security, and there has been really a mistake upon the part of the owner of the equity of redemption, owing to which the property has been sacrificed, the Court ought to regard an application for resale with more indulgence than when a stranger is the purchaser."

The same doctrine was followed in the case of *Strong v. Smith,* 68 N. J. Equity, page 650 (1904), by the Court of Errors and Appeals in a *per curiam* opinion wherein the Court cites with approval the case of *Campbell v. Gardner, supra.* At page 653 the Court states:

> "The control of the Court over the use of its process ought to be liberally exercised to prevent a wrong; in this case the sale is not to an indifferent party but to a prior encumbrancer who can

> suffer no injury if protected in the payment of his debt, and the controlling or judicial sales to bring about equitable results has long been the practice of the courts of this state."

In 42 Corpus Juris, page 235, it is stated that:

> "The general rule against setting aside a foreclosure sale for inadequacy of price does not apply where there are other circumstances connected therewith having a tendency to cause such inadequacy. The fact that the mortgagee becomes the purchaser is a circumstance to be given some weight in reaching a determination as to whether the sale should or should not be vacated. The sale being set aside upon slighter grounds where the mortgagee purchases than where an outsider becomes the purchaser."

It is respectfully called to the attention of the Court that in the case *sub judice* the property was sold at the sheriff's sale to the complainant-appellant, the prior encumbrancer, and that an offer to repay the entire amount of his debt was made to him, which tender he refused to accept.

In the case of *Smith v. Alton,* 22 N. J. Equity, page 572 (1871), Chief Justice Beasley, speaking for the Court of Errors and Appeals, said:

> "This was an appeal from the order of the Chancellor opening the decree to sell in a foreclosure sale, setting aside the sheriff's sale and letting the mortgagor in to make defence. We think this order was proper and equitable. The decree and sale were a surprise to the defendant, and the property has been greatly sacrificed."

In the case of *Schilling v. Lintner,* 43 N. J. Equity, page 444 (1887), also very nearly on all fours with the present case, the petitioner was a woman of seventy-two years of age and little acquainted with the English language. She lived in the premises and had been regularly served with process of subpoena. The property was worth $2,000 and had been sold at the sheriff's sale for $1,380. After the sale, the petitioner raised the money and made a tender thereof, which tender was refused. Vice Chancellor Bird, at page 445, states:

> "It has been urged that the sale was open and fair, and that if the property did not bring the full price, it brought a fair price. It is also urged that sales of this character should not be interfered with by discouraging bidders by depriving them of the benefit of bids which they have fairly obtained. These considerations are always taken into account, and are conceded to be of great importance. But the rights of property under such circumstances are equally important. It is very difficult for a court of equity to make up its mind under such circumstances, to deprive an individual of her estate when, by refusing to do so, it takes nothing from another except the right which that other has acquired by a bid at auction. This is not mere sentiment; it is legal justice and equity."

The doctrine laid down in the case of *Kloepping v. Stellmacher, supra,* was followed in the case of *Raphael v. Zehner,* 56 N. J. Equity, page 836 (1898), wherein the Court of Errors and Appeals in a *per curiam* opinion set aside a sheriff's sale and at page 837 it stated:

> "The ground upon which I reach this conclusion, stated generally, is that I think the entire evidence in the case sufficiently establishes that there was a gross inadequacy of price at the sale, and that, by reason of mistake or misapprehension, the complainant did not attend the sale or protect her interest at the sale and that the sacrifice of the property was the result of this mistake or misapprehension. The case is within reach of equitable relief upon the principles declared by Chancellor Zabriskie in *Kloepping v. Stellmacher.*"

In *Porch v. Agnew Company,* 66 N. J. Equity, page 232 (1904), the property was worth $60,000 to $100,000. The receiver accepted bids of $33,000 and the Court refused confirmation of the sale. Vice Chancellor Grey at page 235 said:

> "The property is shown to be worth from two to three times—probably four times—the amount of the bids which the receiver has reported. On that ground, under the circumstances, I think I am bound to refuse to confirm the sale."

And, by parity of reasoning, it follows that the Court of Chancery has the same power and jurisdiction to set aside a sale as to refuse confirmation thereof.

In *Murray v. D'Orsi,* 98 N. J. Equity, page 548 (1925), property worth $11,250 was sold for $8,000. Vice Chancellor Bentley dismissed the petition to set aside the sale but distinctly intimated that the sale would have been set aside if it were shown that a higher price could be obtained at a resale. At page 549 he states:

> "There is no such shocking contrast here as should result in setting the sale aside."

In the case of *New Jersey National Bank and Trust Co. v. Savemore Realty Co.,* 107 N. J. Equity, page 478 (1931), property worth between $40,000 and $42,000 was sold at a sheriff's sale for $500. The Court of Errors and Appeals, speaking through Mr. Justice Wells, said that the sales price was unconscionably below the value of the property and directed that a resale be had.

In the case of *Fruzynski v. Jablonski,* 117 N. J. Equity, page 117 (1934), Mr. Justice Lloyd, speaking for the Court of Errors and Appeals, said.

> "If in a given case a property is sold so much below its market value as to shock the conscience of the court, the remedy is to set aside the same before confirmation (of, if the circumstances justify, probably after confirmation) and effect a resale."

The doctrine set forth in the case of *Fruzynski v. Jablonski, supra,* is followed in the case of *Young v. Weber,* 117 N. J. Equity, page 242, and in the case of *Blue Stone B. & L. Ass'n v. Glasser*, 117 N. J. Equity, page 392.

In the case at bar, the defendant-respondent states that the present market value of his property is approximately $8,000 (see page 10 of State of Case, line 12). The complainant-appellant submits two affidavits stating that the value of the property is between $3,176 and $2,859.33 (see pages 31 and 35 of State of Case, lines 30 and 18 respectively). At the sheriff's

sale the property was sold to the mortgagee (complainant-appellant) for $100. If the market value of the property is as alleged by the defendant-respondent, then the property was sold for eighty times less than its value. On the other hand, if the property was worth only approximately $3,000 as alleged by the appellant, even then the property was sold for thirty times below its fair market value. The position of the appellant is not strengthened by his refusal to reconvey the property for less than $3,500.

A review of a long line of cases dealing with the subject-matter compels the thought that a court of equity is ever ready to aid the unfortunate, and that principle is strikingly exemplified by its willingness to set aside a judicial sale for a GROSSLY inadequate price, and, *a fortiori,* when such inadequacy is coupled with other circumstances that warrant relief.

In this posture of the case, it cannot otherwise be urged but that the property was sold for a price unconscionably below its fair market value, and, as the Court has stated, for a sum which shocks the Court's conscience (see page 46 of State of Case, lines 38 and 39).

(b) The Court did not err in ordering that the Sheriff's sale and the confirmation thereof together with the deed given by the Sheriff to the foreclosing mortgagee be opened, set aside, vacated and for nothing holden because it concluded as a FACT that taking into consideration ALL of the circumstances involved, the property brought a GROSS INADEQUATE price so as to SHOCK THE COURT'S CONSCIENCE.

POINT ONE ON BEHALF OF THE DEFENDANT-RESPONDENT.

The Court did not err in setting aside the Sheriff's sale and the confirmation thereof because it is within the inherent discretionary right of the Court of Chancery to open, amend or modify its decrees when, in its judgment, to do so will further the ends of justice.

In 42 Corpus Juris, at page 160, it is stated:

> "In conformity to general rules a court of record has the power to open or vacate its judgment for the foreclosure of a mortgage; that the granting of such relief is discretionary."

In 34 Corpus Juris, at page 252, it is stated:

> "The authority to vacate or set aside its own judgments is inherently incident to all courts of record or general jurisdiction, including Courts of Equity."

The case of *Day v. Allaire,* 31 N. J. Equity, page 303 (1879), is a leading case on the subject and is quoted and cited with approval in numerous subsequent decisions. Mr. Justice Scudder, speaking for the Court of Errors and Appeals, at page 315, said:

> "The Court of Chancery has discretionary power, even after enrollment to open a regular decree obtained by default for the purpose of giving the defendant an opportunity to make a defense on the merits, where he has been deprived of such defense, either by mistake or accident, or by the neglect of his solicitor."

The case of *Williams, Jr., v. Lowe,* 79 N. J. Equity, page 173 (1911), is a Court of Errors and Appeals case. Mr. Justice Garrison, speaking for our highest court, said:

> "Whether or not a final decree should be opened is discretionary in the courts of chancery and where an order refusing to open a decree was neither an abuse of such discretion nor the result of mistake or of any imposition practiced on that court, this court will not review such order for the mere purpose of substituting its discretion for that of the court of chancery."

The doctrine of this case was approved and followed in the case of *Sandford v. Wellborn,* 85 N. J. Equity, page 577.

In *Morris v. Glaser,* 106 N. J. Equity, page 585, Vice Chancellor Berry, speaking for the Chancellor, at page 591 says:

> "The opening and amending of a final decree is a matter lying in the discretion of the court and the court may of its own motion open a decree if in its judgment the ends of justice require it."

Again in the case of *Federal Title, etc., Guaranty Co. v. Lowenstein, supra,* Vice Chancellor Berry, at page 207, says:

> "Rules of court are adopted as a guide to facilitate its business, but may be altered, or suspended at the court's will to meet the ends of justice. * * *
>
> "But quite independently of statute or rule of court, the Court of Chancery has inherent power to order a resale of mortgaged premises and to control its process directed to that end. This power was exercised by the English Court of Chancery as early as the reign of Charles I."

And at page 208 he continues:

> "Constitutionally, this court has succeeded to all the powers and jurisdictions anciently exercised by the high court of chancery of the mother country, unimpaired by legislative enactment."

In *Young v. Weber, supra,* at page 246, Vice Chancellor Berry again says:

> "The power of this court (Chancery Court) to control its own decrees, to reopen, set aside, or modify even after enrollment, is as ancient as the court itself, and has long been recognized. Indeed, the power was exercised by the chancery court of the province of New Jersey prior to 1696. That it was exercised by the court of chancery in England, the source of our inherent jurisdiction, long prior to the establishment of courts of equity in this province, is unquestionably settled." In *Sapinsky v. Stout,* 101 N. J. Equity, page 813, the Court of Errors and Appeals held that: "A court of equity will set aside a sheriff's sale on proper terms, even where there has been no fraud, where there is gross inadequacy of price and the party, by reason of mistake or misapprehension, did not attend the sale, and the sacrifice was caused by such mistake or misapprehension. This power of the Court of Chanvery is not now denied in the appellate court, but is again expressly affirmed."

(b) The Court did not err in ordering that the Sheriff's sale and the confirmation thereof be set aside because where the circumstances warrant it, to do so is well within the inherited discretionary power of the Court of Chancery.

CONCLUSION.

The defendant-respondent respectfully urges that the appeal herein be dismissed, and that the order of the Chancellor, be, in all respects affirmed.

Respectfully submitted,

RUSSEL E. GRECO,
Solicitor for and of Counsel
with Defendant-Respondent.

THE REPORTER CO., WALTON, N. Y.
New Jersey Representative:
F. W. Baker, Room 1111, 60 Park Place, Newark
Telephone. MArket 2-6194

New Jersey Court of Errors and Appeals

Between: WALTER YUCIUS, Complainant-Appellant, and JOSEPH GOODLICH, Defendant-Respondent.	On Appeal from the Court of Chancery.

REPLYING BRIEF OF COMPLAINANT-APPELLANT.

Facts.

The complainant-appellant takes exception to the additional alleged facts set forth by the defendant-respondent in his brief. The defendant-respondent states that as a matter of fact the order appealed from herein was based "on the ground that because of the defendant-respondent's stupidity, ignorance and lack of knowledge of the law the property at the sale brought a most inadequate price" (page 2 of the defendant-respondent's brief).

There was no such finding (vide conclusions of Vice Chancellor, State of Case, pages 45-48).

It is true that the Vice Chancellor hereinbelow made mention of the defendant-respondent's stupidity and ignorance and lack of knowledge

of the law and also made note of the defendant-respondent's claim of the lack of proper service but nowhere in his conclusion did the Vice Chancellor hereinbelow set forth any of the foregoing as a ground for the order. In fact the Vice Chancellor on page 46 of the State of Case, line 26, said:

> "I have sufficient doubt of the accuracy of his claim that he was never served with subpoena, to be unwilling to grant him relief on that ground, but I do think that when his property sold for only $100," etc., "the property brought a most inadequate price and was sold to the complainant for a sum which, under the circumstances, shocks the Court's conscience."

Nowhere in the Vice Chancellor's conclusions, however, is there a finding that the sum for which the property was sold at the Sheriff's sale was caused by the defendant-respondent's stupidity, ignorance and lack of knowledge of the law.

The complainant-appellant wishes to refer your Honors to the order upon which this appeal is based. In that order (vide State of Case, page 48, at page 50, line 9) the Court said:

> "And it further appearing that said lands and premises were sold by the Sheriff of Hudson County to the complainant herein for the sum of $100, which said sum the Court hereby deems to be inadequate."

It is obvious therefore that the sole basis for the order was the inadequacy of the purchase price at the Sheriff's sale and that the defendant-respondent is mistaken when he says that it

was based on any other additional circumstances or facts.

Moreover, from the proofs before the Vice Chancellor, a finding that the defendant-respondent was stupid and ignorant and lacked knowledge of the law would be improper. It is conceded that the amended petition and the affidavit of the defendant-respondent himself alleged such stupidity and ignorance, and so forth. But it is the contention of the complainant-appellant that this was not sufficient basis for such a finding of fact. In New Jersey Chancery Practice and Precedents (Kocher and Trier), Volume 1, page 459, Section 745, it is said:

> "On an application by petition, verified by the affidavits of the party, to set aside a sale the material facts alleged in the petition must be proved. The affidavit of the party, except as to the facts peculiarly within his own knowledge, *must be supported by other evidence.*" (Italics ours.)

And in the case of *Coxe v. Halstead,* 2 N. J. E. 311, at page 312, Chancellor Pennington said:

> "The defendants seek relief against a sale made under the process of the Court, upon the ground that the sale was irregular and illegal. The allegation must be sustained by evidence. The petition, verified by the affidavit of the party, is a foundation for the rule to show cause, and will of course be read upon the argument of the rule; but it is not complete evidence, unsupported by other proof, of the charges therein contained, except as to matters peculiarly and exclusively within the defendant's own knowledge."

See also to the same effect *In re Trenton Street Railway Co.,* 58 N. J. E. 533 at pages 536 and 537, decided by the Court of Errors and Appeals.

The complainant-appellant takes exception, likewise, to the statement contained in the last 2 lines on page 2 of the brief of the defendant-respondent wherein it is stated that the complainant-appellant "expressed the willingness to reconvey the premises to the defendant-respondent for $3,500."

Nowhere in the State of Case herein does this appear even as an allegation and complainant-appellant denies the same.

Reply to Answer to Point One.

The Court will please note near the top of page 3 of the defendant-respondent's brief the words in bold type "grossly inadequate." I have read through the complete State of Case, paying particular attention to the petition of the defendant-respondent and to the conclusions of the Vice Chancellor and to the order of the Court below, and nowhere therein do I find either a charge of gross inadequacy or a finding of gross inadequacy.

The defendant-respondent's primary contention is that the complainant-appellant by this appeal is seeking merely to review the discretion of the Court of Chancery. From the numerous cases cited in the complainant-appellant's brief, it is obvious that the discretion of the Vice Chancellor is limited and bound by rules of law and that the exercise of discretion

is to be permitted only when a proper case is spelled out.

The defendant-respondent cites and quotes from many of the cases cited and quoted by the complainant-appellant. Both sides are in accord that where there is a gross inadequacy of price combined with fraud, mistake or other ground of relief, then the court may properly exercise its discretion. But where the inadequacy is not combined with any other element such as fraud or mistake, and so forth, then the court may not properly set aside a Sheriff's sale.

In the instant case, as has been previously pointed out, there was a finding of inadequacy of purchase price and there was no other finding of fact, and, under the ruling in the case of *Coxe v. Halstead,* 2 N. J. E. 311, cited above, there could be no other finding of fact because the allegations of the defendant-respondent herein were not corroborated in any degree.

Defendant-respondent cites many of the cases quoted by the complainant-appellant and attempts to point out distinctions between those cases and the instant case, but your Honors will note that nowhere in the defendant-respondent's brief is it contended that the quotations used by the complainant-appellant are an improper statement of the law.

The defendant-respondent argues that where there is inadequacy of price, slight circumstances in addition thereto will suffice to move the conscience of the court. But as has been argued there are in the present case not even slight circumstances in addition to an alleged inadequacy.

Defendant-respondent stresses likewise the importance of the fact that the purchaser at the Sheriff's sale was not a disinterested person but the foreclosing mortgagee and urges that this should bear great weight. It is contended by the complainant-appellant, however, that the fact that the foreclosing mortgagee was the purchaser is not of importance in the instant case, inasmuch as there was combined with the element of inadequacy of price no other additional equitable element upon which the setting aside of the Sheriff's sale could be based.

Reply to Point One on Behalf of the Defendant-Respondent.

Complainant-appellant concedes that where a proper case for so doing is made out the Court of Chancery has the power to open, amend or modify its decrees, as is contended by the defendant-respondent.

Defendant-respondent cites and quotes from the case of *Day v. Allaire,* 31 N. J. E. 303. It will be noted that in that case the ruling was that a decree may be reopened for the purpose of giving the defendant an opportunity to make a defense on the merits. Such, however, is far from the situation in the case at bar.

Complainant-appellant wishes to point out to your Honors that he does not dispute the jurisdiction or the power of the Court of Chancery to set aside a Sheriff's sale where the circumstances warrant it, but it is the contention of the complainant-appellant that the circumstances in the instant case did not warrant the granting of the order herein appealed from.

Conclusion.

It is therefore again respectfully urged for the reasons set forth above that the order of the Chancellor be reversed.

PERRY E. BELFATTO,
Solicitor for and of Counsel
with Complainant-Appellant.

THE REPORTER CO., WALTON, N. Y.
New Jersey Representative:
F. W. Baker, Room 1111, 60 Park Place, Newark
Telephone, MArket 2-6194