

Your respondent respectfully contends that had the complainants made inquiry of the owner of the premises adjoining on the south, they would have been apprised of the existence of the enactment and the circumstances and conditions attending the same, assuming, of course, that Mr. Weber, the agent, had, as appellants inferred in their testimony, concealed the fact of the enactment.

In the case of *Hodge v. United States Steel Corp.*, 54 A.L. Rep. p. 1, 54 N. J. Eq. 907, this court, sustaining Vice-Chancellor Pitney in the case of *Hodgkiss v. Stephens*, *supra*, says:

"But if prefer not to examine, it must be because he is satisfied to act as if the matters disclosed in the notice were true; and he cannot afterwards complain if his rights are made to rest upon them so far as they are true. The information given by the notice is equivalent to that obtained by inquiry."

It is for the above reasons that your respondent respectfully contends and maintains that the Vice-Chancellor was correct in his findings of fact and in the application of the law as applied to these findings of fact, and for that reason the decree be affirmed, together with costs.

Respectfully submitted,

M. M. SEMMEL,

Solicitor for and of counsel
with the Defendant-Respondent.

Due and legal service of a copy of the within brief is acknowledged this 12 day of May, 1927.
J. L. Newman, Atty. of App'ts.

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Notice of Appeal.

(Filed Feb. 23, 1927.)

IN CHANCERY OF NEW JERSEY.

Between	}	On Bill, &c.	10
JULIA M. MURPHY,			
Complainant,			
and			
JOHN F. SKELLY, <i>et als.</i> ,			
Defendants.			

The defendant, Samuel Silverman hereby appeals from the Final Decree or Order made in the above entitled cause on the 14th day of December, 1926, and from the Order dated February 21st, 1927, and from the whole and every part thereof to the Court of Errors and Appeals in the Last Resort in All Causes. 20

Dated, February 21st, 1927.

SAUL NEMSER,
Solicitor and of Counsel
with Samuel Silverman.

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

SAUL NEMSER,
Of Counsel with Defendant,
Samuel Silverman.

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Amended Notice of Appeal.

(Filed Mar. 1, 1927.)

IN CHANCERY OF NEW JERSEY.

10	Between JULIA M. MURPHY, Complainant, and JOHN F. SKELLY, <i>et als.</i> , Defendants.	}	On Bill, &c.
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20 The defendant, Samuel Silverman hereby appeals from the Final Decree or Order made in the above entitled cause on the 14th day of December, 1926, and from the Order dated February 21st, 1927, made by the Chancellor on the advice of Vice Chancellor John Bentley, and from the whole and every part thereof to the Court of Errors and Appeals in the Last Resort in All Causes.

SAUL NEMSER,
Solicitor and of Counsel
with Samuel Silverman.

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

SAUL NEMSER,
Of Counsel with Defendant,
Samuel Silverman.

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Petition of Appeal.

(Filed Mar. 17, 1927.)

NEW JERSEY COURT OF ERRORS AND APPEALS.

JULIA M. MURPHY, Complainant-Respondent, vs. JOHN F. SKELLY, <i>et als.</i> , Defendants-Appellants.	}	On Appeal of Defendant, Samuel Silverman from the Court of Chancery.	10
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TO THE HONORABLE THE COURT OF ERRORS AND APPEALS IN THE LAST RESORT IN ALL CAUSES:

The petition of Samuel Silverman, the appellant in the above entitled cause, respectfully shows that, 20

1—Petitioner finds himself aggrieved by a Final Decree or Order made in the Court of Chancery, by his Honor, Edwin Robert Walker, Chancellor of the State of New Jersey, bearing date December 14th, 1926, in a certain cause in said Court of Chancery, wherein the said Julia M. Murphy was complainant and the said Samuel Silverman was one of the defendants, in this respect, to wit, that the said Final Decree or Order adjudges that 30

“That said Samuel Silverman, the above-named purchaser, pay to the Sheriff of the County of Hudson the balance of the amount bid by the said Samuel Silverman at the sale of said lands and premises held by the said Sheriff of the County of Hudson under and by virtue of the Writ of fieri facias in the above-entitled cause, together with lawful interest thereon from the date of the said sale Septem- 40

Petition of Appeal.

ber 24, 1925, within 15 days after service of a copy of this order upon him.

And it is further ORDERED that within said time the said Samuel Silverman pay to the solicitors for the complainant a counsel fee of \$200. together with the costs of these proceedings to be taxed.

And it is further ORDERED that the petition of the said Samuel Silverman to be relieved of said bid be and the same is hereby dismissed."

And petitioner appeals from the Final Decree or Order of the Chancellor which decrees as aforesaid, upon the ground that same is erroneous in that

(a) The Chancellor ordered the said Samuel Silverman to pay to the Sheriff of the County of Hudson, the balance of the amount of his bid, whereas the Chancellor should have refused said relief prayed for by the complainant, and should have dismissed complainant's Order to Show Cause to compel the said Samuel Silverman to complete his bid.

(b) The petition of said Samuel Silverman to be relieved of his bid was dismissed, whereas the relief prayed for should have ben granted and the said Samuel Silverman should have been relieved of his said bid by order of the Chancellor.

(c) The Chancellor should have found that the title to the premises being foreclosed by the complainant was unmarketable and thereby should have relieved the said Samuel Silverman of his bid made by him at the said Sheriff's Sale.

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Petition of Appeal.

(d) The defects in the title to the premises being foreclosed were unknown to the said Samuel Silverman at the time he made his bid at the Sheriff's sale and were not set forth in the conditions of sale, Notices of Sale and Advertisements of Sale, as required by law.

(e) The Sheriff of Hudson County had no right to sell the mortgaged premises because the said mortgaged premises were condemned by Municipal authorities of the City of Hoboken and constituted a public nuisance, which facts were not set forth in the Advertisement of Sale.

(f) The premises being foreclosed encroach upon the adjoining property, constituting an encumbrance rendering the title unmarketable, which fact was not set forth in the Advertisements of Sale.

(g) There was pending at the time of the bid by the appellant, Samuel Silverman, a suit in the Court of Chancery of New Jersey, wherein Philip Grassman and Carolina Grassman were complainants and Martin A. Leddy, et al., were defendants, to compel the defendants in said suit to remove the westerly wall of the premises, No. 211 Eighth Street, Hoboken, New Jersey, which are the premises being foreclosed, which fact was not set forth in the Advertisements of Sale by the Sheriff of Hudson County.

(h) The title to the premises foreclosed by the complainant and bid in by the said Samuel Silverman at the Sheriff's Sale was unmarketable in that in the chain of title to the premises being foreclosed, viz., 211 Eighth Street, Hoboken, N. J., there ap-

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Petition of Appeal.

10 appears of record a deed made by the Executors of William Watson to Elizabeth Grunbaum, which deed was executed by the Executors in their capacity as executors, and they failed to sign in their capacity as trustees, the legal title to the premises still remaining in them as trustees, which fact was not set forth in the Conditions of Sale, Notices of Sale and Advertisements of Sale, required by the Statute.

20 2. Petitioner finds himself further aggrieved by an Order made in the Court of Chancery by his Honor, Edwin Robert Walker, Chancellor of the State of New Jersey, bearing date the 21st day of February, 1927, entered in the above entitled cause in this respect, to wit, that the said Order adjudges that

20 "The petition of Samuel Silverman for a re-hearing and to vacate the Order of December 14th, 1926, be and the same is hereby denied, and the said petition and Order to Show Cause is hereby dismissed.

30 And your petitioner appeals from the said Order of February 21st, 1927, as aforesaid, made by the Chancellor which decrees as aforesaid, upon the ground that the same is erroneous in that

40 (a) The petition of Samuel Silverman for a re-hearing and to vacate the Order of December 14th, 1926, should have been granted, whereas the Chancellor denied the said Samuel Silverman a re-hearing and dismissed the petition of said Samuel Silverman for a re-hearing and the Order to Show Cause granted thereon.

Petition of Appeal.

10 (b) The Chancellor should have granted a re-hearing to the said Samuel Silverman and should have vacated the Order of December 14th, 1926, because the title to the lands and premises being foreclosed, viz, 211 Eighth Street, Hoboken, N. J., is unmarketable in that in the chain of title to the said premises, there appears of record, a deed made by The Hoboken Land & Improvement Co. as grantor to one Arthur Young as grantee, which deed is dated August 6th, 1870, and recorded on August 18th, 1870 in liber 214 of deeds for Hudson County, page 524, which deed contains the following restrictive covenant, viz,

20 "And the said party of the second part for himself, his heirs and assigns, hereby covenants to and with the said party of the first part their successors and assigns that he, the said party of the second part, his heirs and assigns occupying the hereby granted premises will not establish nor permit to be established upon the said premises any slaughter house, tallow, chevalry furnace, steam engine, Brass Foundry, nail or other iron factory nor any manufactory of gun powder or fireworks, glue nitrol or varnish, ink, lard, oil soap, candle, starch, turpentine or camphene, nor for the tanning, dressing, preparing or keeping of hides, skins or leather nor any chemical gas or poudrette factory nor brewery or distillery nor any other nuisance."

40 which restrictive covenant is not set forth in the Conditions of Sale, Notices of Sale and Advertisements of Sale, as required by law.

Petition of Appeal.

Petitioner, therefore, prays that the aforesaid Final Decree or Order of the said Chancellor, dated December 14th, 1926 and the aforesaid Order of the Chancellor dated February 21st, 1927 may be wholly reversed, set aside and for nothing holden, and that petitioner may have such other relief in the premises as to this court may seem proper.

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SAUL NEMSER,
Solicitor for and of Counsel with
Appellant, Samuel Silverman.

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Answer to Petition of Appeal.

(Filed Mar. 30, 1927.)

NEW JERSEY COURT OF ERRORS AND
APPEALS.

JULIA M. MURPHY, Complainant-Respondent, vs. JOHN F. SKELLY, <i>et als.</i> , Defendants-Appellants.	} On Appeal of Defendant, Samuel Silverman from the Court of Chancery.	10
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The answer of Julia M. Murphy, the above-named complainant-respondent, to the petition of appeal of Samuel Silverman the above-named appellant.

This respondent, not admitting the truth of all or any of the matters in the said petition contained, for answer thereto nevertheless admits that a decree or order was on December 14th, 1926, made and entered in the Court of Chancery of New Jersey, in the above-entitled cause, for the purposes in said petition mentioned and as therein set forth; but as to the substance and form of said decree or order, this respondent begs leave to refer thereto when the same shall be produced; and this respondent also admits that another order was on February 21st, 1927, made and entered in the Court of Chancery of New Jersey, in the above-entitled cause, for the purposes in said petition mentioned and as therein set forth; but as to the substance and form of said order this respondent begs leave to refer thereto when the same shall be produced.

This respondent is advised and believes that the said decree or order, and order, are agreeable to equity; and she prays that the same may be affirmed with costs to be taxed in favor of this respondent.

JOHN J. FALLON, JR.,
Solicitor for and of Counsel with
Complainant-Respondent.

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Notice of Motion for Stay Pending Appeal.

(Filed Mar. 14, 1927.)

NEW JERSEY COURT OF ERRORS AND APPEALS.

10	Between JULIA M. MURPHY, Complainant-Respondent, and JOHN F. SKELLY, <i>et als.</i> , Defendants-Appellants.	} On Appeal of Samuel Silverman from the Court of Chancery.
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To, JOHN J. FALLON, JR.,
Solicitor of Complainant-Respondent.

20 SIR:

PLEASE TAKE NOTICE: That on Thursday, March 17th, 1927, at 10.30 o'clock in the forenoon or as soon thereafter as counsel can be heard, at the State House, Trenton, New Jersey, I shall apply to the Court of Errors and Appeals for an Order, staying all proceedings in this cause on the Final Decree or Order dated December 14th, 1926, and for a Stay of Execution or other process on said

30 Final Decree or Order of December 14th, 1926, pending the appeal of Samuel Silverman to this court, and shall at said time and place move that the said Stay heretofore granted by the Court of Chancery be continued until the final determination of the Appeal to this court.

SAUL NEMSER,
Solicitor and of Counsel with
Defendant, Samuel Silverman.

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Order.

(Filed Mar. 24, 1927.)

NEW JERSEY COURT OF ERRORS AND APPEALS.

Between JULIA M. MURPHY, Complainant-Respondent, and JOHN F. SKELLY, <i>et als.</i> , Defendants-Appellants.	} On Appeal of Defendant, Samuel Silverman from the Court of Chancery.	10
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This matter coming on to be heard at the State House, Trenton, on Thursday, March 17, 1927, on notice of application of defendant-appellant, Samuel Silverman, for a stay from the operation and effect of the order of the Court of Chancery made in the above entitled cause on December 14, 1926, pending the hearing and determination of the appeal taken therefrom by the said defendant Samuel Silverman to this court in the presence of Saul Nemser, solicitor for and of counsel with defendant, Samuel Silverman, and Maurice J. Breen, representing John J. Fallon, Jr., solicitor for and of counsel with complainant-respondent, and the court having considered the matter and having heard and considered the arguments of counsel for the respective parties;

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It is on this 17th day of March, 1927, ORDERED, that the application of the defendant-appellant, Samuel Silverman, to this court for a stay from the operation and effect of the order of the Court of Chancery made on the 14th day of December, 1926, pending the determination of the appeal therefrom taken by the said defendant, Samuel Silverman, to this court, be and the same is hereby

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Order.

granted upon the following terms: That the said Samuel Silverman shall within ten days from the service of a copy of this order upon his solicitor, which copy may be certified by the complainant's solicitor, deposit with the Clerk of the Court of Chancery the sum of Four Thousand Dollars in cash to secure the payment to the Sheriff of the County of Hudson of the moneys ordered by the Court of Chancery by its order dated December 14, 1926, to be paid by him to said Sheriff of the County of Hudson in the event that said order be sustained by this court on the appeal therefrom taken by said Samuel Silverman, and upon the further terms that upon the failure of said Samuel Silverman to make such deposit within said period of ten days from the date of service of this order as above provided, the said application for a stay from the operation and effect of said order of the Court of Chancery made on December 14, 1926, is denied and said order shall remain in force and effect.

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By the Court,

E. R. WALKER,
C. & P. J.

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A true copy,
JOSEPH B. FITZPATRICK,
Register.

A true copy,
JOHN J. FALLON, JR.,
Solicitor for Complainant-Respondent.

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Petition.

(Filed Nov. 24, 1925.)

IN CHANCERY OF NEW JERSEY.

Between	} On Bill to Foreclose. 10
JULIA M. MURPHY, Complainant,	
and	
JOHN F. SKELLY, <i>et als.</i> , Defendants.	

TO THE HONORABLE EDWIN ROBERT WALKER, CHANCELLOR OF THE STATE OF NEW JERSEY.

The petition of Julia M. Murphy, of the City of Hoboken, in the County of Hudson and State of New Jersey, respectfully shows that. 20

1. Petitioner is the complainant in the above entitled cause.

2. On June 18, 1925 petitioner as complainant filed her bill of complaint in said cause for the foreclosure of a certain mortgage held by her on the lands and premises therein described, and such proceedings were had in said suit that a final decree was entered therein in favor of complainant on August 4, 1925, wherein it was Ordered, Adjudged and Decreed that the said mortgaged premises be sold to raise and satisfy the money due to the complainant, to wit, the sum of \$3620.75, with interest thereon from July 27, 1925, together with complainant's costs, and also to pay and satisfy unto the defendant Mary Worsthorn the sum of \$2075.33, together with lawful interest thereon as aforesaid. 40

Petition.

3. On August 10, 1925 a writ of fieri facias was issued out of this court in the above entitled cause directed to the Sheriff of the County of Hudson, commanding him to make sale of the lands and premises described in the bill of complaint and in said writ of fieri facias, and out of the proceeds thereof pay unto the complainant, the petitioner, or her solicitors, in the first place the sum of \$3620.75, together with lawful interest thereon as aforesaid, and the sum of \$212.25 costs, and in the second place to pay and satisfy unto the defendant Mary Worsthorn or to her solicitor, the sum of \$2075.33, and \$9.06 costs.

4. The Sheriff of the County of Hudson did in due form of law advertise the said mortgaged lands and premises to be sold under and by virtue of said writ of fieri facias at the County Court House, in Jersey City, on Thursday, September 17, 1925, at 1 o'clock P. M. Eastern Standard Time, 2 o'clock local time, by public advertisements duly set up and published according to the statute in such case made and provided, and at the time and place so appointed and advertised did publicly adjourn the sale until the 24th day of September, 1925, at 1 o'clock in the afternoon Eastern Standard Time, 2 o'clock P. M. local time, and at said last named time and place did expose the said lands and premises for sale at public vendue by virtue of said writ of fieri facias, and thereupon one Samuel Silverman, of the City of Jersey City, bidding therefor the sum of \$4700.00, the said Sheriff did then and there openly and publicly in due form of law, between the hours of 12 and 5 o'clock in the afternoon of said day, strike off and sell the said lands and premises for the sum of \$4700.00 to the said Samuel

Petition.

Silverman, he being then and there the highest bidder for same.

5. Prior to offering said lands and premises for sale the said Sheriff did announce that the said lands and premises would be sold subject to the taxes, water rents, encroachments, mislocations, claims and suits pending as to the unsafe and unsound construction of the walls of the building erected upon said mortgaged lands as particularly set forth in the announcement so made by the Sheriff hereto annexed, made part hereof and marked Schedule A., and which said announcement was read by the said Sheriff in the presence and hearing of said Samuel Silverman and other persons present and bidding at said sale.

6. Immediately after said lands and premises were struck off and sold to said Samuel Silverman, he, the said Samuel Silverman signed the conditions of sale, of which a copy is also hereto annexed, made part hereof and marked Schedule B., and paid to the Sheriff ten per cent. of the purchase price of \$4700.00, to wit, \$470.00.

7. The said sale was duly reported by the Sheriff to this honorable court and was duly confirmed by order confirming sale made by this honorable court bearing date October 5, 1925, and a certified copy of said order for sale duly delivered to the Sheriff of the County of Hudson aforesaid.

8. The said Samuel Silverman has failed to complete his purchase by the payment to the Sheriff of the County of Hudson of the balance of his bid of \$4700.00 for said lands and premises, to wit, the sum of \$4230.00.

Petition.

Your petitioner therefor prays that an order may be made by this honorable court commanding and directing the said Samuel Silverman to make payment to the Sheriff of the County of Hudson of the said balance of \$4230.00 upon delivery to him of a deed by the Sheriff of the County of Hudson conveying to him the said lands and premises under the writ of fieri facias in the above entitled cause and the conditions of said sale.

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And your petitioner will ever pray, etc.

FALLON & FALLON,
Solicitors for Petitioner.

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Schedule A.

<p style="text-align: center;">MURPHY v. SKELLY.</p>	}	Foreclosure.
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Announcement to be made by Sheriff at Sale 10

The premises will be sold subject to the following:

Taxes for the year 1924	\$114.95
with interest on the first half thereof from June 1, /24 and on the second half thereof from Dec. 1, 1924 @7% per annum.	

Taxes for the year 1925 \$118.75 (of which the first half—\$59.38—is due and in arrear from June 1/25	118.75	20
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Int. @ 7% per annum from June 1, 1925

Arrears of water rents to July 28, 1925 amounting with penalty to	23.85
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Water rents for July 28, 1925—Estimated

Subject to encroachment and mislocation and claim of Inspector of Buildings of Hoboken as to violations of building code of the City of Hoboken in the respect that the building erected on said premises is in an unsafe condition and that the west wall thereof is leaning out of plumb and the front wall is cracked due to the settlement of the west wall and claim of Philip Grassmann and Karolina Grassmann the owners of the premises adjoining on the west that the said westerly wall leans over on said Grassmann land 1 foot and 5 inches, and a suit now 40

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Schedule A.

pending in the Court of Chancery of New Jersey brought by the said Philip Grassmann and Karoline Grassmann as complainants against Martin A. Leddy and others, praying for a decree in the Court of Chancery that the defendants may be decreed at their expense to tear down or remove the said brick building on the mortgaged premises or to tear down
 10 so much of said brick building as may be necessary to insure a safe and sound construction of the same whereby to insure safety to life and limb of persons passing by said premises on the street as well as for the security and safety of complainants property and garage, and to enjoin and restrain the defendants from permitting said building to remain un-
 20 repaired and unstabled, and in such an unsafe condition as to constitute a menace to life, limb and property.

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Schedule B.

1. The property will be sold to the highest bidder, subject to confirmation by the Chancellor.

2. Ten per cent. of the purchase money shall be paid when the property offered is struck off; in no case, however, shall less than one hundred dollars (\$100.00) be paid; in default whereof, it may be put up again and sold immediately. 10

3. The balance of the purchase money shall be paid on the 15th day of October, A. D. 1925, at 10 o'clock in the forenoon, at the Sheriff's Office, at the Court House of said County.

4. The Deed will be delivered at the above time, upon compliance by the purchaser with these conditions, provided said sale is confirmed as aforesaid.

5. The purchaser will be held bound by the purchase whether he attends to receive the Deed and comply with the conditions of the Sale or not. If he does not so comply with them, the property may be again advertised and sold, or the purchaser may be held diable for his bid, at the option of the Sheriff. In case of re-sale at a less price than the former bid with interest and expenses, the former purchaser will be held liable for the deficiency, to meet which, the money paid by him shall be retained and applied by the Sheriff. 20
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I have bid off the property described above, for the sum of Forty seven hundred (\$4700) dollars, and agree to comply with the above conditions of sale.

Dated Sept. 24/25.

SAMUEL SILVERMAN
 or assigns,
 Jersey City, N. J.

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Schedule B.

SHERIFF'S SALE—IN CHANCERY OF NEW JERSEY.

Between Julius M. Murphy, complainant, and John F. Skelly, et als., defendants.

Fi. Fa. For sale of mortgaged premises. Returnable November 10, 1925.

10 Fallon & Fallon, solicitors.

By virtue of the above stated writ, to me directed and delivered, I shall sell by public vendue at County Court House, Jersey City, on

THURSDAY, the Seventeenth day of September, A. D. 1925

20 at 1:00 p. m. Eastern Standard Time, 2:00 local time, all the following described land and premises with the appurtenances, being the same described in said writ, that is to say:

30 All that certain lot, tract, or parcel of land and premises, hereinafter particularly described, situate, lying and being in the City of Hoboken, in the County of Hudson and State of New Jersey, commencing at a point in the southerly line of Eighth Street in Hoboken, eighty-one feet (81) easterly from the southeasterly corner of Park Avenue and Eighth Street, and running thence easterly along the southerly line of Eighth Street nineteen feet (19); thence southerly and parallel with Park Avenue sixty feet (60), and thence westerly and parallel with Eighth Street nineteen feet (19); thence northerly and parallel with Park Avenue sixty feet (60) to the point or place of beginning.

40 The above mortgaged premises will be sold under a decree for complainant of \$3,620.75 and interest from July 27th, 1925.

Schedule B.

Costs taxed at \$212.85 and interest from August 4th, 1925.

Decree for defendant Mary Worsthorn of \$2,075.33 and interest from July 27th, 1925.

Costs taxed at \$9.06 and interest from August 4th, 1925.

And costs of this sale.

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Dated August 20th, 1925.

JOHN M. HANNAN,
Sheriff.

Jersey Journal and Jersey Observer.

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Affidavit of Maurice J. Breen.

STATE OF NEW JERSEY, }
COUNTY OF HUDSON, } ss. :

MAURICE J. BREEN, of full age being duly sworn according to law, upon his oath deposes and says:

10 1. I am an attorney and counsellor at law of the State of New Jersey and a solicitor in Chancery of New Jersey, employed in the office of Fallon & Fallon, the solicitors for the complainant in the above entitled cause, and I am the person actually entrusted with the management and conduct of said suit. I have read the foregoing petition and all of the matters and things therein contained are true.

20 2. On June 18, 1925, petitioner as complainant filed her bill of complaint in said cause for the foreclosure of a certain mortgage held by her on the lands and premises therein described, and such proceedings were had in said suit that a final decree was entered therein in favor of complainant on August 4, 1925, wherein it was Ordered, Adjudged and Decreed that the said mortgaged premises be sold to raise and satisfy the money due to the complainant, to wit, the sum of \$3620.75, with interest thereon from July 27, 1925, together with complainant's costs, and also to pay and satisfy unto the defendant Mary Worsthorn the sum of \$2075.33, together with lawful interest thereon as aforesaid.

30 3. On August 10, 1925 a writ of fieri facias was issued out of this court in the above entitled cause directed to the Sheriff of the County of Hudson, commanding him to make sale of the lands and premises described in the bill of complaint and in

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Affidavit of Maurice J. Breen.

said writ of fieri facias, and out of the proceeds thereof to pay unto the complainant, the petitioner, or her solicitors, in the first place the sum of \$3620.75, together with lawful interest thereon as aforesaid, and the sum of \$212.85 costs, and in the second place to pay and satisfy unto the defendant Mary Worsthorn or to her solicitor, the sum of \$2075.33, and \$9.06 costs.

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4. The Sheriff of the County of Hudson did in due form of law advertise the said mortgaged lands and premises to be sold under and by virtue of said writ of fieri facias at the County Court House, in Jersey City, on Thursday, September 17, 1925, at 1 o'clock P. M. Eastern Standard Time, 2 o'clock local time, by public advertisement duly set up and published according to the statute in such case made made and provided, and at the time and place so appointed and advertised did publicly adjourn the sale until the 24th day of September, 1925, at 1 o'clock in the afternoon Eastern Standard Time, 2 o'clock P. M. local time, and at said last named time and place did expose the said lands and premises for sale at public vendue by virtue of said writ of fieri facias, and thereupon one Samuel Silverman, of the City of Jersey City, bidding therefor the sum of \$4700.00, the said Sheriff did then and there openly and publicly in due form of law, between the hours of 12 and 5 o'clock in the afternoon of said day, strike off and sell the said lands and premises for the sum of \$4700.00 to the said Samuel Silverman, he being then and there the highest bidder for the same.

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5. Prior to offering said lands and premises for sale the said Sheriff did announce that the said

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Affidavit of Maurice J. Breen.

lands and premises would be sold subject to the taxes, water rents, encroachments, mislocations, claims and suit pending as to the unsafe and un-sound construction of the walls of the building erected upon said mortgaged lands as particularly set forth in the announcement so made by the Sheriff hereto annexed, made part hereof and marked Schedule A., and which said announcement was read by the said Sheriff in the presence and hearing of said Samuel Silverman and other persons present and bidding at said sale.

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6. Immediately after said lands and premises were struck off and sold to said Samuel Silverman, he, the said Samuel Silverman signed the conditions of sale, of which a copy is also hereto annexed, made part hereof and marked Schedule B., and paid to the Sheriff ten per cent of the purchase price of \$4700.00, to wit, \$470.00.

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7. The said sale was duly reported by the Sheriff to this honorable court and was duly confirmed by order confirming sale made by this honorable court bearing date October 5, 1925, and a certified copy of said order for sale duly delivered to the Sheriff of the County of Hudson aforesaid.

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8. The said Samuel Silverman has failed to complete his purchase by the payment to the Sheriff of the County of Hudson of the balance of his bid of \$4700.00 for said lands and premises, to wit, the sum of \$4230.00.

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9. I was present at the Sheriff's sale held at the County Court House, in Jersey City, on September 24, 1925. The announcement of which a copy is

Affidavit of Maurice J. Breen.

hereto annexed marked Schedule A. was read by the deputy sheriff who conducted the said sale in my presence and hearing and in the presence and hearing of Samuel Silverman and the other bidders and persons present and attending said sale.

MAURICE J. BREEN.

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Subscribed and sworn to before me }
this 24th day of November, 1925. }

LOUIS F. BEACHNER,
Notary Public of New Jersey.

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Order to Show Cause.

(Filed Nov. 24, 1925.)

IN CHANCERY OF NEW JERSEY.

10	Between JULIA M. MURPHY, Complainant, and JOHN F. SKELLY, <i>et als.</i> , Defendants.	} On Bill to } Foreclose. } On Peti- } tion, etc.
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20 Upon reading and filing the petition of Julia M. Murphy, the complainant in the above entitled cause, praying for an order directing Samuel Silverman, the purchaser of the lands and premises described in the bill of complaint in the above entitled cause at the sale of said lands and premises held by the Sheriff of the County of Hudson under and by virtue of a writ of fieri facias issued out of this honorable court in said cause, to complete his purchase of said lands and premises by the payment to the Sheriff of the County of Hudson of the balance of the amount bid by him at the sale of said lands and premises;

30 It is on this 24th day of November, 1925, on motion of Fallon & Fallon, solicitors for the said complainant and petitioner, Ordered, that the said Samuel Silverman show cause before the Chancellor, at Chancery Chambers, in the City of New Jersey, on Monday the 30th day of November, 1925, at 10 o'clock in the forenoon of said day or as soon thereafter as counsel can be heard, why an order should not be made directing him to make payment to the Sheriff of the balance of the amount bid by

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Order to Show Cause.

him at the sale of said lands and premises held by the said Sheriff on or before a short day fixed by this court.

And it is further Ordered that a copy of the said petition and this order, which may be certified as true copies by the solicitors of the complainant, be served upon said Samuel Silverman within one day fro mthe date of this order. 10

E. R. WALKER.
C.

Respectfully advised,

JOHN BENTLEY,
V. C.

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Affidavit of Samuel Silverman.

(Filed Jan. 18, 1926.)

IN CHANCERY OF NEW JERSEY.

10	Between JULIA M. MURPHY, Complainant, and JOHN F. SKELLY, <i>et als.</i> , Defendants.	} On Bill, &c.
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STATE OF NEW JERSEY, }
 COUNTY OF HUDSON, } ss.:

20 SAMUEL SILVERMAN, of full age, being duly sworn, according to law, upon his oath, deposes and says:

30 1. I have read the petition of Julia M. Murphy, together with the affidavit of Maurice J. Breen thereto annexed; in reference to Paragraph "5" and "9" of Mr. Breen's affidavit, wherein he states that the Sheriff did announce that said lands and premises would be sold subject to certain taxes, water rents, encroachments, mislocations, claims and suit pending, I desire to say that I did not hear any such announcement made by the Deputy Sheriff, who conducted the sale, or by anyone else at the sale, while I was present.

40 2. Subsequent to the time that I bid in the property at the Sheriff's Sale, the first notice and knowledge that I had that the lands and premises, were effected by and encumbered by taxes, water rents, encroachments, mislocations, claims of the Build-

Affidavit of Samuel Silverman.

ing Inspector of the City of Hoboken, and suit pending in the Court of Chancery, was when I was served with a Subpoena to Answer, together with a copy of an Order entered in a certain cause wherein Philip Grassman and Karoline Grassman, are complainants, and Martin A. Leddy, et al., are defendants; upon being served with the aforesaid subpoena to answer and copy of the Order in the latter suit, by Mr. Charles W. Stover, Solicitor of the complainants, Philip Grassman and Karoline Grassman, I investigated the matter and discovered for the first time that the premises in question had been condemned by the Inspector of Buildings of the City of Hoboken, and that the westerly wall of the premises encroaches over adjoining land owned by Grassman to the extent of about one and one-half feet, and that under the orders of the Building Inspector of the City of Hoboken, the entire building would have to be torn down, and the occupants of said building at once ordered to vacate the same because of its dangerous condition, the same having been condemned by the lawful authorities of the City of Hoboken.

30 3. If I had known of the existence of these matters at the time I appeared at the sale, I certainly would not have purchased the property for the sum of Forty-seven Hundred (\$4700.00) Dollars, because if the building has to be torn down, or the westerly wall of the building removed, the property is not worth any more, in my opinion, than Five Hundred (\$500.00) Dollars, which is the value of the lot, which in my opinion, measures sixty feet by eighteen feet (60 x 18); the first knowledge I had that the premises in question were going to

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Affidavit of Samuel Silverman.

be sold by the Sheriff, was when I read the advertisement of sale published in the Jersey Journal; neither in the advertisement of sale, notice of sale or in the conditions of sale, was anything mentioned or disclosed in regard to the aforesaid matters; when I bid the property in, I had absolutely no knowledge of the same.

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4. Since the Order to Show Cause in this matter was granted, I have been informed by my Solicitor, that there exists of record, and has existed of record, a lease for the premises in question made by Martin A. Leddy, to Frank Vissers, dated March 15th, 1925, running for a period of two years commencing on the first day of April, 1925, and expiring on the first day of April, 1927, covering the entire premises known as No. 211 Eighth Street, Hoboken, to be used for dwelling and furnished rooming business; the Notice of Sale contained no reference to this lease, nor did the Sheriff announce the existence of this lease, or encumbrance against the property in question, and had I known that such a lease existed, I would not, under any circumstances have bid for the property, because the existence of the lease precludes me from the use and occupation of the premises in question, for too long a time to make the property of any use to me. This is especially true, in view of the fact that John H. Cummings, Inspector of Buildings for the City of Hoboken, under date of December 29th, 1924, notified Martin A. Leddy, the owner of the premises at No. 211 Eighth Street, Hoboken, New Jersey, as follows:

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Affidavit of Samuel Silverman.

"December 29, 1924.

Re: 211 8th Street, Hoboken, N. J.

To Martin A. Leddy, owner,

TAKE NOTICE:

The brick building at the above address of which you are the owner or part in charge does not conform with the provisions of the building code of the city of Hoboken in the following respect.

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The building in my judgment is in an unsafe condition and is a menace to the occupants in the building of the adjoining property.

The west wall is laid out of plumb, and I fear will give way at the left end corner.

The front wall is cracked due to the settlement of the west wall.

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I would request that you vacate the building and tear down the west wall and rebuild.

JOHN H. CUMMINGS,
Inspector of Buildings.

Section of violation refers to Section 151 to the building code of November 30, 1910, and you have 10 days to comply with the law."

5. I am also advised by my solicitor, that title to the premises in question is entirely defective and unmarketable, because of the fact that there exists of record, a deed made by Elizabeth Mary Willson Grunbaum, wife of Samuel Grunbaum to Mads Brandt Fischer, dated May 1st, 1891, and recorded in the Hudson County Register's Office in Liber 529 of deeds for said county, page 80. Neither in the granting clause of said deed, or in any other portion of said deed, is the name of Samuel Grun-

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Affidavit of Samuel Silverman.

baum, the husband of Elizabeth Mary Willson Grunbaum mentioned, except that the deed is signed "S. GRUNBAUM," and acknowledged, "SAMUEL GRUNBAUM," but nowhere in the deed does the husband's name appear. My Solicitor informs me that because of the fact that the husband's name is not set forth in the granting clause of this deed, or in the body of the deed that Mads Brandt Fischer, the grantee in said deed, never acquired a valid title and that all conveyances since the execution of this deed in the chain of title are likewise void and that the present owner, Martin A. Leddy has not got a clear and valid title to the premises in question because of the defect in the aforesaid deed.

6. I am also advised by my Solicitor that since the building was condemned by the Local Authorities of the city of Hoboken, that if I were to purchase this property I would immediately be guilty of a crime, under the laws of the State of New Jersey, in that I would be the purchaser of property where there was a continuing public nuisance, and that it would be against public policy for me to purchase as it is against public policy for the Sheriff to sell a crime to me.

7. I respectfully request the Court to relieve me of my bid, and order the Sheriff of Hudson County to return to me, the amount of my deposit, viz: Four Hundred and Seventy (\$470.00) Dollars.

SAMUEL SILVERMAN.

Sworn and subscribed to before me }
 this 11th day of December, 1925. }

PHILIP MIELE,
 Master In Chancery of New Jersey.

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Affidavit of Samuel Friedman.

(Filed Jan. 18, 1926.)

IN CHANCERY OF NEW JERSEY.

Between JULIA M. MURPHY, Complainant, and JOHN F. SKELLY, <i>et als.</i> , Defendants.	}	On Bill, &c. 10
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STATE OF NEW JERSEY, }
 COUNTY OF HUDSON, }ss.:

SAMUEL FRIEDMAN of full age, being duly sworn, according to law, upon his oath, deposes and says: 20

1. I am an Attorney at Law of the State of New Jersey, with offices at No. 15 Exchange Place, Jersey City, N. J.

2. I have made a search of the records in the Court House at Jersey City of the premises known as No. 211 Eighth Street, Hoboken, New Jersey, also known as Lot 23, City Block 182, County Block 1857, located on Eighth Street, between Garden Street and Park Avenue in the City of Hoboken, and particularly described by metes and bounds as follows: 30

ALL that certain lot, tract, or parcel of land and premises, hereinafter particularly described, situate, lying and being in the City of Hoboken, in the County of Hudson and State of New Jersey, commencing at a point in the southerly line of Eighth Street in Hoboken eighty-one feet (81) easterly from the southeasterly corner of Park Avenue and 40

Affidavit of Samuel Friedman.

Eighth Street, and running thence easterly along the southerly line of Eighth Street nineteen feet (19); thence southerly and parallel with Park Avenue sixty feet (60), and thence westerly and parallel with Eighth Street nineteen feet (19); thence northerly and parallel with Park Avenue sixty feet (60) to the point or place of beginning.

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3. I find title to the premises in question in fee in Martin A. Leddy, subject to a first mortgage of Thirty-five Hundred (\$3500.00) Dollars, held by Julia M. Murphy, and subject to a second mortgage of Twenty-two Hundred (\$2200.00) Dollars, held by Petrus Goolenaerts and Mary Goolenaerts, his wife.

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I also find open of record, a lease made by Martin A. Leddy as landlord to Frank Vissers, as tenant, dated March 15th, 1925, and recorded in the Hudson County Register's Office on March 23rd, 1925, in Liber 1553 of deeds for said county, page 619; under the terms of which lease, the premises No. 211 Eighth Street, Hoboken are leased by Martin A. Leddy to Frank Vissers for a term of two years, commencing on the first day of April, 1925, and terminating on the first day of April, 1927, at the yearly rental of Seven Hundred and Twenty (\$720.00) Dollars, payable in equal monthly installments of Sixty (\$60.00) Dollars each, in advance on the first day of each and every month; the premises leased to be used for dwelling and furnished rooming business. The lease covers the entire building and premises known and designated as No. 211 Eighth Street, in the City of Hoboken.

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I also find in the Chain of Title, a deed Elizabeth Mary Willson Grunbaum, wife of Samuel Grunbaum, to Mads Brandt Fischer, covering the prem-

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Affidavit of Samuel Friedman.

ises in question, viz, 211 Eighth Street, Hoboken, dated May 1st, 1891, and recorded May 1st, 1891, in the Hudson County Register's Office in Liber 529 of deeds for said County, page 80. This deed is signed E. M. W. Grunbaum and S. Grunbaum. In the acknowledgment, the name of Samuel Grunbaum is mentioned. The granting words in the deed are all in the singular, such as "HAS GRANTED, etc." "DOES GRANT", etc. Neither in the Granting Clause, or in any other part of the deed does the name of Samuel Grunbaum, the husband of the said Elizabeth Mary Grunbaum appear.

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4. I also find open of record in the Hudson County Circuit Court a judgment as follows: Francis Gilbert, as Trustee in Bankruptcy of Motor Engineering Sales Co., against J. Leo Skelly, entered in book 31, of the Hudson County Circuit Court Minutes, page 402, on January 30th, 1913, which judgment with costs totals Eight Hundred and One Dollars and Seventy-two Cents (\$801.72).

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5. I find that one John F. Skelly became the owner of the premises in question on June 11th, 1924, by deed from Petrus Goolenaerts and Mary Goolenaerts, his wife, recorded in the Hudson County Register's Office in Liber 1530 of deeds for said county, page 423.

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SAMUEL A. FRIEDMAN.

Sworn and subscribed to before me }
this 12th day of December, 1925. }

WILLIAM A. RAE,
Master In Chancery of New Jersey.

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Affidavit of Saul Nemser.
(Filed Feb. 4, 1927.)

IN CHANCERY OF NEW JERSEY.

10	Between JULIA M. MURPHY, Complainant, and JOHN F. SKELLY, <i>et als.</i> , Defendants.	} On Bill, &c.
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STATE OF NEW JERSEY, }
COUNTY OF HUDSON, } ss.:

20 SAUL NEMSER, of full age, being duly sworn, according to law, upon his oath, deposes and says:

1. I have examined the records of the Hudson County Surrogate's Office, particularly the Will and Codicil of William Watson, recorded in book 15 of Wills, page 682; annexed hereto is an abstract of Paragraphs "9" and "14" of the Will and Paragraphs "5" and "6" of the Codicil.

SAUL NEMSER.

30 Sworn and subscribed to before me }
this 2nd day of February, 1926. }

PHILIP J. MIELE,
Master in Chancery of New Jersey.

Will and Codicil—Annexed to Affidavit of Saul Nemser.

WILL AND CODICIL OF WILLIAM WATSON.

Will

(Bk 15 page 682
(Paragraphs 9 and 14
(Codicil Paragraphs 5 and 6

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Ninth:—I give devise and bequeath all the rest residue and remainder of my estate real as well as personal including said farm, stock, cattle, horses, personal property and utensils and the said house and premises number 51 east 34th st. (Subject to the life estate of my wife as aforesaid) to my said Executors and trustees and to the survivors and survivor of them.

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In Trust Nevertheless and to and for and upon the following uses, intents and purposes and with the following powers of and concerning the same that is to say, to sell and dispose of the same at public or private sale for cash or upon credit and convert the same into money and to execute and deliver good and sufficient conveyances and transfers of the same so as to vest good title in the purchaser and purchasers thereof and to divide the proceeds into as many equal shares as I shall leave children surviving me and in case any of my children shall have died before me leaving issue living at the time of my death then the said number of shares shall be increased, so as to include one equal share for each of such deceased children and I give devise and bequeath all of said equal shares of the proceeds of my said residuary estate to my said executrix, Executors and trustees

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Will and Codicil.

Will Bk 15 page 682

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and to the survivors and survivor of them, In Trust Nevertheless and to and for and upon the following uses, intents and purposes and with the following powers of and concerning the same that is to say: to invest each equal share separately in the same manner as hereinbefore directed and to apply the rents, income and profits of the respective shares allotted to my daughters (surviving me) that is, one equal share for the benefit of each daughter, as follows, to the use of each daughter during her natural life the rents income and profits of one equal share for her sole and separate use free from the debts control and engagements of any husband she may at any time have, in the same manner and with the like effect as if she were feme sole and upon her death to divide, distribute and pay over the principal of her share (and I so give, devise and bequeath the same) to her children living at the time of her death, and to the issue then living of any of her children then dead to be equally divided between them, each issue to stand in the place of his, her or their parent and in default of such children or issue, then to such person or persons and in such manner and form as she by any instrument in writing in the nature of a will or appointment execute under her hand in the presence of two witnesses, notwithstanding her coverture shall limit direct or appoint and in default of such limitation direction or appointment then to the next of my kin under the laws of the state of New York as if I had died intestate, and also to apply the rents income and profits of the

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Will and Codicil.

Will Bk. 15 page 682

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respective shares allotted as aforesaid to my sons, surviving me that is one equal share for the benefit of each son as follows, to the use of each son the rents income and profits of his one equal share until he shall attain the age of twenty five years or sooner die, and upon attaining that age or if he shall have attained it before my death to pay transfer and deliver over, (and I so give devise and bequeath) to him one half of the principal of his equal share, and to apply the rents, income and profits of the remaining half of the principal of his one equal share to his use until he shall attain the age of thirty five years, to pay transfer and deliver over (and I so give, devise and bequeath) to him the said remaining half of the principal of his one equal share and in the event of his death before he would be entitled as aforesaid to the payment of the half or the whole of the principal of his one equal share then to pay transfer and set over (and I so give, devise and bequeath) the principal of his one equal share or so much thereof as may not have been paid to him thereafter provided for his children living at the time of his death and to the issue then living of any of his children then dead, to be equally divided between them such issue to stand in the place of his her or their parent and in default of such children or issue then to such person or persons and in such manner or form as he shall by his last will and testament executed after he shall attain the age of twenty one years limit or direct and in default of such

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Will and Codicil.

Will Bk. 15 page 682

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10 limitation or direction then to my next of kin under
the laws of the State of New York as if he had died
intestate and also to apply the rents income and
profits of the respective remaining equal shares (if
any living at my death of any of my children then
dead, as follows: to the use of each class of issue
equally the rents, income and profits of the share
allotted to that class until the youngest of such
class of issue living at my death shall attain the
age of twenty one years, or sooner die and upon
such dying, to pay transfer and set over (and I
so give devise and bequeath) the principal of the
share of such class to and among said last men-
20 tioned issue equally and to their heirs executors,
administrators and assigns.

I feel a desire, not obligatory, however, that my
children in case their pecuniary circumstances will
warrant it, should reside upon portions of my said
farm having dwellings thereon, or having building
sites upon which then can erect buildings, there-
fore, in case my children respectively or any or
either of them shall elect, in writing, that portions
or portion of my said farm shall form the whole
30 or a part of their said respective shares or share
in my estate, at the fair value of such portions or
portion, to be fixed by my trustees and executors
the survivors or survivor of them. I authorized
the latter to set the set the same apart by an in-
strument in writing to be executed acknowledged,
and recorded, to the intent that the portion

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Will and Codicil.

Will Bk. 15 page 682

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so set apart for each one shall represent a whole
or a part (as the case may be) of his or her share
and shall be held accordingly, subject to the afore-
said like estate of my wife therein, and subject to
the trusts uses and powers respecting the said share 10
as herein contained, should the portion so selected
in any case exceed in value (to be fixed as afore-
said) the amount of such child's share in any estate
the excess shall be paid or satisfactorily secured
by such child to my estate, and in apportioning to
my farm to meet the election of my children, the
preference of my choice shall be given, first to my
sons commencing with the eldest and so on suc-
cessively down to the youngest daughter. 20

I Expressly declare that the direction hereinbe-
fore contained to sell my said house and premises
in Thirty Fourth Street, and my farm, stock, cattle,
horses, personal property and utensils, subject to
the life estate of my wife and the direction herein-
after contained to sell my other real estate is not
intended to control the Executors and trustees as
to the time when then shall make such sale to any
time during the life of my wife, and it is my judge-
ment although not obligatory that all sales of my 30
real estate be deferred during the life of my wife in
order to give an increase of value.

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Will and Codicil.

Will Bk. 15 page 682

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10 Fourteenth, I hereby appoint my wife Marie Waston Executrix and Joseph Sturat, Ross Campbell and my sons-in-law William H. Caswell and William H. Tailer all of the City of New York, and all of my said sons on their respectively attaining the age of twenty five years executors and trustees of and under this my last will and testament. And I give to each of my executors the sum of one thousand dollars in addition to their lawful commissions. And I give to the persons who shall be my partners in business immediately preceding the of my death the sum of one thousand dollars each.

WILLIAM WATSON (L. S.)

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Will and Codicil.

Codicil Paragraphs 5 and 6

Bk. 15 page 682 of Wills

Fifth: In and by the ninth clause or article of my said will I directed my executors and trustees and the survivors and survivor of them to pay transfer and deliver over, and I so gave, devised and bequeathed to my sons respectively upon their respectively attaining the age of thirty five years the remaining one half of the principal of the respective shares of my residuary estate allotted to my sons respectively and made provisions for the disposition of the said remaining half of the said principal, in the event that either or any of my sons shall not attain the age of thirty five years as will more fully appear by reference to the said ninth clause or article.

20 Now I revoke the said directions gifts, devises and bequests in respect to the remaining half of the principal of the said respective shares of my residuary estate so allotted to my sons as aforesaid and direct my executrix and executors and trustees and the survivors and survivor of them to apply the rents, income and profits of the said remaining half of the said share to his children living at the time of his death and to the issue if any then living of any of his children then dead, to be equally divided between them such issue to stand in the place of the parent, and in default of such children or issue then to such person

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Will and Codicil.

Codicil Paragraphs 5 and 6
Bk. 15 page 682 of Wills

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10 or persons and in such manner or form as he (my son) shall by his last will and testament duly executed after the age of twenty one years, limit or direct and in default of such limitation or direction then to my next kin, under the laws of the State of New York, as if I had died intestate and I hereby revoke so much of the ninth clause or article in respect to the said remaining half of the principal of the said shares respectively so allotted to my sons as is inconsistent with or in conflict with this fifth clause or article of this codicil.

20 Sixth, Joseph Stuart and Ross Campbell nominated by me as two of the executors and trustees under said will having died since the making of said will I hereby appoint my wife Maria Watson Executrix and my sons-in-law William H. Caswell and William H. Tailer all of the City of New York and all of my son (including any son now a minor upon his attaining the age of twenty one years) Executors and trustees of and under my said will, and this codicil, except that any son entitled to the

30 income or principal of any trust fund shall not be a trustee of any fund in which he may be interested as aforesaid.

Affidavit of Hugh E. Mara.
(Filed Dec. 16, 1925.)

IN CHANCERY OF NEW JERSEY.

Between
 JULIA M. MURPHY,
 Complainant,
 and
 JOHN F. SKELLY, *et als.*,
 Defendants.

On Bill, &c. 10

STATE OF NEW JERSEY }
 COUNTY OF HUDSON, } ss.:

HUGH E. MARA, of full age, being duly sworn according to law, upon his oath deposes and says: 20

1. I am an under sheriff of the County of Hudson.

2. I have read the copy of the affidavit of Samuel Silverman, dated December 11, 1925, served upon the Solicitors of the Complainant in the above entitled cause and have also read a copy of the affidavit made by Maurice J. Breen, dated November 24, 1925, and filed herein. 30

3. I conducted the sale of the lands and premises described in the writ of fieri facias issued in the above entitled cause. Immediately prior to offering the said lands and premises for sale under the said writ of fieri facias, I read to the bidders assembled, the announcement, a copy of which is hereto annexed. One of the bidders was Sam-

Affidavit of Hugh E. Mara. Foreclosure.

uel Silverman. There were several bids made by Samuel Silverman and another bidder and the said premises were struck off and sold to the said Samuel Silverman, he having made the highest bid, to wit, the sum of \$4,700.00. The said Samuel Silverman upon signing the conditions of sale, paid 10% of the bid, to wit, the sum of \$470.00.

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4. The said sale was duly reported to the Court of Chancery and duly confirmed by an order confirming sale bearing date October 5, 1925.

5. The said Samuel Silverman has failed to complete his purchase by the payment to the Sheriff of the County of Hudson of the balance of his bid, \$4,230.00.

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HUGH E. MARA.

Subscribed and sworn to before me }
this 16th day of December, 1925. }

THOMAS ENRIGHT,
Notary Public, N. J.

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Affidavit of Hugh H. Mara. Foreclosure.

MURPHY
v.
SKELLY. } Foreclosure.

Announcement to be made by Sheriff at sale. 10
The premises will be sold subject to the following:

Taxes for the year 1924 \$114.25
with interest on the first half thereof from
June 1/24 and on the second half thereof
from Dec. 1, 1924 @ 7 % per annum.

Taxes for the year 1925 \$118.75 (of which
the first half—\$59.38—is due and in ar-
rear from June 1/25. 118.75

Int. @ 7% per annum from June 1, 1925 20

Arrears of water rents to July 28, 1925
amounting with penalty to 23.85

Water rents from July 28, 1925—estimated

Subject to encroachment and mislocation and
claim of Inspector of Buildings of Hoboken as to
violations of buildings code of the City of Hobo-
ken in the respect that the building erected on said
premises is in an unsafe condition and that the
west wall thereof is leaning out of plumb and the
front wall is cracked due to the settlement of the
west wall and claim of Philip Grassman and Caro-
lina Grassman the owners of the premises adjoin-
ing on the west that the said westerly wall leans
over on said Grassmann land 1 foot and 5 inches,
and a suit now pending in the Court of Chancery
of New Jersey brought by the said Philip Grass-

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Affidavit of Hugh H. Mara. Foreclosure.

mann and Karoline Grassmann as complainants
 against Martin H. Leddy and others, praying for a
 decree in the Court of Chancery that the defend-
 ants may be decreed at their expense to tear down
 or remove the said brick building on the mortgaged
 premises or to tear down so much of said brick
 building as may be necessary to insure a safe and
 10 sound construction of the same whereby to insure
 safety to life and limb of persons passing by said
 premises on the street as well as for the security
 and safety of complainants property and garage,
 and to enjoin and restrain the defendants from per-
 mitting said building to remain unrepaired and un-
 stabled, and in such an unsafe condition as to con-
 stitute a menace to life, limb and property.

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Affidavit of Harry Seiken.

(Filed Jan. 18, 1926.)

IN CHANCERY OF NEW JERSEY.

Between JULIA M. MURPHY, Complainant, and JOHN F. SKELLY, <i>et als.</i> , Defendants.	}	On Bill, &c.	10
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STATE OF NEW JERSEY }
 COUNTY OF HUDSON, } ss.:

HARRY SEIKEN, of full age, being duly sworn, ac-
 cording to law, upon his oath deposes and says:

1. I attended the sale of the premises 211 Eighth
 Street by the Sheriff of the County of Hudson, un-
 der foreclosure in the above entitled cause, at the
 Court House, in the City of Jersey City, on Sep-
 tember 24, 1925, and was one of the bidders at the
 said sale. 20

2. Immediately prior to the sale, the under-sher-
 iff who conducted the sale read an announcement,
 a copy of which is annexed to the affidavit of Hugh
 H. Mara, under-sheriff, hereto annexed. 30

3. The said announcement was read in full by
 the said under-sheriff and was heard by me and
 undoubtedly heard by Mr. Samuel Silverman who
 was near me when the same was read.

HARRY SEIKEN.

Subscribed and sworn to before me }
 this 15th day of December, 1925. } 40

Affidavit of Maurice J. Breen.

supplement to an Act entitled 'An Act respecting conveyances (revision of 1898) approved June fourteenth, eighteen Hundred and Ninety-eight' approved March 11, 1924" Chapter 150, Laws of 1924, page 347.

10 8. The judgment in the Hudson County Circuit Court, Francis Gilbert, as Trustee in Bankruptcy of Motor Engineering Sales Company against J. Leo Skelly for \$801.72, entered in 31 Hudson Circuit Court Minutes, page 402 on January 30, 1913 mentioned in paragraph 4 of the affidavit of Samuel A. Friedman, is not a judgment against John F. Skelly, former owner of the said mortgaged premises as will appear by the affidavit of the said John F. Skelly, hereto annexed.

20 MAURICE J. BREEN.

Subscribed and sworn to before me }
this 16th day of December, 1925. }

LOUIS F. BEACHNER,
Notary Public of New Jersey.

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Affidavit of John F. Skelly.

STATE OF NEW JERSEY, }
CITY OF HOBOKEN, } ss. :
COUNTY OF HUDSON, }

JOHN F. SKELLY being duly sworn, says that he resides at 464 Newark Street, Hoboken, New Jersey, and is by occupation ;
that he is a citizen of the United States, twenty-one years of age and upwards; and that he is now in possession, and the owner in fee simple, of the premises 211 Eighth Street, in said City, this day to be mortgaged by him to Julia M. Murphy. 10

Deponent further says that the said premises have been held by him for this day only, and that his possession thereof has been peaceable and undisturbed, and that the title thereto has never been disputed or questioned to his knowledge, nor does deponent know of any facts by reason of which said possession or title might be disturbed or questioned, or by reason of which any claim to said premises, or any part thereof, might arise or be set up adverse to this deponent; and that he is informed and believes that his grantors held the said premises for more than twenty years prior to the transfer to him; and that no person has any contract for the purchase of, or claim to or against said premises, except as hereinafter stated; and that the same are now free and clear of all taxes, incumbrances or liens by mortgage, decree, judgment, or by statute, or by virtue of any proceeding in any Court, or filed in the office of the clerk of any County or Court in this State, that there are no outstanding claims for the furnishing of material or labor, for the erection, construction, or alteration of any building on said premises whereby the same are now or might become subject to mechanic's or other liens. That there are no prospective assessments for improvements which have already been made on 20
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Affidavit of John F. Skelly.

or about said premises and of all other liens of every nature or description. Deponent's attention has been called to a judgment in the Hudson County Circuit Court Frances Bilberg, as trustee, in bankruptcy of the Moters Engineering Sales Co., against J. Leo Skelly for \$801.72, and a judgment docketed in the Hudson Common pleas from the First District Court, Jersey City, E. Drake, plaintiff vs. J. Leroy Skelly, defendant, \$118.50. Deponent says he is not the defendant named in either of said judgments.

Deponent further says that he is unmarried and that he has never been married to any person now living; and that there are no judgments, or decrees, or attachments, or orders of any Court or officer for the payment of money against him, or to which he is a party, unsatisfied or not cancelled of record in any of the Courts, or before any officer of the United States, or of this State, or any suit or proceeding pending anywhere affecting said premises, to him knowledge, information or belief, and that any judgments found of record against John F. Skelly are not against deponent, but against another of similar name; and that no proceedings in bankruptcy or insolvency have ever been instituted by or against deponent.

Deponent makes this affidavit to induce Julia M. Murphy to accept a mortgage on said premises, and pay the consideration therefor, knowing that said _____ relies upon the truth of the statement herein contained.

JOHN F. SKELLY.

Sworn to before me this }
 11th day of June, 19 }

MAURICE J. BREEN,
 Master in Chancery of New Jersey.

Affidavit of Samuel M. Friedman.

(Filed Feb. 4, 1926.)

IN CHANCERY OF NEW JERSEY.

Between JULIA M. MURPHY, Complainant, and JOHN F. SKELLY, <i>et als.</i> , Defendants.	}	On Bill, &c.	10
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STATE OF NEW JERSEY, }
 COUNTY OF HUDSON, } ss.:

SAMUEL M. FRIEDMAN, of full age, being duly sworn according to law, upon his oath disposes and says:

1. I am an Attorney at Law of the State of New Jersey and am employed in the office of Fallon & Fallon, the Soliictors for the Complainant in the above entitled cause and have read the copy of the supplemental affidavit of Samuel A. Friedman, served upon complainants's Solicitors on January 18th, 1926.

2. I have examined the Will of William Watson mentioned in the affidavit of said Samuel A. Friedman, recorded in the Hudson County Surrogate's Office on April 9, 1883, in Liber 15 of Wills for said County on page 682.

3. The fourth paragraph of the said Will does not devise to the executors and trustees and to the survivors of them, the estate, real and personal, of the said testator. It gives and bequeaths to the executors and trustees and to the survivors of them, an amount of money to be realized by them out of his personal estate as shall be sufficient to produce an annual income of \$30,000.00 free from all debts

Affidavit of Samuel M. Friedman.

and charges, in trust for certain uses and purposes in said paragraph mentioned.

4. The tenth paragraph of the said last Will and Testament contains a power of sale to the Executrix and Executors and the survivor or survivors of them, which reads as follows:

10 "I authorize my executrix and executors and the survivors and survivor of them from time to time in their, his or her discretion to sell any part and parts of my estate real and personal at public or private sale for cash or credit secured by purchase money mortgage except as hereinafter provided, and to execute and deliver good and sufficient conveyances and transfer of the same so as to vest the title thereof in the purchasers or purchaser thereof * * *."

20 5. William Watson, Robert C. Watson, Francis A. Watson, Henry R. C. Watson, William H. Caswell, and William H. Tailer qualified as executors under said will and letters testamentary were granted to them, and the said executors by their deed as such executors dated March 22, 1883, and recorded in Book 377, page 723, conveyed the premises in question to Elizabeth Mary Wilson Greenbaum, wife of Samuel Greenbaum. In the granting clause of this deed the name of the executor William H. Tailer is erroneously spelled Taylor, but the deed is signed correctly by him "Tailer" and in the certificate of acknowledgment his name appears as "Tailer".

SAMUEL M. FRIEDMAN.

Subscribed and sworn to before me }
this 25th day of January, 1926. }

40 LOUIS F. BEACHNER,
Notary Public of New Jersey.

Order.

(Filed Nov. 30, 1925.)

IN CHANCERY OF NEW JERSEY.

Between JULIA M. MURPHY, Complainant, and JOHN F. SKELLY, <i>et als.</i> , Defendants.	}	58-399. On Bill to Foreclose. 10 On Peti- tion, etc.
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This matter coming on to be heard on return of the order to show cause, made herein, on November 24th, 1925, in the presence of Maurice J. Breen, representing Fallon & Fallon, Solicitors for the Complainant, and Saul Nemser, Solicitor for Samuel Silverman, and I. Faerber Goldenhorn, of Counsel with said Samuel Silverman, and it appearing that true copies of the petition and affidavit and said order to show cause filed on November 24th, 1925, were served on the said Samuel Silverman as directed in said order to show cause.

It is, on this 30th day of November, 1925, on motion of the Solicitor for the said Samuel Silverman, ORDERED, that the hearing on the return of the said order to show cause, be and the same is hereby continued and adjourned to Monday, the 21st day of December, 1925, at Chancery Chambers, in the City of Jersey City, at ten o'clock in the forenoon of said day, or as soon thereafter as Counsel can be heard.

It is further ORDERED that the said Samuel Silverman, or his Solicitor, shall, on or before the 14th

Order.

day of December, 1925, serve upon the Solicitors of the Complainant copies of the affidavits and a memorandum of the law to be used by the said Samuel Silverman on the argument on the hearing of said order to show cause.

E. R. WALKER,
C.

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Respectfully advised,

JOHN BENTLEY,
V. C.

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Stipulation.

(Filed)

IN CHANCERY OF NEW JERSEY.

Between JULIA M. MURPHY, Complainant, and JOHN F. SKELLY, <i>et als.</i> , Defendants.	}	On Bill to Foreclose. On Petition and Order to Show Cause.	10
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It is on this 21st day of December, 1925, hereby stipulated by and between the solicitors of the complainant and the solicitor of Samuel Silverman, that the hearing of the argument on the return of the order to show cause made herein on the 24th day of November, 1925, be and the same is hereby adjourned and continued to Monday, the 18th day of January, 1926, before the Hon. John Bentley, Vice Chancellor, at Chancery Chambers, in the City of Jersey City, at 10 o'clock in the forenoon of said day or as soon thereafter as counsel can be heard.

FALLON & FALLON,
Solicitors for Complainant. 30

SAUL NEMSER,
Solicitor for Samuel Silverman.

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Order.
(Filed Dec. 14, 1926.)

IN CHANCERY OF NEW JERSEY.

10	Between JULIA M. MURPHY, Complainant, and JOHN F. SKELLY, and others, Defendants.	} 58-399. } On Bill to } Foreclose. } On Petition } and Order to } Show Cause.
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20 The order to show cause why the purchaser Samuel Silverman should not be required to complete his purchase of the lands and premises sold to him by the sheriff of the County of Hudson under and by virtue of the writ of *feri facias* issued out of this Honorable Court in the above-entitled cause, by the payment to the sheriff of the County of Hudson of the balance of the amount bid by him at the sale of said lands and premises, and the petition of the said Samuel Silverman to be relieved of said bid coming on to be heard in the presence of Fallon & Fallon, solicitors for the complainant and Saul Nemser, solicitor for the said Samuel Silverman, and upon reading the affidavits 30 of the respective parties and the arguments of counsel having been heard and considered.

40 It is on this 14th day of December, 1926, on motion of Fallon & Fallon, soliictors for the complainant ORDERED that the said Samuel Silverman, the above-named purchaser, pay to the sheriff of the County of Hudson the balance of the amount bid by the said Samuel Silverman at the sale of said lands and premises held by the said sheriff of the County of Hudson under and by virtue of the

Order.

writ of *feri facias* in the above-entitled cause, together with lawful interest thereon from the date of the said sale September 24, 1925, within 15 days after service of a copy of this order upon him.

And it is further ORDERED that within said time the said Samuel Silverman pay to the solicitors for the complainant a counsel fee of \$200.00 together with the costs of these proceedings to be taxed. 10

And it is further ORDERED that the petition of the said Samuel Silverman to be relieved of said bid be and the same is hereby dismissed.

E. R. WALKER,
C. 20

Respectfully advised,
JOHN BENTLEY,
V. C.

A true copy,
THOMAS BARBER,
Clerk. 30

Opinion.

baum is concerned, she could not be heard to complain in this court that the enactment of the law of 1924 unconstitutionally affected her rights, notwithstanding anything that was said in Wright v. Pell (*supra*). In view of the clear intimation of the Court of Errors and Appeals in Jason v. Johnson (*supra*), the Wright case should be followed as a precedent no further than is necessary to avoid confusion in the proceedings of this court, and its effect should not be extended to declaring the statute unconstitutional. It is not shown that Grunbaum had anything more than an inchoate right by the curtesy and this may be abolished at will. Allen v. Hanks, 136 U. S. 300. Neither can it be successfully urged, in view of what has already been said, that the retrospective character of the act in question renders it invalid. The only constitutional inhibitions in that respect deals with *ex post facto* laws. Johannssen v. United States, 225 U. S. 227.

I will advise an order directing the bidder to complete his bid in conformity with the practice followed in Silver v. Campbell, 25 N. J. Eq. 465, and dismissing his petition to be relieved of his bid.

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Notice.

(Filed Dec. 31, 1926.)

IN CHANCERY OF NEW JERSEY.

Between JULIA M. MURPHY, Complainant, and JOHN F. SKELLY, <i>et als.</i> , Defendants.	}	On Petition for Re-Hearing.	10
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To FALLON & FALLON,
Solicitors of Complainant.

SIRS:

PLEASE TAKE NOTICE: That I have presented a petition for re-hearing in the above entitled cause, on behalf of Samuel Silverman to the Honorable John Bentley, Vice Chancellor, before whom the said cause was heard, a copy of which petition is hereto annexed and served upon you, together with a copy of the Order to Show Cause granted on said petition.

Dated, December 29th, 1926. 30

Yours truly,

SAUL NEMSER,
Solicitor of Defendant,
Samuel Silverman.

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Petition of Samuel Silverman to Re-Open Hearing, Etc.

IN CHANCERY OF NEW JERSEY.

10	Between JULIA M. MURPHY, Complainant, and JOHN F. SKELLY, <i>et als.</i> , Defendants.	} On Bill to Foreclose.
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TO THE HONORABLE EDWIN ROBERT WALKER,
CHANCELLOR OF THE STATE OF NEW JERSEY:

20 The petition of Samuel Silverman of Jersey City,
County of Hudson and State of New Jersey, re-
spectfully shows unto your Honor:

1. On September 24th, 1925, your petitioner, did
bid in the premises known as No. 211 Eighth Street,
Hoboken, Hudson County, New Jersey, being fore-
closed by the complainant herein, for the sum of
Forty-seven Hundred (\$4700.00) Dollars, at the
sale held by the Sheriff of Hudson County.

30 2. Your petitioner failed to complete his said
bid, by reason of the fact that your petitioner con-
tended and was advised that the title to said prem-
ises was unmarketable and thereupon an Order to
Show Cause was granted on application of Fallon
& Fallon, Solicitors of Complainant, why your peti-
tioner should not be compelled to complete his bid,
and to pay in the balance of the purchase price to
40 the Sheriff of the County of Hudson, which Order
to Show Cause was granted on the 24th day of

*Petition of Samuel Silverman to Re-Open
Hearing, Etc.*

November, 1925, by the Honorable John Bentley,
one of the Vice Chancellors of this court.

3. Petitioner thereupon filed a cross-petition
seeking to be relieved of the said bid, on the ground
that the title to the said premises being foreclosed
was unmarketable. 10

4. Due argument was had on both petitions,
briefs were filed by respective Counsel and there-
upon on the 14th day of December, 1926, an Order
was entered in this cause, wherein the prayer of
the petition filed by the complainant herein was
granted and your petitioner ordered to complete
his bid, and your petitioner's cross-application to
be relieved of said bid was dismissed. 20

5. Your petitioner shows that since the entry
of the said Order of December 14th, 1926, aforesaid,
your petitioner's Solicitor, viz., Saul Nemser dis-
covered on Friday, December 24th, 1926, among his
papers an abstract of the deed in the chain of title
to the premises, 211 Eighth Street, Hoboken, N. J.,
which deed is dated August 6th, 1870, and which
was recorded on August 18th, 1870 in liber 214
of deeds for Hudson County, page 524, in which 30
deed The Hoboken Land & Improvement Co., is
grantor and one Arthur Young is grantee, and in
which deed is described the premises in question.
Said deed contains the following restrictive cove-
nant, viz.:

“And the said party of the second part for
himself, his heirs and assigns, hereby covenants
to and with the said party of the first part
their successors and assigns that he, the said 40

*Petition of Samuel Silverman to Re-Open
Hearing, Etc.*

10 party of the second part, his heirs and assigns occupying the hereby granted premises will not establish nor permit to be established upon the said premises any slaughter house, tallow, chevalry furnace, steam engine, Brass Foundry, nail or other iron factory nor any manufactory of gun powder or fireworks, glue, nitrol or varnish, ink, lard, oil soap, candle, starch, turpentine or camphene, nor for the tanning, dressing, preparing or keeping of hides, skins or leather nor any chemical gas or poudrette factory nor brewery or distillery nor any other nuisance."

20 6. Your petitioner is advised and believes that said restrictive covenant is a substantial defect in the title and renders the title unmarketable, and is advised and believes that if the said restrictive covenant had been called to the court's attention at the time of the argument aforesaid, that this court would have declared said title unmarketable, and would have relieved said petitioner of his bid. A copy of said deed, certified by the Hudson County Register is hereto annexed, marked Schedule "A" and made a part hereof.

30 7. Your petitioner shows that it was through an accident that said deed from The Hoboken Land & Improvement Co., to Young aforesaid was inadvertently overlooked by Saul Nemser, Solicitor of your petitioner in that the sheets of the abstract of the title to the said premises, No. 211 Eighth Street, Hoboken, Hudson County, New Jersey, containing said deed had been through accident, inadvertently lost or misplaced, and had been over-

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*Petition of Samuel Silverman to Re-Open
Hearing, Etc.*

looked for that reason by your petitioner's Solicitor, said Saul Nemser.

8. Your petitioner is advised and believes that the said deed from The Hoboken Land & Improvement Co. to Young aforesaid, being a matter of public record, in the County of Hudson, cannot be controverted and that the matters therein contained are absolutely true; and your petitioner is further advised and believes that the restrictive covenant contained in said deed is a matter of substance and renders the title unmarketable. 10

9. Petitioner further shows that neither he nor his said Solicitor, Saul Nemser, knew of the existence of the said deed, and the restrictive covenant contained in said deed as aforesaid, until Friday, December 24th, 1926, and that the same was discovered purely by accident and for that reason was not called to the Court's attention prior to the date hereof, and your petitioner is further advised and believes that if the said deed from The Hoboken Land & Improvement Co. to Young aforesaid had been called to the Court's attention at the time of the argument, that it would have changed the result herein and would have caused this Honorable Court to have granted the prayer of your petitioner to be relieved of his said bid, and that if an opportunity is now given to your petitioner to submit said newly discovered evidence consisting of said deed, and the restrictive covenant contained therein as aforesaid, this court will vacate the said Order of December 14th, 1926, and will grant a new order, relieving your petitioner of the said bid. 20 30

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Petition of Samuel Silverman to Re-Open Hearing, Etc.

10 10. Petitioner shows that the said restriction contained in the deed from The Hoboken Land & Improvement Co. to Arthur Young aforesaid was not mentioned or set forth in the advertisements of sale, notices of sale, conditions of sale or in the announcement made by the Sheriff at the Sale, copies of which are annexed to the complainant's petition, on her application to compel your petitioner to perform his said bid, and your petitioner and his solicitor, Saul Nemser never had any knowledge, information or notice of said restrictive covenant until Friday, December 24th, 1926, as aforesaid.

20 11. Your petitioner therefore prays that your Honor grant an order, requiring the said Julia M. Murphy and her solicitors, to show cause before this Honorable Court, why the said Order of December 14th, 1926, should not be re-opened and vacated and set aside, and a new Hearing and argument granted to the petitioner herein, and why said petitioner should not have leave to submit to this Honorable Court, and introduce in evidence, the deed aforesaid from The Hoboken Land & Improvement Co. to Arthur Young and the restrictive covenant therein contained.

30 And your petitioner will ever pray, etc.

SAMUEL SILVERMAN,
Petitioner.

SAUL NEMSER,
Solicitor of Petitioner.

Affidavit of Samuel Silverman.

IN CHANCERY OF NEW JERSEY.

Between
JULIA M. MURPHY,
Complainant,
and
JOHN F. SKELLY, *et als.*,
Defendants. } On Bill to Foreclose. 10

STATE OF NEW JERSEY, }
COUNTY OF HUDSON, } ss.:

SAMUEL SILVERMAN, of full age, being duly sworn, according to law, upon his oath, deposes and says: 20

1. I am the petitioner in the foregoing petition; I have read the said petition and the matters and things therein contained are true. Particularly is it true that on September 24th, 1925, I did bid in the premises known as No. 211 Eighth Street, Hoboken, Hudson County, New Jersey, being foreclosed by the complainant herein, for the sum of Forty-seven Hundred (\$4700.00) Dollars, at the sale held by the Sheriff of Hudson County. 30

2. I failed to complete my said bid, by reason of the fact that I contended and was advised that the title to said premises was unmarketable and thereupon an Order to Show Cause was granted on application of Fallon & Fallon, Solicitors of Complainant, why I should not be compelled to complete my bid, and to pay in the balance of the purchase price to the Sheriff of the County of Hudson, 40

Affidavit of Samuel Silverman.

which Order to Show Cause was granted on the 24th day of November, 1925, by the Honorable John Bentley, one of the Vice Chancellors of this court.

3. I thereupon filed a cross-petition seeking to be relieved of my said bid, on the ground that the title to the said premises being foreclosed was unmarketable. 10

4. Due argument was had on both petitions, briefs were filed by respective Counsel and thereupon on the 14th day of December, 1926, an Order was entered in this cause, wherein the prayer of the petition filed by the complainant herein was granted and I was ordered to complete my bid, and my cross-application to be relieved of my said bid was dismissed. 20

5. Since the entry of the said Order of December 14th, 1926, aforesaid, my solicitor, viz., Saul Nemser discovered on Friday, December 24th, 1926, among his papers an abstract of the deed in the chain of title to the premises, 211 Eighth Street, Hoboken, N. J., which deed is dated August 6th, 1870, and which was recorded on August 18th, 1870 in liber 214 of deeds for Hudson County, page 524, in which deed The Hoboken Land & Improvement Co., is grantor and one Arthur Young is grantee, and in which deed is described the premises in question. Said deed contains the following restrictive covenant, viz.: 30

“And the said party of the second part for himself, his heirs and assigns, hereby covenants to and with the said party of the first part their successors and assigns that he, the said 40

Affidavit of Samuel Silverman.

party of the second part, his heirs and assigns occupying the hereby granted premises will not establish nor permit to be established upon the said premises any Slaughter House, tallow, cavalry furnace, steam engine, Brass Foundry, nail or other iron factory nor any manufactory of gun powder or fireworks, glue, nitrol or varnish, ink, lard, oil soap, candle, starch, turpentine or camphene, nor for the tanning, dressing, preparing or keeping of hides, skins or leather nor any chemical gas or poudrette factory nor brewery or distillery nor any other nuisance.” 10

6. I am advised and believe that said restrictive covenant is a substantial defect in the title and renders the title unmarketable, and am advised and believe that if the said restrictive covenant had been called to the court's attention at the time of the argument aforesaid, that this court would have declared said title unmarketable, and would have relieved me of my bid. A copy of said deed, certified by the Hudson County Register is hereto annexed, marked Schedule “A” and made a part hereof. 20

7. It was through an accident that said deed from The Hoboken Land & Improvement Co. to Young aforesaid was inadvertently overlooked by Saul Nemser, my Solicitor in that the sheets of the abstract of the title to the said premises, No. 211 Eighth Street, Hoboken, Hudson County, New Jersey, containing said deed had been through accident, inadvertently lost or misplaced, and had been overlooked for that reason by my solicitor, said Saul Nemser. 30

Affidavit of Samuel Silverman.

8. I am advised and believe that the said deed from The Hoboken Land & Improvement Co. to Young aforesaid, being a matter of public record, in the County of Hudson, cannot be controverted and that the matters therein contained are absolutely true; and I am further advised and believe that the restrictive covenant contained in said deed is a matter of substance and renders the title unmarketable.

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9. Neither I nor my said solicitor, Saul Nemser, knew of the existence of the said deed, and the restrictive covenant contained in said deed as aforesaid, until Friday, December 24th, 1926, and that the same was discovered purely by accident and for that reason was not called to the Court's attention prior to the date hereof, and I am further advised and believe that if the said deed from The Hoboken Land & Improvement Co. to Young aforesaid had been called to the Court's attention at the time of the argument, that it would have changed the result herein and would have caused this Honorable Court to have granted my prayer to be relieved of my said bid, and that if an opportunity is now given to me to submit said newly discovered evidence consisting of said deed, and the restrictive covenant contained therein as aforesaid, this Court will vacate the said Order of December 14th, 1926, and will grant a new Order, relieving me of my said bid.

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10. That the said restriction contained in the deed from The Hoboken Land & Improvement Co. to Arthur Young aforesaid was not mentioned or set forth in the advertisements of sale, notices of sale, conditions of sale or in the announcement

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Affidavit of Samuel Silverman.

made by the Sheriff at the Sale, copies of which are annexed to the complainant's petition, on her application to compel me to perform my said bid, and myself and my solicitor, Saul Nemser never had any knowledge, information or notice of said restrictive covenant until Friday, December 24th, 1926, as aforesaid.

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SAMUEL SILVERMAN.

Sworn and subscribed to before me }
 this 29th day of December, 1926. }

LOUIS EICHENBAUM,
 Attorney at Law
 of New Jersey.

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Affidavit of Saul Nemser.

IN CHANCERY OF NEW JERSEY.

10	Between JULIA M. MURPHY, Complainant, and JOHN F. SKELLY, <i>et als.</i> , Defendants.	} On Bill to } Foreclose.
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STATE OF NEW JERSEY, }
 COUNTY OF HUDSON, } ss.:

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

1. I am the solicitor of Samuel Silverman, one of the defendants in the above entitled cause, and actually entrusted with the care and management of said cause; said cause has been under my personal care and supervision from its inception and no one else has had charge thereof.

2. At the time of the argument on the complainant's petition to compel my client, Samuel Silverman to complete his bid, and on the cross-application of said Samuel Silverman to be relieved of his said bid, in January, 1926, I did not have before me the abstract of the deed from The Hoboken Land & Improvement Co., to Arthur Young, and the restrictive covenant therein contained, as more fully set forth in the petition hereto annexed. I did not know of the existence of the said deed from The Hoboken Land & Improvement Co. to Arthur Young and the restrictive covenant therein con-

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Affidavit of Saul Nemser.

tained until Friday, December 24th, 1926, when going through some other files in my office, containing some papers of Samuel Silverman in other matters, I accidentally ran across the abstract of said deed; if I had known of the existence of the said deed from The Hoboken Land & Improvement Co. to Arthur Young and the restrictive covenant therein contained, I would have submitted the same to this court, as a ground for relieving Silverman of his bid, because I believe the restrictive covenant contained in the said deed creates a substantial defect in the said title, and renders the title unmarketable, and if the Court had this deed and the restrictive covenant before it at the time of the Hearing of both petitions in January, 1926, I believe the Court would have come to a different result and would have granted the petition of the said Samuel Silverman to be relieved of his said bid.

3. The abstract of the said deed from The Hoboken Land & Improvement Co. to Arthur Young had been placed in one of my office files, containing Samuel Silverman's matters through inadvertence in filing the same in the wrong file, and if the same had been placed in the proper file in the above entitled cause, unquestionably I would have discovered the same, and would have set up said deed as a ground for relieving Silverman of his bid.

SAUL NEMSER.

Sworn and subscribed to before me }
 this 29th day of December, 1926. }

DANIEL D. LOEB,
 N. C. C. of N. J.

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Deed, Dated August 6th, A. D. 1870.

(On Side—Deed 214/524 Hoboken L. & I. Co. to Young. COMPARED E. K. & V. M.)

THE HOBOKEN LAND AND IMPROVEMENT COMPANY

TO

ARTHUR YOUNG

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THIS INDENTURE, Made the sixth day of August in the year of Our Lord One Thousand eight hundred and seventy. Between the Hoboken Land and Improvement Company of the first part and Arthur Young of the City of Hoboken, in the County of Hudson and State of New Jersey, party of the second part, WITNESSETH: That the said parties of the first part for and in consideration of the sum of eight hundred and twenty-seven (827) dollars lawful money of the United States to them in hand paid by the said party of the second part at or before the ensealing and delivery of these presents the receipt whereof is hereby acknowledged have granted bargained, sold, aliened, released, conveyed and confirmed and by these presents do grant, bargain, sell, alien, release, convey and confirm unto the said party of the second part his heirs and assigns.

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ALL that certain piece or parcel of lot of land situate lying and being in the City of Hoboken, in the County of Hudson and State of New Jersey, and which is described as follows: viz Commencing at a point in the southerly line of Eighth Street in Hoboken eighty-one (81) feet easterly from the southeasterly corner of Meadow and Eighth Street; and running thence easterly along the southerly line of Eighth Street nineteen (19) feet southerly

Deed, Dated August 6th, A. D. 1870.

and parallel with Meadow Street sixty (60) feet thence westerly and parallel with Eighth Street nineteen (19) feet thence northerly and parallel with Meadow Street sixty (60) feet to the point or place of beginning.

TOGETHER with all and singular the rights members hereditaments and appurtenances to the same belonging or in ANY wise appertaining, and the reversion and reversions remainder and remainders rents issues and profits thereof. And also all the estate rights, title, interest, property possession, claim and demand whatsoever of the said parties of the first part of in and to the same.

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TO HAVE AND TO HOLD all and singular the said premises above granted and conveyed with the hereditaments and appurtenances unto the said party of the second part his heirs and assigns to his and their only use and behoof forever. And the said party of the first part do hereby for themselves, their successors and assigns covenant and agree to and with the said party of the second part, his heirs and assigns, that the said party of the second part, his heirs and assigns shall and may at all times hereafter peaceably and quietly have, hold, possess and enjoy the said premises above granted and conveyed or intended so to be with the hereditaments and appurtenances without the let suit molestation or interruption of any person or persons lawfully claiming or to claim the same. And also that the said parties of the first part, their successors and assigns shall and will at all times hereafter save harmless and indemnify the said party of the second part, his heirs and assigns, of and from all former gifts, grant, mortgages,

Deed, Dated August 6th, A. D. 1870.

10 judgments, executions and other encumbrances whatsoever heretofore had made, obtained or suffered by any person or persons whomsoever. And the said party of the second part for himself, his heirs and assigns hereby covenant to and with the said party of the first part, their successors and assigns, that he, the said party of the second part, his heirs and assigns, occupying the hereby granted premises will not establish nor permit to be established upon the said premises any slaughter house, tallow Chandlery furnace, steam Engine, brass foundry, nail or other iron factory, nor any manufactory of gun powder or fireworks, glue, vitriol or varnish, ink, lard, oil, soap, candles, starch, turpentine or camphene nor for the tanning, dressing, preparing or keeping of hides, skins or leather nor

20 any chemical gas or poudrette factory nor brewery or distillery nor any other nuisance. And the said parties of the first part, their successors and assigns the said premises above granted and conveyed with the hereditaments and appurtenances unto the said party of the second part, his heirs and assigns against all persons whomsoever shall and will warrant and forever defend, by these presents.

30 IN WITNESS WHEREOF, the said parties of the first part have caused their corporate seal to be hereunto affixed and these presents to be signed by their President on the day and year first above written.

SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF
S. B. DOD.

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W. W. SHIPPEN,
President,
H. L. & I. Co. Corporate Seal.

Deed, Dated August 6th, A. D. 1870.

STATE OF NEW JERSEY, }
HUDSON COUNTY, } ss.:

BE IT REMEMBERED that on this Ninth day of August, A. D. one thousand eight hundred and seventy before me Wm. H. Havens a Commissioner of Deeds, personally appeared Samuel B. Dod of Weehawken, New Jersey, who being duly sworn on his oath deposes and saith that he saw the within named W. W. Shippen sign his name to the within Instrument that he knows him to be the President of the Hoboken Land and Improvement Company, that the seal to the within Instrument affixed is the Corporate Seal of the said Company and the said President did acknowledge that the same was signed, sealed and delivered for and in behalf of said company as their act and deed for the uses and purposes therein mentioned He this deponent subscribing his name thereto at the same time as an attesting witness.

S. B. DOD.

Sworn and subscribed before me the day and year aforesaid.

WM. H. HAVENS,
Commissioner of Deeds.

Received in the office and recorded August 18th,
A. D. 1870, at 5 o'clock P. M.

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Deed, Dated August 6th, A. D. 1870.

STATE OF NEW JERSEY, }
COUNTY OF HUDSON, }SS.:

I, CHARLES F. X. O'BRIEN, Register of the County of Hudson, do hereby Certify that the foregoing is a true and correct copy of a certain Deed as the same is on Record in my Office In Book 214 of deeds on page 524, &c.
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In Testimony Whereof, I have hereunto set my hand and seal this 29th day of December, A. D. 1926.

CHARLES F. X. O'BRIEN,
Register.

By CHARLES M. AUSTIN,
Deputy Register.

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Order to Show Cause.

(Filed Dec. 31, 1926.)

IN CHANCERY OF NEW JERSEY.

Between

JULIA M. MURPHY,
Complainant,

and

JOHN F. SKELLY, *et als.*,
Defendants.

On Bill to Foreclose. 10

Upon reading and filing the duly verified petition of Samuel Silverman, one of the defendants herein, and on Motion of Saul Nemser, Solicitor of Said Samuel Silverman,
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It is on this 31st day of December 1926,

ORDERED, That the said complainant, Julia M. Murphy and her solicitors, Fallon & Fallon, show cause before the Chancellor at the Chancery Chambers, 1 Exchange Place, Jersey City, N. J., on Monday, the 17th day of January, 1927, at 10 o'clock in the forenoon or as soon thereafter as counsel can be heard, why the prayer on Petitioner's petition should not be granted and why the Order heretofore entered on Decemebr 14th, 1926, should not be vacated, set aside and for nothing holden, and why a re-hearing should not be granted to the said Samuel Silverman and permission granted to the said Samuel Silverman to submit his newly discovered evidence, consisting of the deed from The Hoboken Land & Improvement Co. to Arthur Young, and the restrictive covenant therein contained, and it is further
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Order to Show Cause.

ORDERED: That a copy of this Order to Show Cause, and the verified petition upon which it is founded, certified by the Solicitor of Samuel Silverman as a true copy be served upon Fallon & Fallon, Solicitors of Complainant, within 5 days from the date of hereof.

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E. R. WALKER,
C.

Respectfully advised,

JOHN BENTLEY,
V. C.

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Order Dismissing Petition.

(Filed Feb. 21, 1926.)

IN CHANCERY OF NEW JERSEY.

Between JULIA M. MURPHY, Complainant, vs. JOHN F. SKELLY, <i>et als.</i> , Defendants.	} On Petition for Re-Hearing.	10
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The defendant, Samuel Silverman, having filed his petition for re-hearing and to vacate and set aside the order of this court heretofore entered on December 14th, 1926, and the matter coming on to be heard on the return of the order to show cause granted on the filing of said petition on the 31st of December, 1926, continued over by consent until Monday, February 7th, 1927, in the presence of Saul Nemser, Solicitor of Samuel Silverman, for the petition; and Maurice J. Breen, representing Fallon & Fallon, Solicitors for complainant, opposed and after due argument.

It is on this 21st day of February, 1927,

ORDERED, that the petition of Samuel Silverman for re-hearing and to vacate the order of December 14th, 1926, be and the same is hereby denied and said petition and order to show cause is hereby dismissed.

E. R. WALKER,
C.

Respectfully advised.

JOHN BENTLEY.

Consent as to form.

SAUL NEMSER,
Solicitor for Samuel Silverman. 40

Memorandum of Opinion.

(Filed)

IN CHANCERY OF NEW JERSEY.

10	Between JULIA M. MURPHY, Complainant, and JOHN F. SKELLY, <i>et als.</i> , Defendants.	} On Bill to Foreclose.
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February 16, 1927.

20 FALLON & FALLON, Esq'rs, For the Complainant;

SAUL NEMSER, Esq., For the Defendants.

BENTLEY, V-C. :—

Application is made for a rehearing of a petition to be relieved of a bid under section 35 of the act for the sale of land (4 C. S., 4686).

30 The application is based upon what is regarded by the applicant as newly-discovered evidence. After a dismissal of the above-mentioned petition, proof was filed with the court that a copy of a deed was found in the file of the petitioner's solicitor on the chain of title pertinent to this proceeding, containing a restrictive covenant of the usual sort prohibiting the establishing upon the premises conveyed of any slaughter-house, fireworks, glue or varnish-factory, &c. Assuming, for the purpose of this argument, that such a covenant does render the title unmarketable in an ordinary case, it is without effect on the premises in ques-

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Memorandum of Opinion.

tion because it is universally to be found in all old conveyances affecting land in its neighborhood, and it has been distinctly abandoned and broken to such an extent that it is incredible that any court would undertake to enforce it.

Furthermore, it is not newly-discovered evidence within the meaning of that term as understood by courts of law and equity. After the petitioner's solicitor had caused the title to be searched, someone in his office caused the abstract of title to be filed in such a way that his solicitor failed to come across it at the time the said petition was prepared. Subsequently, and after the petition had been ordered dismissed, a more intensive search was instituted, with the result that the abstract was located and the objectionable covenant discovered. It is so elementary as to require neither the citation of authorities nor argument to prove that one applying for a rehearing on the ground of newly-discovered evidence must have made diligent search therefor. It is always an indication that diligent search has not been made when missing evidence is discovered shortly after the trial or hearing.

Furthermore, the principal ground urged in the original petition was based upon a peculiarity in this very chain of title, and it seems strange that all defects or alleged defects in the title were not collected and presented therein. It would be an exceedingly irksome thing if a party should be permitted to present his objections to a title one and thus prolong litigation, to the point of desperation.

There is no more salutary policy of the law, enforced by courts of equity as well, than the one

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Memorandum of Opinion.

which directs a litigant to prepare his case or defense fully and have the court pass upon everything upon which he relies, except where he could not by due diligence have discovered the evidence before trial. As already indicated above, not only were the records of the Register's office available to this applicant but he actually had a transcript thereof and must have used it in the preparation of his petition. There has been no mistake in this case cognizable by this court.

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The rehearing should be denied.

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NEW JERSEY

Court of Errors and Appeals

JULIA M. MURPHY,
Complainant-Respondent,

vs.

JOHN F. SKELLY et als.,
Defendants-Appellants.

} Appeal of
Samuel
Silverman
from decree
of the Court
of Chancery.

BRIEF FOR COMPLAINANT-RESPONDENT.

The facts relating to the proceedings in the Court of Chancery as set forth on pages 1, 2 and 3 of the appellant's brief are substantially correct.

The following statement will be noted in appellant's brief (p. 2):

"Silverman in his answering affidavits also raised certain other objections to the title which are not urged in this court."

The fact that Silverman had actual notice of the liens and encumbrances, mislocation and defective condition of the premises under sale, by the announcement of the Under Sheriff conducting the sale prior thereto and the reading of same with the conditions of sale signed by Silverman (Schedule A, Schedule B, Case, pp. 19-21), was not disputed upon argument by counsel for Silverman in the Court below, as he considered that fact as estab-

lished by the weight of the evidence, but he sought to be relieved of his bid because there had not been a strict compliance with the statute (4 C. S., p. 4686, Sec. 35).

Silverman states in his affidavit (Case, p. 30, par. 1):

"I desire to say that I did not hear any such announcement made by the Deputy Sheriff who conducted the sale or by anyone else at the sale while I was present."

By paragraphs 5 and 9 of the affidavit of Maurice J. Breen (Case, pp. 25-26), the affidavit of Hugh E. Mara, the Under Sheriff of Hudson County who conducted the sale (Case, pp. 47-48), and the affidavit of Harry Seiken (Case, p. 51), and the affidavit of Maurice J. Breen (Case, pp. 52-53), it will appear that the announcement was made by the Sheriff in the presence and hearing of the bidder Silverman, and that he had full knowledge thereof at the time of signing the conditions of sale of which the said announcement formed part.

POINT I.

The purchaser Silverman should not be relieved of his bid, as he had actual notice of the liens, encumbrances and defective condition of the premises.

The failure of the complainant to insert in the notices and advertisements of sale and in the conditions of sale all tax liens, encumbrances and mislocations, and claims as to violations of Building Code and defects in building, in compliance with the provisions of the statute (P. L., 1906, p. 269; 4 C. S., pp. 4686-4687, Sec. 35), does not entitle

the bidder Silverman to be relieved of his bid, as it appears by the evidence that prior to making his bid and at the time of signing the conditions of sale, he had actual notice of all of the liens and encumbrances and defects in the title by reason of which he now seeks to be relieved. Commenting upon this statute in *Oakley v. Shaw*, 69 Atl. Rep. 462, at page 464, the Chancellor said:

"What is aimed at by this statute is notice, and, independently of the statute, it seems to me that one who has notice of the condition of the title cannot object that he did not obtain that notice in the manner and form prescribed by the statute. In other words, he cannot be relieved if he has notice. The statute is entirely remedial, and should not be extended to one whose claim to the remedy is without equity.

"The effect of this statute is to prevent the bidder or purchaser from being relieved, if the defects in the title and the liens and encumbrances thereon are brought to his notice before the sale."

Armstrong v. Fischer, 73 N. J. Eq. 228, 66 Atl., page 107.

The statements in the brief for appellant (p. 6) as to decrees entered in the Court of Chancery in the suit of *Grassman v. Leddy* should not be considered by this Court, as they are not a part of the record in this case.

It is stated in appellant's brief (p. 8) that the conditions of sale and advertisement of sale (Case, pp. 21-22) do not set forth and are absolutely silent with respect to the defects in the title. This is not true as to the conditions of sale. The announcement read by the Sheriff as to the liens and encumbrances and defects in the title (Schedule A, Case, p. 19) was annexed to and formed part

of the conditions of sale which were signed by the bidder Silverman (Case, pp. 19, 20, 21).

POINT II.

The refusal of the Court of Chancery to vacate and set aside the order of December 14, 1926, and to grant a rehearing upon the ground of newly discovered evidence, was within the Court's discretion and the application was properly denied.

The petition for rehearing and order to show cause why same should not be granted was dismissed by the Vice Chancellor for the reason as stated in his opinion (Case, p. 89) that the evidence sought to be introduced at the rehearing was not newly discovered evidence within the meaning of that term as understood by courts of law and equity, and further stated:

"It is so elementary as to require neither the citation of authorities nor argument to prove that one applying for a rehearing on the ground of newly discovered evidence must have made diligent search therefor. It is always an indication that diligent search has not been made when missing evidence is discovered shortly after the trial or hearing."

A new trial will not be granted upon evidence alleged to be newly discovered, but the existence of which could have been ascertained by the exercise of reasonable diligence before the case was moved for trial.

Crescent Mfg. Co. v. Klempler, 2 Misc. Rep. 229.

Error will not lie on a rule of discharging a rule to show cause why a judgment regularly entered should not be opened to let in a proposed defense.

First Nat. Bank of Redbank v. Jones, 44 N. J. L. 60.

An order refusing to open a judgment is an incidental one and discretionary in its character.

State Mutual B. & L. Ass'n v. Williams, 79 N. J. L. 720-723.

The well established rule is, that if new evidence might, with ordinary diligence, have been discovered previous to the trial, the new trial will not be granted.

Deacon v. Allen, 4 N. J. L. 338.

Sheppard v. Sheppard, 10 N. J. L. 250.

Servis v. Cooper, 33 N. J. L. 68-71.

An application for a rehearing in chancery is governed by principles applicable to motions for new trial after verdict at law.

Kirschbaum v. Kirschbaum, 92 N. J. Eq. 7, at p. 10; citing *Feinberg v. Feinberg*, 70 N. J. Eq. 420, and *Richardson v. Hatch*, 68 N. J. Eq. 788.

At law they are always addressed to the discretion of the Court and are not reviewable on error.

Kirschbaum v. Kirschbaum, *supra*; citing *Furman v. Applegate*, 23 N. J. L. 28, 33; *D., L. & W. R. R. Co. v. Nevelle*, 51 N. J. L. 333.

State B. & L. Ass'n v. Williams, 78 N. J. L. 720-723.

De Mateo v. Perana, 80 N. J. L. 437, 438.

Upon the presentation to the Vice Chancellor of the petition of Samuel Silverman and the supporting affidavits (Case, pp. 68-79, with exhibit thereunto annexed—Case, pp. 80-83), an order to show cause was granted by the Vice Chancellor that complainant show cause why the order entered on December 14, 1926, should not be vacated, set aside and for nothing holden, and why a rehearing should not be granted to Samuel Silverman, and permission granted him to submit his newly discovered evidence. Although it does not appear in the printed case, upon the argument on the return of the rule to show cause why the rehearing should not be granted, complainant's solicitor offered, if directed by the Vice Chancellor so to do, to submit affidavits to show that the covenant against nuisances in the deed made by the Hoboken Land and Improvement Company to Arthur Young in 1870, was no longer of any force or effect and did not render the title unmarketable, but was informed by the Vice Chancellor that he would take the matter under advisement upon the moving papers of the applicant for the rehearing, and if he desired any affidavits in reply thereto would notify complainant's solicitor.

The application for the rehearing was decided by the Vice Chancellor adversely to Samuel Silverman, the applicant, upon the ground, as will appear by his opinion (Case, pp. 88-90), that the evidence sought to be introduced was not newly discovered evidence within the meaning of that term as understood by courts of law and equity, and should have been introduced at the original hearing.

If this Court should determine that the petition for rehearing should have been granted by the Vice Chancellor, an opportunity should be given to the complainant to introduce evidence that the restric-

tive covenant above referred to was not at the time of the Sheriff's sale of any force and effect, and was not such a substantial defect in or cloud upon the title of the premises sold as would render the title unmarketable.

In *McDowell v. Perrine*, 36 N. J. Eq. 632, on appeal from a decree advised by the Chancellor, *Perrine v. White*, 9 Stew. Eq., p. 1, it was held that a client is bound by his counsel in the management of his cause, and the Court will not grant another trial, because some witness was not examined, unless the conduct of counsel was fraudulent, and among the cases cited with approval therein is *Jones v. Pilcher*, 6 Munf. 425, and further that some of the authorities have gone so far as to hold that it is not sufficient ground for a bill of review that certain documents, on which complainant's right to a decree depended, were lost or mislaid by his counsel, and not found until after the decree against him (citing *Jones v. Pilcher*, 6 Munf. 425).

It is respectfully submitted that the final decree or order of the Court of Chancery, dated December 14, 1926, and the order of the Court of Chancery bearing date February 21, 1927, should be affirmed.

JOHN J. FALLON, JR.,
Of Counsel with Complainant-Respondent.

New Jersey Court of Errors and Appeals

JULIA M. MURPHY,
Complainant-Respondent,

vs.

JOHN F. SKELLY, *et als.*,
Defendants-Appellants.

Appeal of
Samuel
Silverman
from Decree
of Court of
Chancery.

**BRIEF FOR
APPELLANT SAMUEL SILVERMAN.**

The Sheriff of Hudson County, at a public auction sale conducted by him on September 24th, 1925, sold the premises known as 211—8th Street, Hoboken, N. J., to the appellant, Samuel Silverman, who bid for the same, the sum of \$4700.00. The premises were sold under a Foreclosure Decree obtained by Julia M. Murphy on August 4th, 1925, and a Writ of Execution issued out of the Court of Chancery on said decree on August 10th, 1925, directed to John M. Hannan, Sheriff of Hudson County. Silverman signed the conditions of sale, and paid to the Sheriff a deposit on account of the purchase price, \$470.00. (p. 21). The Foreclosure sale held by the Sheriff was confirmed by an Order of the Court of Chancery, dated October 5, 1925.

Thereafter, Silverman having failed to complete his bid, and to pay the balance of the purchase price, the complainant in the foreclosure action in the Court of Chancery, Julia M. Murphy, filed her petition (p. 15), praying that an Order be made

directing the bidder at the foreclosure sale, the appellant herein, Samuel Silverman, to complete his bid, and to pay the balance thereof, amounting to \$4230.00 to the Sheriff of Hudson County, and to accept delivery of the deed from the Sheriff. Upon the filing of this petition duly verified by complainant, an order was granted by Vice Chancellor John Bentley November 24th, 1925 (p. 24), requiring the said bidder at the foreclosure sale, Samuel Silverman, to show cause "Why an order should not be made directing him to make payment to the Sheriff of the balance of the amount bid by him at the sale of said lands and premises held by said Sheriff on or before a short day fixed by this Court."

Silverman, the bidder at the foreclosure sale held by the Sheriff, on being served with this Order to Show Cause, filed certain affidavits in reply thereto. The general purport of his affidavits being, that the title to the premises foreclosed is unmarketable, because of certain encroachments and mislocations affecting said premises 211—8th Street, Hoboken, N. J., because the premises had been condemned by the building inspector of the City of Hoboken, and because there was a suit in Chancery pending by an adjoining land owner, affecting the premises 211—8th Street, Hoboken, N. J. Silverman in his answering affidavits also raised certain other objections to the title, which are not urged in this court. Silverman also made a cross application to be relieved of his bid, in accordance with the provisions of the statute, viz: 4 C. S., page 4686, paragraph 35, and to secure a return of his deposit amounting to \$470.00, paid to the Sheriff of Hudson County at the time the sale was held (p. 34, par. 7). The complainant's Petition, Order to Show Cause, and Silverman's Cross Application to be relieved of his bid, were duly argued before

Vice Chancellor John Bentley, and decision reserved.

On December 18th, 1926, the learned Vice Chancellor in the Court below, filed an opinion (p. 64), granting the prayer of the complainant's petition, that Silverman be directed to complete his bid and dismissing Silverman's application to be relieved of the said bid. The learned Vice Chancellor's opinion deals only with the question of the constitutionality of P. L. 1924, page 347, which the appellant herein does not urge in this court. Thereupon the final decree or order was granted by the learned Vice Chancellor (p. 62), dated December 14, 1926, which final decree or order in substance, directs Silverman to pay the balance of his bid, grants a counsel fee of \$200.00 to complainant's solicitor, and orders Silverman's application to be relieved of his bid, dismissed.

After the entry of the order of December 14th, 1926, Silverman filed a petition for re-hearing (p. 67), on December 31, 1926, setting up that the title to the premises foreclosed, 211 8th Street, Hoboken, N. J., was unmarketable because of a certain restrictive covenant affecting said premises, which was not discovered by Silverman or his solicitor until after the main argument before the learned Vice Chancellor. Upon filing of Silverman's petition for re-hearing, Vice Chancellor Bentley granted an Order to Show Cause, which was duly served upon defendant's solicitors, and the matter was then argued before Vice Chancellor John Bentley (p. 85).

On February 16th, 1927, the learned Vice Chancellor filed an opinion (p. 88) dismissing Silverman's application for re-hearing, and an Order to that effect was entered on February 21st, 1927 (p. 87).

The appellant, by his appeal in the cause, presents for review to this Honorable Court, the legal propriety of:

1. The Final Decree or Order, dated December 14th, 1926.
2. The Order dated February 21st, 1927.

POINT I.

The Chancellor should have relieved Silverman from his bid made at the Sheriff's sale under the plain wording of the Statute.

This point involves the legality of the Final Decree or Order entered in the Court of Chancery on December 14th, 1926, the pertinent portions of which read as follows:

"It is on this 14th day of December, 1926, on motion of Fallon & Fallon, solicitors for the complainant ORDERED that the said Samuel Silverman, the above-named purchaser, pay to the sheriff of the County of Hudson the balance of the amount bid by the said Samuel Silverman at the sale of said lands and premises held by the said sheriff of the County of Hudson under and by virtue of the writ of fieri facias in the above-entitled cause, together with lawful interest thereon from the date of the said sale September 24, 1925, within 15 days after service of a copy of this order upon him.

And it is further ORDERED that within said time the said Samuel Silverman pay to the solicitors for the complainant a counsel fee of \$200.00 together with the costs of these proceedings to be taxed.

And it is further ORDERED that the petition of the said Samuel Silverman to be relieved of said bid be and the same is hereby dismissed."

In the court below, Silverman urged and now respectfully urges in this honorable Court that the title to the premises 211 8th Street, Hoboken, N. J., which premises Silverman bid in at the Sheriff's sale, is unmarketable and that there are clouds upon the said title, substantial defects therein, and the same are encumbered in such a manner that to compel Silverman to complete his bid and take this title, is manifestly unfair, inequitable and unconscionable, and that he had absolutely no knowledge or notice of the existence of these defects in the title, which it must be conceded, render the same unmarketable, until some time after the Sheriff's sale.

The title to the premises is unmarketable because: 1. The west wall of the building on the premises is out of plumb and leans and encroaches over on the adjoining premises owned by Grassman to the extent of at least one foot and five inches.

2. That the building has been condemned by the inspector of buildings of the City of Hoboken, and ordered to be torn down.

3. A suit was instituted in the Court of Chancery by the adjoining land owners by viz: Phillip Grassman and Carolina Grassman as complainants, and against Martin A. Leddy and others as defendants, praying for a decree in the Court of Chancery that the building on the mortgaged premises #211 8th Street, Hoboken, N. J., be torn down, and enjoining and restraining the defendants in said suit from permitting the said building to remain unrepaired and unstabled and in such an unsafe condition as to constitute a men to life, limb and property.

The existence of these matters are undisputed; in fact, a perusal of the complainant's petition to compel Silverman to complete his bid filed in the Court below on November 24, 1925 (p. 15) and

Schedule A, thereto attached (p. 19) will disclose the existence of these facts. The premises in question have been condemned by the Inspector of Buildings of the City of Hoboken, and are in a dangerous and unsafe condition (p. 33). The westerly wall of the building leans over on the adjoining land, a distance of at least a foot and five inches (p. 19, l. 37). This court undoubtedly will take judicial notice of the Decree entered in the Court of Chancery in the suit of Grassman vs. Leddy, supra (Clerk's Docket 58, p. 404), although not printed in State of Case, and a reading of that decree will disclose that the Court of Chancery in that suit granted a mandatory injunction against the defendants in that suit, of whom Silverman was one, directing and commanding that the brick building erected on the premises in question, viz: 211 8th Street, Hoboken, N. J., be torn down and repaired in such a manner that the same shall not continue as a nuisance rendering it unsafe and dangerous to the public and the adjoining land owners. The suit of Grassman vs. Leddy, supra, was commenced before Silverman had bid in the premises at the Sheriff's sale. After Silverman had bid in the premises he was added as a party defendant to said suit, unquestionably on the theory that the bidder at the foreclosure sale, Silverman, by virtue of his bid, became a party to the suit, and became the equitable owner of the premises, although the legal title until the actual delivery of the Sheriff's deed continued in the owner of the equity of redemption, Martin A. Leddy. Silverman therefore finds himself in a precarious situation; not only is he compelled by the Final Decree, or Order of December 14th, 1926, to take title to the premises, the brick building of which must admittedly be torn down under the orders of the building inspector of the City of Hoboken, and which admittedly encroach and lean

over on Grassman's property, but he must also comply with the mandatory injunction granted by Vice Chancellor John Bentley in Grassman vs. Leddy, supra, and also pay part of the counsel fee and costs in said suit as provided for in the Final Decree therein.

The statute under which Silverman urges that he should have been relieved of his bid can be found in 4 C. S., p. 4686, paragraph 35, and reads as follows:

"RELIEF OF BIDDER ON SHOWING DEFECT IN TITLE, etc. Sec. 1. Any purchaser of real estate at any public sale, held under the provisions of the act to which this is a supplement, or of any supplement thereto or amendment thereof, except at sales under general execution and actual levy thereunder, or for unpaid taxes or municipal liens, shall be entitled to be relieved from his bid if before delivery of the deed he shall satisfy the court by whose authority such sale was made of the existence of any substantial defect in or cloud upon the title of the premises sold which would render said title unmarketable, or of the existence of any lien or encumbrance thereon, unless a reasonable description of the estate or interest to be sold, and of the defects in title and liens or encumbrances, if any, be inserted in the notices and advertisements required by law, and in the conditions of sale; provided, however, that if the court shall direct any lien or encumbrance not described, and which is due and payable, to be paid out of the proceeds of sale, the purchaser shall not then be relieved by reason of such lien or encumbrance."

The plain wording of this statute discloses that it reads in the conjunctive, that is, the words used are:

"be inserted in the conditions *and* advertisements required by law, *and* in the conditions of sale."

The word "and" is used, twice in the same sentence; in other words, the bidder should be relieved from his bid unless the defect or encumbrance or cloud upon the title be inserted in three places, viz:

1. In the notices required by law;
2. In the advertisements required by law;
3. In the conditions of sale.

It cannot be disputed that in the case at bar, the encroachments of the westerly wall of the premises in question over the property of the adjoining land owner, the condemnation of the brick building on the premises in question by the building inspector of the City of Hoboken, and the fact that there was a suit pending in the Court of Chancery, *Grassman vs. Leddy, supra*, were not set forth in the notices and advertisements of sale, and in conditions of sale, as required by the statute.

The conditions of sale and advertisement of sale (p. 21 and p. 22), do not set forth and are absolutely silent in respect to the defects in the title as aforementioned. There is not a single word in the conditions of sale, or in the advertisement of sale about the building on the premises in question being condemned by the building inspector of the City of Hoboken, and that the westerly wall encroaches and leans over on the adjoining landowner's property, or that the premises in question are affected by the suit pending in the court of action entitled *Grassman vs. Leddy, supra*. A purchaser at a judicial sale such as Silverman was, is entitled to the protection provided by the statute. Certainly Silverman had a right at the time he made his bid to rely upon the conditions of sale that he signed and the advertisement of sale printed in the public press. If the conditions of sale and

advertisement of sale are silent as to any matters rendering the title unmarketable, it is clearly the intent of the legislature that the bidder may have relief in the Court of Chancery.

The complainant-respondent contended in the court below and will undoubtedly contend in this honorable court that although these defects in the title to the premises in question, while rendering the title to the same unmarketable, that Silverman is not entitled to be relieved from his bid by reason thereof because of the following viz:

1. A certain announcement was read by the Sheriff at the sale (p. 19).
2. That Silverman, at the time of his bid had actual knowledge of the existence of the matters which he urges rendered the title unmarketable.

The so-called "announcement to be made by Sheriff at sale" annexed to complainant's petition in the court below, and known as Schedule A (p. 19), the respondent, undoubtedly will urge, as was urged in her behalf in the court below, was actually read by the deputy sheriff conducting the sale on September 24, 1925.

There is nothing in the statute quoted above which authorizes or mentions "an announcement to be made by Sheriff at sale". The statute speaks only of "notices and advertisements required by law, and in the conditions of sale". If this so-called "announcement" read by the Sheriff at the sale, disclosing the defects in the title, is to bar Silverman from relief, then the entire legislative intent as manifested by the statute would be rendered useless and abortive. The legislature did not intend that the defects in or the clouds upon the title or encumbrances be left to the uncertainties of oral testimony; the plain wording of the statute

manifested an intention that the unmarketable features of the title be included in the notices *and* advertisements *and* in the conditions of sale and not in any self-serving declaration, such as the so-called "announcement" made by the Sheriff at the sale held on September 24th, 1925, in the case at bar.

Silverman did not hear the so-called "announcement", read by the Sheriff at the sale, if it was read. Silverman knew nothing about these matters affecting the marketability of the title. In his affidavit (p. 31, l. 30) he says:

"I desire to say that *I did not hear any such announcement made* by the Deputy Sheriff, who conducted the sale, or by anyone else at the sale, while I was present.

2. *Subsequent* to the time that I bid in the property at the Sheriff's Sale, *the first notice and knowledge that I had* that the lands and premises, were effected by and encumbered by taxes, water rents, encroachments, mislocations, claims of the Building Inspector of the City of Hoboken, and suit pending in the Court of Chancery, was when I was served with a Subpoena to Answer, together with a copy of an Order entered in a certain cause wherein Philip Grassman and Karoline Grassman, are complainants, and Martin A. Leddy, et al., are defendants; upon being served with the aforesaid subpoena to answer and copy of the Order in the latter suit, by Mr. Charles W. Stover, Solicitor of the complainants, Philip Grassman and Karoline Grassman, I investigated the matter and *discovered for the first time* that the premises in question had been condemned by the Inspector of Buildings of the City of Hoboken, and that the westerly wall of the premises encroaches over adjoining land owned by Grassman to the extent of about one and one-half feet, and that under the orders of the Building Inspector of the City of Hoboken, the entire building would have to be torn down, and the occupants of said building

at once ordered to vacate the same because of its dangerous condition, the same having been condemned by the lawful authorities of the City of Hoboken."

The deputy Sheriff who conducted the sale says that the announcement was read (p. 47, l. 33). Harry Seiken made an affidavit (p. 51) that the announcement was read by the under-sheriff, and says:

"The said announcement was read in full by the said under-sheriff and was heard by me and undoubtedly heard by Samuel Silverman who was near me when the same was read."

Mr. Seiken's testimony that Silverman *undoubtedly* heard the announcement read by the Sheriff because he was near Seiken at the time it was read, is a mere conclusion of fact by Seiken. The affidavit of Maurice J. Breen (p. 52, par. 3) states, that he spoke to Silverman personally prior to the sale about the matters set forth in said announcement in Schedule A. Mr. Breen in paragraph 4 of his affidavit says:

"*Immediately after he had bid in the property and before signing the conditions of sale*, Mr. Silverman was asked whether he desired to read the announcement which had been read by the under-sheriff prior to the sale, before signing the conditions of sale, and he stated that he did not, and, thereupon, signed the conditions of sale."

It is pertinent to ask, at this time, why should Silverman's attention have been called to the announcement alleged to have been read by the Sheriff prior to the sale just before the signing of the conditions of the sale, if Mr. Breen had already informed Silverman, as he says in paragraph three of the affidavit, of the matters contained in the announcement?

What was the necessity of Mr. Breen, not only telling Silverman about the matters set forth in the announcement, but also again calling the matter to Silverman's attention, just before the signing of the conditions of the sale? Does not this show beyond any question, that there was at least some doubt in Mr. Breen's mind as to whether or not Silverman knew of the matters contained in the announcement?

At any rate, it should be noted that the allegations in paragraph four of Mr. Breen's affidavit disclose that Silverman was asked whether he desired to read the announcement *after* the bid had been made, and at the time the conditions of sale were signed by Silverman. Silverman in his affidavit (p. 30, par. 3), says:

"3. If I had known of the existence of these matters at the time I appeared at the sale, I certainly would not have purchased the property for the sum of Forty-seven Hundred (\$4700.00) Dollars, because if the building has to be torn down, or the westerly wall of the building removed, the property is not worth any more, in my opinion, than Five Hundred (\$500.00) Dollars, which is the value of the lot, which in my opinion, measures sixty feet by eighteen feet (60 x 18); the first knowledge I had that the premises in question were going to be sold by the Sheriff, was when I read the advertisement of sale published in the Jersey Journal; *neither in the advertisement of sale, notice of sale or in the conditions of sale*, was anything mentioned or disclosed in regard to the aforesaid matters; *when I bid the property in, I had absolutely no knowledge of the same.*"

Upon the question of fact therefore as to whether Silverman had actual notice or knowledge of the matters contained in the so-called "announcement" alleged to have been read by the Sheriff at the sale,

it is respectfully urged that this question of fact should be resolved in Silverman's favor. It is hardly probable, that Silverman, knowing of all these defects in the title, knowing that the building on the premises had to be torn down, knowing that there was litigation pending in another suit in the Court of Chancery effecting the premises in question, would have persisted and bid the same in for the sum of \$4700.00.

It is respectfully urged that even if Silverman did have actual knowledge or notice of these matters effecting the marketability of the title he would still have a right to be relieved from his bid upon showing as he has shown, the statute had not been complied with.

The statute is mandatory and must be obeyed in every particular. The statute undoubtedly was enacted to encourage bidders to come forth and bid at judicial sales. The statute seeks to surround the prospective purchaser with a cloak of protection, and in the event there are any defects in and encumbrances or clouds upon the title, that the prospective bidder can bid with the complete assurance that if the title to the premises bid for, is unmarketable, that such bidder can secure the aid of a court of equity and be relieved from his bid.

The effect of the statute is somewhat analogous to the constructive notice under the various recording acts in our State.

If the defects in the title had been inserted in the notices *and* advertisement *and* in the conditions of sale, it would have been immaterial under the statute whether Silverman had had actual notice, and knowledge or not. He then would have been bound completely by his purchase.

The respondent urged before the learned Vice Chancellor in the Court below, and undoubtedly will urge in this Court, that the fact that Silver-

man may have had actual knowledge or notice of the matters contained in the so-called "announcement," precludes Silverman from taking advantage of the protective features of the statute, and will cite the case of *Oakley vs. Shaw*, 69 Atl. 462. This case is clearly distinguishable from the case at bar. Shaw, purchaser at the sale, sought to be relieved from his bid because of the existence of an alleged prior mortgage which he, himself, as mortgagor, had executed. Certainly, it would have been unfair to permit a bidder to set up an encumbrance which he had himself created, and then seek relief in the Court of Equity from the effect of his own act. In this connection, the Court in *Oakley vs. Shaw*, *supra*, said, on page 465:

"He (Shaw) is the sole defendant, and, after the bill had been taken as confessed against him for want of an answer and final decree of foreclosure made, the mortgaged premises were sold to him by the sheriff of Somerset county on November 4, 1907, under the fieri facias issued on the decree, and he himself became the purchaser of the Williamson tract for \$5,000, not only with full knowledge of the exact situation of the title, but he had himself created the situation. Therefore, upon every principle of justice and right reason, he cannot now be heard to say that he should be relieved of his bid because no description of the estate or interest in the mortgaged premises to be sold, and of the defects in the title and liens or incumbrances thereon, with the approximate amount thereof (if any) was not inserted in the notice and advertisements of sale and in the conditions of the sale. It should be observed that the only thing he urged against the title on the hearing of the objections was the alleged existence of the guarantee company's mortgage as a lien prior to the mortgage foreclosed, *both of which mortgages were made by himself, as already remarked.*" (Italics ours.)

"Having, as I said, created the situation against which he asks to be relieved, and knowing it the while, and seeking to take advantage of that situation, he is with respect to it without equity."

In the case at bar Silverman did not create any of the incumbrances or defects in the title; Silverman had nothing to do with the same; Silverman did not create the very situation from which he seeks relief in the manner that Shaw did in the case of *Oakley vs. Shaw*, *supra*.

POINT II.

Silverman's application for a re-hearing should have been granted and the final decree or order dated December 14, 1926, should have been vacated.

This point brings up the legality of the Order entered on February 21st, 1927, dismissing Silverman's application for re-hearing. On December 31st, 1926, Silverman filed a petition for re-hearing and to vacate the Final Decree or Order dated December 14th, 1926. On filing the petition for re-hearing, Vice Chancellor John Bentley granted an Order requiring the complainant, Julia M. Murphy, and her solicitors, Fallon & Fallon, to show cause why the prayer in Silverman's Petition should not be granted and the Final Decree or Order of December 14th, 1926, should not be set aside. On the return of the Order to Show Cause, the matter was argued before the learned Vice Chancellor in the court below and thereupon an opinion was filed on February 16th, 1927 (p. 88), in which Vice Chancellor Bentley denied the application for re-hearing

and thereupon an Order to that effect was entered on February 21st, 1927 (p. 87).

Silverman based his application for re-hearing on the ground that the premises in question were affected by a certain restrictive covenant, contained in the deed from the Hoboken Land and Improvement Company to Arthur Young (p. 80), a certified copy of which was annexed to the petition for re-hearing. The restrictive covenant which is set forth in this deed (p. 82, L. 4) reads as follows:

"And the said party of the second part for himself, his heirs and assigns hereby covenant to and with the said party of the first part, their successors and assigns, that he, the said party of the second part, his heirs and assigns, occupying the hereby granted premises will not establish nor permit to be established upon the said premises any slaughter house, tallow Chandlery furnace, steam Engine, brass foundry, nail or other iron factory, nor any manufactory of gun powder or fireworks, glue, vitriol or varnish, ink, lard, oil, soap, candles, starch, turpentine or camphene nor for the tanning, dressing, preparing or keeping of hides, skins or leather nor any chemical gas or powder factory nor brewery or distillery nor any other nuisance."

It is respectfully urged that the restrictions contained in this covenant are a matter of substance, and render the title to the premises unmarketable.

That a covenant restricting the use of premises renders the title to same unmarketable, is held by the following authorities, viz.:

Krah vs. Waisman, 75 N. J. Eq. 109, affirmed 78 N. J. Eq. 305;

Propper vs. Colson, 86 N. J. Eq. 399;

Muller vs. Weiss (N. J.), 109 Atl. 357.

See *Smith vs. Reidy*, 92 N. J. Eq. 586, for a general discussion as to what renders the title unmarketable.

In 36 Cyc. 639, it is said:

"A vendee who has a right to a good title cannot be forced to take the property when it is subject to covenants or conditions, restricting its use."

The case of *Engersoll Engineering Co. vs. Crocker*, 228 Fed. 844, the restriction as to use was held to render the title unmarketable. In this case the words were in the form of a condition subsequent and not a covenant. The rule seems to be the same in either event.

In *Neff vs. Rubin*, 161 Wisc. 511, 154 N. W. 976, at page 978, a covenant restricting the use of the premises is held to render the title unmarketable.

In *Eckel vs. Spitzer*, 58 Misc. Rep. 467, 111 N. Y. S. 459, a covenant against nuisance is held to render the title unmarketable. To the same effect, see *Bacot vs. Fessenden*, 115 N. Y. S. 698, at page 702.

The case of *Terry vs. Westing*, 5 N. Y. S. 99, is to the same effect and reviews several other New York cases.

The case of *Van Schaick vs. Lese*, 66 N. Y. S. 64, the restrictive covenant is similar to the one in the case at bar, and reads:

"Distillery, foundry, blacksmith shop, Slaughter House, Coal Yard or for brewing, Soap boiling, bone boiling, frying fat, the use of steam power, a piggery, or any act or business or use that is considered a nuisance to desirable places of residence, or that shall be offensive and annoying to persons there residing."

The following cases referred to in *Van Schaick vs. Lese*, *supra*, containing restrictive covenants similar to the restrictive covenants in the case at Bar, all held that the title is thereby rendered unmarketable, viz.:

Reynolds vs. Cleary, 16 N. Y. S. 421;
Kountze vs. Helmuth, 22 N. Y. S. 205;
Fourth Presbyterian Church vs. Steiner,
 29 N. Y. S. 488.

In the case of *Dethloff vs. Voit*, 158 N. Y. S. 522, the Court held a restrictive covenant as to use rendered the title unmarketable and said:

"It is, however, the well settled rule that specific performance of a private contract to purchase land will not be enforced unless the title is marketable, and that a title subject to restrictions or covenants which impose greater restrictions on the use of the land than those imposed by law, render the title unmarketable, and that the court will not in such case inquire into the question of whether the restrictions are beneficial or otherwise. (Citing cases)."

In 15 C. J., page 1252, Section 69, it is said:

"And hence covenants that the premises shall not be used for certain particular trades or business, such for instance as for sale of intoxicating liquors or for noxious or offensive trades, or business, run with the land."

A perusal of Silverman's petition for re-hearing and the affidavits thereto annexed (p. 68 to p. 79), disclose that at the time of the main argument, resulting in the Final Decree or Order dated December 14th, 1926, the matter of the restrictive covenant was not known to Silverman or his solicitor, and it was only through an accident that the same was discovered.

The learned Vice Chancellor in his opinion states,

"Assuming, for the purpose of this argument, that such a covenant does render the title unmarketable in an ordinary case, it is without effect on the premises in question be-

cause it is universally to be found in all old conveyances affecting land in its neighborhood, and it has been distinctly abandoned and broken to such an extent that it is incredible that any court would undertake to enforce it."

There isn't a single iota of evidence in the record to warrant the learned Vice Chancellor finding, to the effect, that:

"because it is universally to be found in all old conveyances affecting land in its neighborhood, and it has been distinctly abandoned and broken to such an extent that it is incredible that any court would undertake to enforce it."

Unquestionably, the Learned Vice Chancellor took for granted the oral argument of the complainant's counsel in the court below that the restrictive covenant had been distinctly "abandoned and broken." There is nothing in the record, however, to warrant such an inference. It is respectfully urged that Silverman's application for a re-hearing and to vacate the Order of December 14th, 1926, should have been granted.

The appellant respectfully submits that the Final Decree or Order of the Court of Chancery dated December 14th, 1926, should be reversed, set aside and for nothing holden, and that a Decree should be entered relieving Silverman from his bid, made at the Sheriff's Sale on September 24th, 1925.

SAUL NEMSER,
 I. F. GOLDENHORN,
 Of Counsel with Appellant,
 Samuel Silverman.

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