

No. 9805, Equity.

9. That the said Thomas Bernard Diffendal intermarried with Mary Hebbs, and departed this life in the month of December in the year A,D,1912, leaving him surviving his said wife Mary Diffendal and his sons Evan B, Diffendal Joseph b. Diffendal, as his heirs at Law, both of whom residents of the City of Philadelphia, State of Pennsylvania,
- 10 that the said Mary Augustine Diffendal intermarried with Fannie Mullinix, and they reside in in the City of Philadelphia, State of Pennsylvania,
- 11- That the said Mary Rosemond Diffendal is unmarried, and resides in the City of Philadelphia State of Pennsylvania,
- 12- That the said John Peter Clarence Diffendal with Gula Margaret Conred, and they reside in the City of Philadelphia, Pennsylvania,
- 13- that the defendants Noah E Cramer. purchaser and G. Mantz Besant, substituted purchaser, are both residents of Frederick City, Md,
- 14 The said John Diffendal in his said last will constituted and appointed his said sons Charles Lawrence and John Marshall Diffendal executors thereof and acting as surviving Executor, the said John Diffendal, for an order to sell and dispose of the real estate of said Testator, which application was granted and an order passed by said Court, on the 8th day of January, A,D,1918, directing that the said Executor sell and dispose of all the real estate, directed to be sold, by the said will of said testator, at public sale, on the terms stated, in said order, all of which more fully appear, by reference to the Certified copy of said courts Order, herewith filed and Marked Exhibit C.
- 15- That acting under said Authority, the said John Marshall Diffendal, as surviving executor, advertised the aforesaid property, at public sale, by advertisements in the News, a Newspaper published in frederick county aforesaid, in said Advertisement recited, that he would sell "under and by virtue of the power of sale contained in the last will and Testament, of said John Diffendal, deceased, all of which will more fully appear, by reference to a certified copy, of certificate of Publication, duly certified and herewith filed as exhibit, D.
- 16 that the said John Marshall Diffendal as such Executor and under such powers, on the 2nd day of March in the year 1918, at the court house door on Frederick city, State of Maryland, offered the hereinbefore described, real estate, at public sale and sold the same to Noah E, Cramer one of the defendants in this cause, who was then and there the highest bidder therefor at and for the sum of Twenty hundred and sixty Dollars, (\$ 2060,00) all of which will more fully appear by reference to Report of Sales, a certified Copy of which is herewith filed, and Marked Exhibit, E.
- 17-. That the said Noah E. Cramer. purchaser paid to the said John Diffendal, Executor, the sum of One Hundred Dollars, as part of purchase money, and signed an acknowledgement of purchase, wherein he agreed to comply with the terms of sale as set forth in the advertisement of sale a certified copy of which acknowledgement is herewith filed, and marked Exhibit F.
- 18- That on the Second day of April in the year A,D,1918, the said Noah E. Cramer, purchaser, with the said G. Mantz Besant, petitioned the Orphans Court of Frederick County, that the said G. Mantz Besant be made the purchaser, and substituted as such. as purchaser of said real estate, and upon said petition it was ordered by said Court, that the said G. Mantz Besant. assignee of Noah E, Cramer, purchaser, be and he is hereby substituted as purchaser, of the said real estate, in this cause mentioned, upon the terms of the original purchaser and the surviving Executor is directed to convey said property to the said G. Mantz Besant, assignee all of which will more fully appear, by reference to said petition. and courts order herewith filed, and marked exhibit G.
- 19-. that acting upon the report of sales hereinbefore mentioned. the Orphans Court of frederick County, after due publication ratified the said report on the 2nd day of April in the year A,D, 1918, as will appear by reference to said Order, a certified Copy of which is herewith filed and marked Exhibit H.
- 20, that the said J. Marshall Diffendal executor as aforesaid, has at all times been ready and willing to execute and deliver to the said G. Mantz Besant a good and sufficient deed under the powers conferred. upon him by the said will and the order to sell by the said orphans, court. but the said G. Mantz Besant refuses to accept such deed or pay any of the balance of the purchase money, and denies that the said surviving executor had any such power, or authority under said to make sale, of the real estate in these proceedings mentioned, and that said order of the Orphans Court, conferred no power or authority, under said to make sale, of the real estate, in these proceedings mentioned. and that said order of the Orphans, court, conferred no power or