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N. J. Court of Errors & Appeals.

Between
WILLIAM R. HENNINGER, *et al.*,
(Complainants,) *Appellant*,
and
CHARLES E. HEALD, AND OTHERS,
(Defendants,) *Respondents*.

On Appeal from Final Decree in Chancery.

Argument of RICHARD WAYNE PARKER for Defendant, Ferdinand E. Canda, on Final Hearing.

This was the third suit brought for the same purpose to set aside an exchange made Nov. 16, 1889, (pp. 253, 254.)

It was confessedly a speculative suit, run, not by the complainant, Henninger, but by the complainant, Little, on a speculative contract.

It is really the fourth suit, for it takes its origin in a suit by way of a raid made by Taylor, who is a self confessed fraud, viz:

1. Taylor sued himself in his wife's name for a share of the proceeds of the property. Failing this,

2. He told Henninger that he had cheated him, and took a conveyance to himself of a three-quarters interest in what should be recovered on account of his own fraud, conveyed part of what

he should get to his attorney, and brought the suit in Henninger's name, but really for his own benefit and that of his attorney.

3. He brought like supplemental suit in Henninger's name, went to trial and dismissed all his bills of complaint.

4. All these failing, he reconveys to Henninger, who gives Taylor's attorney an interest, and this suit is brought.

Complainants' title is derived from and through the alleged fraud-doer, Taylor, who tries to prove his own fraud.

Complainants' case is based wholly upon the evidence of Taylor.

Mr. Canda is an honest purchaser for value, and the suit must certainly drop against him.

This is not a case in which equity will act. The complainants will be left to their remedy at law. If Henninger was defrauded, let him sue Taylor for defrauding him, and take his verdict. If Heald was party to the fraud, let him sue him, too. Henninger has no equitable right to relief.

This is our case. On it the law is clear:

1. The parties cannot be replaced in the same position. No decree could be had except for money. None was asked, except for money. The land is in the hands of honest purchasers. The case is not of equitable cognizance.

2. The facts are pre-eminently such as a jury should decide upon. The facts on which complainants base their claim are thoroughly controverted

3. The complainants' claim is tainted by Henninger's conspiracy with the wrong-doer and gift to him of a share of moneys to be obtained by his

swearing himself a fraud. The other complainant was the fraud-doer's attorney, contrived this arrangement, was a party to it, and, at best, only claims under Henninger in a speculative complaint. Equity will have nothing to do with claims of this sort, and will not lend its powers to aid parties who have placed themselves in this position.

4. Much more is this so when these very parties have attempted to conceal the facts from the Court. It can never be forgotten that neither in Henninger's original bill nor in his supplemental bill were the Court informed that Taylor had an interest, and that an injunction was obtained upon affidavits annexed to the original bill. In these affidavits, made by both Henninger and Taylor, this material fact was concealed. After such concealment, a court of equity will not lend its aid.

5. Still more is this the case after decree dismissing the bill and supplemental bill, a decree made after evidence taken, after opportunity to the complainant to amend and refusal so to do or to proceed, and after this Court had refused to allow dismissal without prejudice.

6. Suit in this Court is barred by *laches*. It was two months from that dismissal before suit was brought. Meanwhile other rights had intervened.

If this suit is considered as a continuation of the former one. it is tainted by its defects. Henninger learned of the alleged facts in January, 1891. He brought this suit June 14, 1892, over a year and four months afterwards. The delay is not aided by the fact that he meanwhile had been engaged in a fraudulent conspiracy with a wrongdoer, and in pursuance thereof had brought a suit which had been dismissed, and prompt action is the essence of suit in equity to set aside a deed.

But the complainants' case utterly fails upon the original facts. Henninger sets out that an exchange made between him and one Dupuy—really Mrs. Platt—through Heald, her agent, was fraudulent on two grounds : 1, That the mortgage on the property conveyed to him was for three thousand six hundred dollars, instead of three thousand dollars. 2, That Heald and his agent Taylor had secretly and fraudulently agreed to share in the proceeds of the property which he conveyed to the owners of the McCoy farm, and likewise that Heald would pay Taylor's commissions.

I.

The difference of five hundred dollars alleged to have existed in the encumbrance on the Blanchard place would be no ground for a suit in equity to set aside the exchange. The damage is the five hundred dollars and interest.

What is more, Henninger knew the amount of the mortgage immediately after the exchange in January, eighteen hundred and ninety, and asked for no such relief.

The claim is useful only to show how untrustworthy Henninger's evidence is. He swears he did not know the amount of the mortgage. Heald swears he did, but that Heald told him the mortgagee would take less than the face, if paid promptly. Henninger's evidence (page 82, line 10,) is that he was told there was a mortgage of three thousand dollars, with interest at five per cent., payable in November ; that he did not examine the records then, but did three months afterwards, (page 83.) Meanwhile he conveyed it away to his father for three thousand dollars, (page 86,) on December 22, 1889.

On the contrary, Mr. Heald's statement (p. 187, line 12,) that Henninger understood that the mortgage was for a larger amount than three thousand dollars, but that the mortgagee would take that sum is confirmed beyond any contradiction.

1. By the deed itself. It does not say subject to a mortgage of three thousand dollars, but uses the unusual phrase, "a mortgage on which there is to be paid three thousand dollars, with interest from November." (p. 254. See the agreement, page 271, line 35.)

2. By a series of letters from Henninger, showing the absolute truth of Heald's statement that after the sale the mortgagee was willing to take not merely three thousand dollars, but much less than that sum. These letters are annexed to the answer in the original cause, and are as follows:

March 12, 1890. Offering to raise $1,800 to cancel the mortgage, saying he had examined record, finds it cannot be foreclosed for a year.

March 22, 1890. As to protest of note. Will pay as soon as you arrange other matter. Will pay $1,900 for the mortgage, which I (think ?) will be accepted if you manipulate well.

April 10, 1890. Am agreed to allow you $2,100 for the mortgage, but no interest is to be recovered.

June 17, 1890. Will pay note if you can succeed to make sale. Have been offering the place for sale on the ground to pay the mortgage, $2,200, and give clear title, and hope that may be your aim in selling it.

June 23, 1890—(a threatening letter.) The mortgage must be reduced to $2,000, so that must be your aim in offering it for sale.

What reliance on a witness who swears like this, that he was cheated on the amount of the mortgage?

3. By Taylor's evidence. He *knew* the amount of the mortgage, (page 115, line 10,) *says* he did not tell Henninger.

4. By the fact that the mortgage was really only security for a $3,000 loan. Blanchard, in selling to Mrs. Pratt, agreed to lend $3,000 for three years, "taking *as security therefor* his properly executed "bond and mortgage (covering said premises) for "the sum of $3,500." See the contract, (page 271), and Blanchard, (page 168, line 20.)

5. I note as to the untrustworthiness of Henninger's evidence the following:

He claims to have seen and negotiated with Heald before the contract, (p 97, l. 14.)

In the original case he said he met him but once. He admits he had not seen him before the letter of the 13th November, (p. 102, l. 27.) And all the letters of Taylor to Henninger speak of "parties," "owner of Blanchard place," etc., (pp. 101 to 103.) He came down 16th on telegram of 15th.

It is impossible he saw Heald but once, and Heald's testimony as to that is confirmed.

But as to the mortgage question, the difference between $3,500 and $3,000, the complainants make no case.

The whole evidence as to this part of the complainants' claim utterly fails.

II.

The complainants' claim that Heald and Taylor, at the time of the sale, were secretly and fraudulently interested together in the McCoy farm as conveyed by Henninger, is *absolutely unsupported by evidence.*

I say absolutely unsupported because Taylor's evidence is to be absolutely disregarded.

The confession of an accomplice may be received with corroboration, but there is here no corroboration.

Taylor's evidence has not even the dignity of a confession. He did not confess. He tried to make money out of the allegation that he was a fraud, and to do this secretly in fraud of this Court.

Heald's evidence is clear. Taylor brought the McCoy farm to his attention. He wanted to sell the Blanchard place—as remote from *him.* He was willing to consider McCoy, but found prompt action necessary. He bought the farm spite of pressing encumbrances. The McCoy farm was heavily mortgaged, foreclosure threatened, and *after* the conveyance Taylor represented that he could by special effort find a purchaser, and insisted upon a specially large commission if he effected a sale.

The agreement was in writing, and is produced, and it is subsequent. That agreement is obviously the original agreement. It speaks of efforts to be made to sell, not of efforts that had been made. It is in Heald's own handwriting. Mr. Heald's testimony on this matter is in pages 196 to 200. (See the agreement, December 21, 1889. Complainants' Exhibit 14, p. 260.) Its terms clearly repudiate prior agreements.

Compare paragraph 5, of Heald's answer, p. 22, etc.; also Heald's answer to Taylor in *January, 1891,* before *any* claim by Henninger.

III.

The complainants then try to rest their case upon Heald's allegation that Taylor's commissions on the exchange of one hundred dollars were paid by Heald, and assert that this was a fraud on Henninger for which the sale should be set aside.

Henninger paid boot in the exchange four hundred dollars, and Heald's commissions of one hundred dollars, and Taylor's commissions of one hundred dollars came out of this money. This was understood between Heald and Taylor as part of the arrangement.

Heald had the right to suppose this arrangement was communicated by Taylor to Henninger. It was not an unnatural thing, and perfectly lawful, if so understood.

If Taylor deceived Henninger in that regard without Heald's knowledge, it would not be his affair, but the fact of this arrangement was expressly communicated by Heald to Henninger at the only meeting between them, when the agreement was signed. Heald swears to it. (See his evidence, pp. 185, 186; also 190, 191.)

Henninger does not deny it, and practically admits it. (See his evidence page 99, l. 33 to p. 100, line 13):

> "*A* He wanted $500 and I reduced him to $400. I offered him $300 and he wanted $500 for taxes and interest due on the mortgage; I offered him $300, and finally we agreed to $400, and then I gave him the note.
>
> "*Q* Did he ask you for cash?
>
> "*A* I don't remember, but if he did I could not have given him the cash then.
>
> "*Q* Did he ask you for it?
>
> "*A* That may be.
>
> "*Q* Didn't he tell Mr. Taylor right there in in your presence that as you could not give him cash that Taylor would have to wait for his commission?

"*A* That I don't remember.
"*Q* Don't remember whether he said it or not?
"*A* No, sir.
"*Q* Don't you remember that he told Taylor he would have to wait for his commission?
"*A* No, sir; I don't remember.
"*Q* Don't remember whether that was said or not?
"*A* No, sir."

After this evidence, Henninger is recalled in rebuttal (p. 238, bottom,) to prove the contrary.

IV.

Ferdinand E. Canda, who took title to this land for the Canda Manufacturing Company, cannot be affected in any way by this suit. The bill must be dismissed as against him.

He claims under agreement made with Heald on Nov. 20, 1890, copy Exhibit H. 13, (p. 275.) Original, H. 16.

This agreement was for sale for $10,000 in the name of C. P. Haughton, a director of the Canda Company.

Henninger had no suit then against the property, and swears he did not know of any right to bring such suit until January, 1891, two months afterwards. The first suit was not begun until March 30, 1891, and Canda was not a party. If he had been, he would have had a right to have his agreement carried out. This Court would not have touched anything but the proceeds. He had acquired rights without notice.

That suit was dismissed finally on April 15, 1892, and after that dismissal he took his deed and paid

the consideration in cash. He had a right so to do. He could not refuse so to do under his agreement. He could have asked in this Court for the land. Heald could have asked for the money. The deed and payment are complete and cannot be disturbed.

What is more, he claims by deed from the Jardines, who were never affected by any transactions with Henninger, but claimed under paramount mortgage. This point is elaborated for the railroad company. All the arguments urged apply with equal force in favor of Canda.

R. WAYNE PARKER.

H. No. 1.

LETTER, LEON F. BLANCHARD TO HEALD, DATED DEC. 2, 1888

27 Franklin Street,
Newark, N. J., Dec. 2d, 1888.

C. E. Heald, Esq., New York.

Dear Sir:—Yours at hand and noted, and as per request I give below a description of my place, and will try and call at your office on Wednesday or Thursday. My place is situated about 5 miles from the Del. Water Gap, Pa., Co. of Monroe, on the road to Bushkill Falls, Dingman's Ferry, &c. All these places, and in fact all that country is noted as a summer resort. I bought my place for its view; from the front of the house the view is very fine. I have about 7 acres, the house is ten rooms, with a wide piazza running around on all sides, the house is all *furnished throughout*, a large ice house, wood house, double water closet, wash house, boat house, large bird cage, large carriage house, 25 feet square, with upstairs for a gymnasium and play house; a stable, 14 feet wide by 42 feet long, with room for a man; the lake is between the house and barn, a bridge crossing it 12 feet wide; the lake is about 600 feet long and from 50 feet to about 100 feet wide; this lake is supplied by springs; some of the land is in wood and the rest is not cultivated, everything is in first-class shape; there are many things for the enjoyment of children, &c., which are too numerous to mention, such as swing, patent sea saw, several places for hammocks, boat. As I told you, I have spent about $12,000 on it; the place is free and clear. I have decided to sell or exchange it. I am willing to put a small sum of money for a good investment; several properties instead of one would be better; any person could make money if they would make a boarding place of it, as the demand is greater

than the conveniences. I will bring a photograph if I can find it, when I come in to see you.

Remain respectfully yours,

LEON F. BLANCHARD.

H. No. 5.

LETTER, HENNINGER TO HEALD, DATED MARCH 12, 1890.

Allentown, Pa., Mar. 12, 1890.

C. W. Heald. Esq.,

Dear Sir:—I can manage to raise $1,800.00 to have that mortgage cancelled on Blanchard's place. As the party is very anxious to raise money on the mortgage, if you put in a good word I think he will accept. Would then be able to meet your as also Mr. Taylor's note.

Trusting that you will take a hand in the matter that I may be able to adjust at that figure, would hold it as a great favor. I had the record examined about the mortgage by an able attorney who finds it not due until Jan. 1, 1892, and being only a common mortgage could not be foreclosed until after the expiration of another year.

Hoping to hear from you soon, I remain,

Very respt'y yours,

W. R. HENNINGER.

H. No. 6.

LETTER, HENNINGER TO HEALD, DATED APRIL 10, 1890.

Allentown, Pa., Apr. 10, 1890.

C. E Heald, Esq.,

Dear Sir:—You will no doubt receive a letter from Edward Harvey, atty. at law in this city, asking for information concerning Blanchard's place. The other party who offered me the money to pay your mortgage could not accommodate me, being that there was too much delay about the matter and

hence gave it to another party. Mr. Harvey is a very rich party, and if you give him a satisfactory answer he will accommodate me. I am agreed to allow you $2,100.00 for the mortgage, but no interest are to be recovered.

Respt'y yours,
W. R. HENNINGER,
522 No. 7th st., Allentown, Pa.

H. No. 7.

LETTER, FROM HENNINGER TO HEALD, DATED JUNE 17, 1890.

No. 522 North 7th st.,
Allentown, Pa., June 17, '90.

C. E. Heald, Esq ,

Dear Sir:—Yours received. Will forward cancellation papers of McCoy's place to-morrow morning, if I can find it. I was under the impression Mr. Moore had attended to cancellation of mortgage. Yes, sir, will pay note if you can succeed to make sale. I tried hard to raise some on it but did not succeed. Hoping that I may soon hear of favorable report of sale, I remain,

Very respt'y yours,
W. R. HENNINGER.

Over

I have been offering the place for sale on the ground to pay the mortgage, $2,200.00, and give clear title, and hope that may be your aim in selling it.

H.

H. No. 8.

LETTER, E. INGRAM TO HENNINGER, DATED JUNE 13, 1890.

Philadelphia, June 13th, 1890.

W. R. Henninger, Esq.,

Dear Sir:—I have prevailed on the other parties interested in the mortgage on the Water Gap property not to foreclose at present. Can you raise

$1,000 or more against the mortgage? If you can I will arrange to have it reduced to $3,000, less whatever cash you can raise, and make a new mortgage for the balance, with interest at the rate of five per cent. per annum. If you are willing to pay $10.) to have this done, I can adjust it as above stated. This will give you the opportunity of protecting your equity in the property, and will put the whole matter in a very satisfactory shape for you. Kindly advise me on receipt of this. *Do not delay your answer*, as it is important to attend to this without delay. Address me at 74 Cortlandt st., New York.

Yours truly,

E. INGRAM.

H. No. 9.

LETTER, HENNINGER TO HEALD, DATED JUNE 23, 1890.

Allentown, Pa., June 23, '90.

C. Heald, Esq.

Dear Sir:—I find there is something seriously wrong about the necessary papers of Blanchard's place. The records were to-day examined by Phila. parties at Stroudsburg as also my deeds. From what I could infer they are trying to get you into trouble by the manner you drew up my deed. Foreclosure proceedings will also be instituted if no satisfaction is given by Saturday evening, as there are interest due for upwards of a year. My deed says they were paid up to Nov. 1, 1889. The party that was here is apparently an enemy of yours, and if they can accomplish it will surely get you into trouble. The mortgage must be reduced to $2,000, so that must be your aim in offering it for sale, and the sale must be made by Saturday, otherwise I will lose every dollar I have in it. As I have an idea of going into grocery business, if you can trade it off for $1,000 cash and the stock, fixtures and lease of a retail grocery store either in

your city, Brooklyn or Jersey City, and party to assume mortgage, would be very acceptable. But all that you do, rush matters, as we dare not delay, otherwise we are in a fix. If you have an offer let me know by wire in order to facilitate matters. Should you succeed in getting grocery it must be straight in every particular, as I have had bother enough by the mortgage business.

Hoping to hear from you soon, I remain very respecty. yours,

W. R. HENNINGER.

H. No. 10.

LETTER FROM HENNINGER TO HEALD, DATED MARCH 22, 1890.

Allentown, Pa., March 22, 1890.

C. W. Heald, Esq.

Dear Sir :—I received a protest last evening concerning your note. As my deposits were not sufficient to cover the same, said action had to be taken by bank, at the same time I did not know that the note was there. I will pay the note, however, as soon as you arrange other matter. I will pay $1,900 for the mortgage, which I will be accepted if you manipulate well. At the same time let me know at once the amount of insurance on the property and in what company and how long policy has to run, as the party who propose to advance me the money desires to know.

Respecty. yours,

W. R. HENNINGER.

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N. J. Court of Errors & Appeals.

Between
WILLIAM R. HENNINGER, *et al.*,
Appellants,
and
CHARLES E. HEALD, *et al.*,
Respondents.

On Bill.

The facts of this peculiar case are the following: William R. Henninger, one of the complainants, in the year 1889 was the owner of a farm in Woodbridge township, Middlesex county, in this State, on which there was a mortgage of $5,000, held by Thomas Jardine, Vreeland Jardine and Margaret Jardine. Foreclosure of this mortgage was threatened, and Henninger, not being able to take care of it, endeavored to dispose of the mortgaged property, and employed one Taylor, a New York real estate broker, to find a purchaser. Taylor introduced Henninger to one Charles E. Heald, one of the defendants, who was also a real estate broker, and who was endeavoring to dispose of what was known as the Blanchard place, consisting of a dwelling house and lot (p. 179,) in Monroe county, Pennsylvania, on which there was a mortgage of $3,600, and which he appears to have controlled. An exchange of these properties was agreed upon in writing on November 16, 1889, (p. 253 of Case), each purchaser to take subject to the mortgage upon the property he was to purchase, Henninger agreeing to pay, in addition, in cash $425. This agreement was shortly thereafter consummated by the delivery of the deed, (pp. 196, 254.)

The alleged fraud upon which the Court of Chancery was asked to rescind was two-fold. It was insisted, first, that the two agents, without the knowledge of Henninger, entered into an agreement by which Taylor, Henninger's agent, was to share with Heald one-half of the profits to result from a subsequent sale of the Henninger farm, (p. 119,) that this agreement was unknown to Henninger, and was therefore, as to him, fraudulent. The title to this farm had been taken in the name of one Dupuy, but he held it for the benefit of a Mrs. Pratt, Heald's mother-in-law, (p. 180,) who three or four months after sold her interest to Heald, to whom Dupuy then made a conveyance, (p. 192.)

Complainants' second insistment was that it was represented to Henninger by Heald at the time of the sale that the mortgage upon the Blanchard place amounted only to $3,000, whereas it in fact amounted to $3,600. While the mortgage on its face purported to secure $3,600, it was intended to be, and was in fact, a security for $3,000 only; and there is little or no evidence of any substantial misrepresentation on this point.

The Vice-Chancellor found a fraudulent bargain between Taylor and Heald to divide the profits of a resale, but did not find misrepresentation as to the amount due upon the mortgage.

Whether there was a corrupt agreement entered into while Taylor was in Henninger's employ, is a matter of dispute. Taylor swears that there was, (p. 119.) Heald swears there was not, (p. 190, l. 20.) He says that after the delivery of the deeds he did enter into a written stipulation with Taylor to give him one-half of the proceeds of the sale of the equity of redemption, Taylor's agreeing "to use every effort to sell and to advance one-half of all expenses," (pp. 198, 260,) but that in a few weeks

thereafter he, (Taylor) withdrew from it entirely. (p. 199, l. 32.)

We insist that the corrupt agreement alleged is not established by the weight of evidence, but if it be deemed to be so established (as the Vice-Chancellor thought,) it has no effect upon our title, which rests upon a mortgage antedating the agreement and which, for other reasons to be mentioned, is not affected by it.

The material facts are these: On November 23d, 1889, seven days after the agreement of exchange was entered into, Thomas, Vreeland, and Margaret Jardine filed a bill to foreclose the mortgage on the Henninger farm. This mortgage antedated the agreement by several years. The delivery of the deeds was made after the foreclosure was begun. At that time the property was neither very valuable nor marketable. The Vice Chancellor finds that the Blanchard place was a full equivalent for it, and this was worth, clear of encumbrance, from eight to nine thousand dollars, (p.181, l. 1.) Considerably more was subsequently paid by the Port Reading Railroad, because the company was in such a position that it had to buy at any price, but it gave much more than the real value of the land then or since. The decree of foreclosure was made May 21, 1890, (p. 279,) and the property came to a sale in July following. Then it was bought in by the Jardines, the holders of the mortgage. It is alleged by complainants that it was bought in under a verbal agreement, made with the attorney of the Jardines, that Heald, the then owner, should have thirty days after the sale within which to redeem, (p. 156.) Whether this Court would hold that a verbal agreement of this kind is binding contrary to the express provisions of the statute of frauds, or whether the Vice-Chancellor, on a bill which was filed by Heald on August 15, 1890, (p. 257,) to enforce the verbal agreement, filed his con-

clusions sustaining the complainant (of which there is no evidence in the printed case except the casual statement in the opinion, on p. 60, l. 26,) the fact is undisputed that on this bill *there was a decree of dismissal*, after the case had been heard on its merits, which has never been opened, and consequently the title of the Jardines, acquired by them at sheriff's sale, is not open to controversy; and it is this title, now held by the Port Reading, in so far as they are interested, which the complainants are now seeking to impugn under the following circumstances:

On July 29, 1890, the sheriff of the County of Middlesex conveyed the Henninger (otherwise called the McCoy,) farm to Thomas Jardine.

On April 30, 1891, Thomas Jardine conveyed a portion of this farm to the Port Reading Railroad Company for $12,000, and the remainder thereof to Gordon Chambers, for $10,000, (p. 280.)

The Port Reading Railroad Company, to further secure its title, likewise took at the same time an assignment of the Jardine mortgage, and on April 26th, 1892, took the title of Heald, (p. 280.) It has, therefore, both the Jardine title, acquired under the foreclosure, and the Heald title, originally in Henninger, and conveyed first by Henninger to Dupuy, and then by Dupuy to Heald.

It is claimed that this title is bad as against Henninger and his grantees. Before discussing the merits of this title, I will, however, first consider the complainant's right to attack it.

I.

The complainants are not in a position to attack the title of any of the defendants:

1. Because their own title is tainted with the very fraud in respect of which they seek a recovery.

2. Because the plaintiff, Henninger, instituted a prior suit in equity for the same cause of action in the same Court, which suit was heard on the merits and the bill dismissed, without any reservation that it was dismissed without prejudice.

3 Because the plaintiff, Henninger, through whom, and through whom alone, the other plaintiff, Little, claims, is not in a position to restore the *status quo*, having conveyed away the Blanchard property, taken in exchange for the Henninger property.

I take up these propositions in their order:

First. The complainant's title is tainted with the very fraud they allege as ground of recovery. Complainant bases his right to recover on the ground that he employed Taylor as his agent to sell his land; that Taylor accepted the employment and found a purchaser; and that he then in fraud of his principal, made a secret agreement with the agent representing the purchaser for a half interest in the proceeds of the property to be sold—an agreement which was incompatible with the duty he owed his principal, because the agent's interest thereby became adverse to the interest of the principal.

Now, one would imagine that while a court of equity would desire to aid a principal in recovering property with which he had parted under circumstances like this, *it certainly would not help the fraudulent agent to do it.* And yet, this is the very thing which the decree in this case does, to the extent of the relief granted. The case, on this branch of it, is very remarkable.

That there was an agreement between Taylor and Heald to share the proceeds of the resale of the property, is not denied. The controversy on this point is, only, over the time when it was entered into. If it was made pending negotiations between Henninger and Heald it was fraudulent. If it was made, as Heald says it was, after the transaction had been completed, it was unobjectionabls. Be this as it may, the undisputed fact is, that when Taylor learned that Heald had been successful in disposing of the property to the Port Reading Railroad, by an agreement dated on August 8th, 1890, (p. 281,) (the deeds, however, not having been delivered until the following April,) he, on September 23d, 1890, commenced a suit in his wife's name against Heald to establish his right to a share of the proceeds, (pp. 132, 199, l. 12; p. 202, l. 37.) This suit, for some reason or other, failed. Here comes in the extraordinary part of this case. Taylor, the fraud-doer, learning that his suit has failed or must fail, has a conversation with his counsel, Mr. Little, and in this conversation, which occurred in the fall of 1890, Mr. Little tells him that he had, by making the agreement of December 21st, 1889, with Heald, committed a fraud upon his principal, Henninger. He no sooner hears thisthanhe posts off, on the advice of Mr. Little, to Allentown, Pennsylvania, and tells the, no doubt, astonished Henninger, who lives there, all about it. And then, after telling him about it, has the audacity to propose that on the basis of this fraud suit should be commenced against Heald in Henninger's name, in the benefits of which he, Taylor, *was to have a three-quarters interest and Henninger one-quarter.* To this singular proposition Henninger at once acceded, and an agreement was made, dated January 29, 1891, (p. 89, l. 20,) by which Henninger gave Heald a three-quarters interest in the recovery, keeping only one-quarter for himself. This evidence is uncontra-

dicted, and is so remarkable that I extract a few passages from the evidence of Taylor, (p. 134):

"*Q* How came you to go to see Mr. Henninger?

"*A* I went on the advice of Mr. Little; after we had talked the thing over.

"*Q* What did you go to see Mr. Henninger for?

"*A* To make a contract with him—to commence a suit with him, so as to get part of the proceeds.

"*Q* Well, did you go in order to communicate to him the facts which you supposed might entitle him to set aside the sale?

"*A* Yes, sir.

"*Q* On account of your fraud?

"*A* Yes, sir.

"*Q* And then when you went to him, you supposed you had been committing a fraud on him?

"*A* No, sir; I never supposed I had committed a fraud.

* * * * * * *

"*Q* You didn't suppose you had done anything improper. Hadn't you been told before you went to see him that if your statements were correct, it was improper and a fraud on Mr. Henninger?

"*A* Yes, sir.

"*Q* And when you went to see him, didn't you suppose it was?

"*A* Yes, sir.

* * * * * * *

"*Q* Well, you didn't go to see him until after Mr. Little had talked to you about it, did you?

"*A* No, sir.

"*Q* When you went up to see him and from the information you got from Mr. Little, you supposed that you had been committing a fraud on Mr. Henninger?

"*A* Yes, sir.

"*Q* Well, what was your idea when you thought you had been committing a fraud on Mr. Henninger—was it to restore him?

"*A* Yes, sir; in a measure.

"*Q* What do you mean by 'in a measure?'

"*A* I proposed to give him part of what I could recover.

"*Q* For what?
"*A* By this suit.
* * * * * * *

"*Q* Was that your idea of restoring Mr. Henninger, by reason of a fraud you supposed you had committed on him, that you should make an agreement with him to give you three-quarters of the proceeds?
"*A* Yes, sir.
"*Q* Of what—
"*A* Of the suit—whatever was recovered.
"*Q* If you established the fraud by your evidence; come right down to it now?
"*A* If anything was recovered, then Mr. Henninger was to have his share of it.
"*Q* One-quarter?
"*A* Yes, sir.
"*Q* And yourself three-quarters?
"*A* Yes, sir."

In pursuance of this agreement, or rather conspiracy, suit was commenced by Henninger against Heald to set aside the conveyance of the farm, (p. 259,) and it coming out on the trial that such an agreement was made, the bill was dismissed. The decree of dismissal is dated April 15, 1892.

In the meantime and pending the suit, (April 30, 1891,) the Port Reading Company and Chambers took deeds of conveyance under the Jardine mortgage title, a title which, as I have said, antedated the title of Henninger, and was superior to it, and fortified that title by a conveyance from Heald and by an assignment of the Jardine mortgage.

Then another expedient was resorted to. It was conceived that it would never do to allow a three-quarters interest in the property to remain in Taylor, and so Josiah Taylor conveys his interest to John L. Taylor, a son of Josiah, and Stephen H. Little, the solicitor, and they on April 14, 1892, transfer this interest again to Henninger, (p. 93–4,) and Henninger, by agreement dated April 27, 1892, conveys a half interest in the claim to Stephen H. Little. The interest so conveyed was both an interest in the land

and in its proceeds, (p. 94.) Certainly Talyor could, in respect of his three-quarters' interest, recover nothing. His own fraud would prevent it. Would it be tolerated for an instant in a court of equity, that a fraud-doer desiring to profit by his fraud could, without other consideration than an agreement to testify to his fraud, acquire the claim from the person defrauded, and then bring suit in that person's name for his own benefit? It is a fundamental axiom that he who comes into equity must come with clean hands. Taylor certainly could not recover. And if he could not recover, how can Little, who became the voluntary assignee of Taylor's interest with notice, and who was, in fact, the contriver and manipulator of the whole business? Is it not certain that the claim to recover on the ground of fraud became extinguished the moment it got into the hands of the fraud-doer, and that Little could not, by taking an assignment of Taylor's title, revive it?

Second. The above considerations lead up to my second proposition, that the prior suit in equity brought by Henninger against Heald for the same cause of action is a bar to recovery in this suit. The suit was brought by Henninger in pursuance of theabove-mentioned agreement between himself and Taylor. The omission of Taylor as co-complainant, was designed. No practitioner would for one moment have so much as considered the question of disclosing Taylor's interest on the record. He would, had he been willing to bring such a suit, have studiously concealed it. It was part of the agreement that Henninger should sue both for his own benefit and for that of Taylor. The Court, therefore, when it heard the evidence and when it discovered Taylor's interest in the recovery and dismissed the bill, dismissed it on the merits. In fact the whole subsisting interest on which a recovery could be had, was then before the Court. If the three-quarters

interest in the hands of Taylor was not recoverable —or was extinguished —then Henninger represented the whole subsisting claim. Moreover, the decree recites that the Court gave the complainant, Henninger, an opportunity to amend by adding Taylor, and then proceeding with the trial, and that Henninger refused to amend. It further recites that complainant's counsel then asked that there should be a decree of dismissal *without prejudice*, and that this was refused. So there was a full opportunity given to every one to be heard on the merits. A decision, in one proceeding, where opportunity is afforded to try the case on its merits, is a bar to subsequent proceeding for the same cause of action.

Bigelow on Estoppel, p. 58, 5th Ed.
The Bellcairn, 10 P. D. Rep. 161.
Durant v. *Essex County*, 7 Wall. 107.
Durant v. *Essex County*, 101 U. S. 555.
Walden v. *Bodley*, 14 Pet. 156.

Third. The complainants are not in a position to restore the *status quo.*, Henninger, through whom also Little claims, having conveyed away the Blanchard property, and not being able to procure its reconveyance.

The complainants allege in their bill that Henninger, having become financially embarrased, one Mary R. H. Meyer, claiming to be the assignee of said mortgage, obtained a judgment for the principal and interest thereon, amounting to $3,924, in the Court of Common Pleas of Monroe county, Pennsylvania, under which the property was sold, and bought in by said assignee, and that the property had, therefore, passed beyond the control of the complainants, (p. 12, l. 30, *et seq.*) But the proof was that Henninger had obtained a deed for the property on December 19, 1889, and had conveyed it to his father on December 22, 1889, (p. 279,) who had paid him therefor, *in cash*, the sum of $3,000, (p. 86,) this sum being realized for it over

and above the mortgage encumbrance, (p. 279.) The Vice-Chancellor finds (p. 62, l. 16,) that "the exchange was fair, and the consideration of the one parcel of land for the other, including the boot money, was fair and reasonable." There is absolutely no evidence to the contrary. (See Heald's testimony on pages 179, 180, and 181, l. 1.) The proposition contended for, then, is, that although Henninger got for the McCoy farm a fair equivalent in the Blanchard place, which he thereafter voluntarily disposed of for a cash consideration, and although he neither offers to restore nor is able to restore the property thus sold by him, he may yet claim the McCoy farm or its value from the Port Reading Railroad Company and Gordon Chambers, who have already paid for it more than it is worth, and in good faith gone on and improved it. In other words, the claim is that equity demands that after having already received one full equivalent for his property, he should, not only as against the party who has, as he says, defrauded him, but also as against innocent purchasers, receive a second equivalent, which is to be further increased by the value of the improvements put upon it before the commencement of this suit. I venture to assert that so monstrous a claim has seldom been asserted in a court of equity.

II.

Not only are the complainants in no position to sue—the title of the Port Reading, Gordon Chambers and the Jardines is unassailable. It antedates the title of Henninger and is superior to it. It is derived under the mortgage given to the Jardines by Anson B. Moore, a former owner, on August 4, 1886, (p. 280, l. 20,) Henninger acquiring his title to the equity of redemption subsequently. The foreclosure bill was filed after Henninger and Heald had entered into their agreement of exchange, but before the deeds passed. It is not pretended that the decree made on May 21, 1890, and the sale thereunder, did not effectually foreclose Henninger's and Heald's equity of redemption. Thomas Jardine purchased at this sale in July, 1890, and on April 30, 1891, conveyed one portion of the farm to the Port Reading Railroad Company for the consideration of $12,000, and the other part to Gordon Chambers for the consideration of $10,000.

The proposition for which the complainants contend is this: After Heald had acquired the legal title from Dupuy, to whom Henninger had conveyed, his attorney made a verbal agreement with the attorney of the Jardines at the time of the sheriff's sale, to the effect that if Heald's attorney would not insist upon his right of adjournment, but allow the property to be struck off and bought by Thos. Jardine, he (Jardine's attorney,) would agree that at any time within thirty days Heald might redeem for the sum due upon the decree and sheriff's costs, (p. 156.)

The contention is that this agreement enured not only for the benefit of Heald, on whose behalf it was made, but also for the benefit of Henninger. And that having once been made not only did Heald become incapacitated from rescinding or modifying it, but that contrary to its express pro-

visions, which limited the right to thirty days, it still continues to exist for the benefit of Henninger.

It is difficult to understand on what principle this agreement could exist after Heald put an end to it, as he did when he joined with the Jardines in conveying his right (such as it was) to Chambers, for the use of the Port Reading Company, (Ex. P. R. 10, p. 280,) on April 26, 1892. And this deed was made, too, before the present suit was commenced, by the filing of the bill on June 14, 1892. It is manifest that Henninger has, from the beginning, been claiming in hostility to Heald. Heald has never been acting for Henninger's benefit. He has always been acting for himself alone. The principle applied in the case of *Crowell* v. *Hospital of St. Barnabas*, 12 C. E. Gr. 654, seems directly applicable. Says Mr. Justice DEPUE in this Court: "The doctrine of the Court of Chancery is that as a general rule as to strangers to the contract, who are also strangers to the consideration, the parties may, at their pleasure, abandon it and mutually release each other from its performance, and upon such rescission and abandonment, the contract is completely at an end and thereafter cannot be enforced." Here Henninger was both a stranger to the contract and a stranger to the consideration. He was a stranger to the contract for he did not appear at the sale, and he did not apply for an adjournment and he did not secure any stipulation from the Jardines in his favor, and he was a stranger to the consideration, for the consideration was merely a waiver of Heald's right to have the sale adjourned. Moreover the burden of performance rested exclusively upon Heald, and the right itself was a new and independent one, arising long after the alleged right of Henninger to a rescission of the exchange of properties had arisen. Would it not be the height of injustice to hold that Henninger could stand by and let the burden of performance fall upon Heald,

and then wait until it could be seen whether Heald's venture was profitable. If it was, Henninger would claim the whole benefit of the transaction ; if it was not, he would have nothing to do with it.

In the second place, there has been a formal adjudication on this alleged right. After Jardine had taken title from the Sheriff, he contested Heald's claim that he was entitled to redeem. Heald thereupon filed a bill against the Jardines to compel the specific performance of the agreement. The Jardines answered and the case went to a hearing. The Vice Chancellor states that he filed conclusions sustaining complainant, (p. 60,) but that the Jardines subsequently procured a decree dismissing the bill (p. 61.) (See this bill, answer and decree in supplemental exhibits.) This, the Vice-Chancellor says, "left the title of the premises absolutely in the Jardines."

The matter then stands thus : Henninger's right, if it existed, was a right to have from Heald, or his grantor, Dupuy, a reconveyance of the equity of redemption of the McCoy farm. This equity was foreclosed by the sheriff's sale. At that sale, however, a new right arose, (assuming that the verbal agreement was not void, as being in contravention of the statute of fraud,) in Heald. This new right Heald sought to enforce in the Court of Chancery, which decreed against him, and so forever extinguished it. Where, then, is the right of Henninger in the land ? It is possible, as the Vice-Chancellor has decreed, that he might follow so much of the price as came into the hands of Heald, though I think this is more than doubtful, but what possible interest can he claim in the land, in the teeth— (1) of the decree of foreclosure, which adjudges that the equity of redemption, to which alone Henninger had title, is absolutely barred and foreclosed ; and (2) of the decree in the second suit, dismissing

Heald's bill, after hearing on the merits. Neither of these decrees is attacked in the present bill and both stand unimpeached and unimpeachable.

In the third place, the weight of the evidence is, without any reference to the state of the record, that Heald, finding he could not within the thirty days raise the required sum with which to redeem, abandoned the option and told the Jardines they could go on and sell. The Jardines so testify, (p. 219, l. 11; p. 230, l. 5,) and Savage, who had previously testified that within the thirty days he had tendered the money and demanded a deed, (p. 157,) was not recalled to contradict them.

The Jardines purchased at the foreclosure sale without any notice of Henninger's claim, (p. 218, l. 13.) As to this there is no contradiction. In point of fact, Henninger himself did not know that he had a claim until months after, when he learned it from Taylor, in the manner I have described. As to Henninger, therefore, Thomas Jardine was a *bona fide* purchaser for value, without notice.

Voorhes v. *Westervelt*, 16 Stew. p. 644.

16 Amer. & Eng. Ency. Law, p. 831.

But if Jardine was entitled to hold the land as such a purchaser, the Port Reading Company and Chambers were likewise entitled to do so. I cannot find in the record any evidence that the Railroad Company or Chambers had notice of Henninger's claim when they took title from Jardine on April 30, 1891, (page 280.) Henninger had commenced his suit against Heald alone, before then, but the supplemental bill against the railroad company and Chambers, was not filed until October 7, 1891; but if they did it would make no difference, because it is elementary law that a person with notice purchasing from one without notice, acquires the title of the grantor and takes unaffected by the notice. The deed from Heald was not obtained

until April 26th, 1892, but it seems clear that at that time Heald had no title, and if the railroad paid him anything, it was merely because it determined in good faith to carry out an agreement with him entered into long before, and at a time, too, when neither party had notice of Henninger's claim. (See agreement with Byers, the company's agent, dated August 8th, 1890, p. 216 of Case, and note that it was the Byers' transaction which induced Heald to attempt to exercise the opinion that he had acquired from the Jardines.)

III

Henninger's right to rescind the sale has been lost by *laches*. He knew of the alleged fraud, at least as early as January, 1891. He did not commence suit against Heald until March 30, 1891. His supplemental bill against the other parties to this suit was filed October 7, 1891. In that suit under the leave granted by the Court, he had leave to amend by adding Little and Taylor as co-complainants, and try the whole case on its merits. This he refused. He, without any necessity, put all the parties to the annoyance and expense of another suit, wholly unnecessary, and this suit he did not commence until June 14th, 1892. Is not this *laches?* Will the Court say that the institution of the former suit, coupled with the vexatious refusal to prosecute it, is any excuse for the delay in bringing *this* suit? I submit, that if there ever was a case to which the doctrine of *laches* should be applied, it is this. It is utterly and thoroughly unconscionable. The Vice-Chancellor, himself, while he finds fraudulent conduct in Taylor, finds also that Henninger got a full equivalent for his farm. Although Taylor now asserts that he has no interest in the result of the present suit, his testimony and

conduct are not such as to warrant us in placing much credit on his statement, and it is undeniable that it is largely speculative and that the title to bring it has been conferred by the fraud-doer himself.

IV.

I have thus far presented the argument from the standpoint of the Vice-Chancellor, who finds that the original bargain between Henninger and Heald was affected by Taylor's alleged fraud. I submit, however, that the weight of the evidence is against the complainants on this point also. The Vice-Chancellor thinks that there was a corrupt agreement between Taylor and Heald, which rendered the exchange voidable (p. 62.) This agreement, as the Vice-Chancellor finds it, was that Taylor was to have one-half of the profits of a resale of the McCoy farm. It was only corrupt in that it was concealed from Henninger. But the vital point here is the time of the making the agreement, for it is manifest that if it was made, as Heald says it was made, (p. 197,) after the delivery of the deeds, it was absolutely unobjectionable

I submit that Heald's statement is, on its face, more reasonable than Taylor's. (See Heald's account, p. 198, and Taylor's account, p. 119.) But aside from this, there is in Taylor's statement nothing to show that the agreement between them preceded or was contemporaneous with the making of the agreement of November 16, (p. 253.) The latter agreement having once been made, each party was bound to its performance, and the agent's attitude toward his principal became of no consequence. I submit that the question, (p. 119, l. 20): "Was there any agreement between you as to what should be done with the McCoy place after the exchange

was made?" relates, and was understood by the witness to relate to the delivery of the deeds. The answer, "Yes, sir; we were to advertise it and try to sell it, and whatever we received for it * * * after the Jardines were paid, we were to divide the balance equally," plainly referred to that period of time when the dominion over the property was such that they were in a position to sell and receive the money, *i. e.* to the time of the delivery of the deeds and not to the time of the delivery of the agreement of exchange. But it was vital to complainant's case that the agreement between Heald and Henninger should have preceded the latter, and this does not appear. At all events the question and answer are ambiguous, and on this point, which lay at the foundation of the complainants' recovery, there should have been no doubt. On their own showing, therefore, it seems to me the complainants have not established a right of recovery.

As to the allegation of fraud in misrepresenting the amount due on the mortgage, that is too frivolous for consideration. It is demonstrated that while the mortgage was drawn for $3,600, only $3,000 was from the beginning due or could have been recovered thereon, (p. 168.) Henninger, although he admits he knew of the amount of the face of the mortgage three months after the sale, (p. 83, l. 8,) never complained of it, for the obvious reason that he must have also known that it stood as security for $3,000, the precise amount named by the parties at the time of the exchange. The present complaint is obviously an afterthought.

I submit that the decree of dismissal, so far as concerns the Port Reading Company, Chambers and the Jardines, is obviously right, and that there should be as to them an affirmance.

FREDERIC W. STEVENS.

November Term, 1895.

New Jersey Court of Errors and Appeals.

Between WILLIAM R. HENNINGER *et al.*,
Appellants,

AND

CHARLES E. HEALD, THOMAS JARDINE,
FREELAND JARDINE *et als.*,
Respondents.

On appeal from the decree of the Chancellor.

Statement of Complainants' Case.

In the month of November, 1889, William R. Henninger of Allentown, Pennsylvania, was the owner of a farm situated in Middlesex County in this State, containing eighty-six acres and known as the McCoy farm. The farm was subject to a mortgage for $5,000 held by the defendants Thomas Jardine, Freeland Jardine and Margaret E. Jardine of Rahway, N. J., who were pressing Henninger for payment. He employed one Josiah Taylor, a real estate agent of the City of New York, to sell the farm. In some way the matter came to the knowledge of the defendant Charles E. Heald, also a real estate agent, having an office in the same building with Taylor—who represented himself to be agent of one Abraham Dupuy, who as Heald alleged was the owner of a property situated in Pennsylvania and known as the Blanchard place—and proposed an exchange of the Blanchard place for the McCoy farm.

Henninger had no acquaintance with either Taylor or Heald and trusted the negotiation entirely to Taylor. After considerable negotiation an agreement was en-

tered into dated November 16, 1889 (p. 253), by which Henninger agreed to convey the McCoy farm to Abraham B. Dupuy, for whom Heald professed to act as agent, and to receive in payment a conveyance of the Blanchard place subject to a mortgage as stated of $3,000 bearing five per cent interest—Henninger paying also $400 difference.

The deeds were delivered about the 21st or 22d of December, 1889, and Henninger paid $300 in cash and gave his note for $100. He also paid $66, which he had received for the rent of the McCoy farm up to April, 1890. He also gave to Taylor his note for his commissions of $100. Out of the $300 Taylor received $75, and also $33 out of the $66 (pages 119 and 188).

In the month of November, 1889, after the agreement was made between Henninger and Heald as agent of Dupuy, the Jardines commenced proceedings to forclose their mortgage, the bill being filed November 23d, 1889 (p. 279), the decree was made May 21st, 1890, for $5,539.16, with costs $110.29 (p. 25), and the farm was sold under the decree by the Sheriff of Middlesex County in July, 1889, to Thomas Jardine, who acted for his brother and sister also, for $4,000. That sale was made by consent of Heald by his attorney for that sum (p. 156), under an agreement that Heald, to whom the equity of redemption had been conveyed by Dupuy June 14, 1890 (p. 256), might redeem the property by paying to the Jardines the amount of their decree with interest and their costs at any time within thirty days after the day of sale. Within the thirty days the money was tendered and a deed demanded and refused (p. 41 and 157).

Heald at once (August 15, 1890) filed his bill against the Jardines to enforce the agreement for redemption and that cause was heard in or about the month of December, 1890, but was not decided until March 26, 1891.

In the month of *January, 1891*, Taylor and Heald having fallen out (as rogues sometimes do), Henninger was informed by Taylor (p. 85) that while he in mak-

ing the contract for the disposition of the McCoy farm professedly acted as his (Henninger's) agent, and Heald acted professedly as agent for Dupuy; in fact, they had acted in concert and under an agreement between them to squeeze what money they could out of him and divide it between themselves—to take the title to the McCoy farm in the name of Dupuy, who, Heald said, was impecunious and would hold the title subject to his (Heald's) order; that they would then unite their ~~orders~~ efforts to sell the McCoy farm and would divide equally whatever amount might be realized over the Jardine mortgage (pp. 118, 119).

As the Jardines held the title at that time under the foreclosure sale, and Henninger could only reach it through the agreement between the Jardines and Heald, and would depend on the decision of the suit then pending to enforce that agreement, Henninger delayed all proceedings until that decision was announced on the 26th March, 1891, and on the 30th March he filed his bill against Heald, claiming the right to rescind the conveyance of the McCoy farm to Dupuy by reason of the fraud practiced on him by Taylor and Heald, claiming also the benefit of the agreement made by Heald and the Jardines, giving to Heald the right to redeem the farm, and claiming also the benefit of the proceedings in the suit of Heald *v.* Jardines.

Before any decree was signed in that suit (Heald *v.* Jardines), but with full notice to them of Henninger's claim and of the filing of his bill against Heald to enforce his claim, the Jardines sold and conveyed the McCoy farm to the Port Reading Railroad Company, who took title to one part of the farm to themselves and to the other in the name of Gordon Chambers. That sale was completed by the delivery of the deeds and payment of the money on the 12th May, 1891 (pp. 41 and 57), the company at the same time giving to the Jardines an agreement to indemnify them against any decree in the Heald suit, or any other suit then pending, or which might be thereafter instituted

by whomsoever instituted and arising out of Heald's alleged right of redemption (p. 261).

These conveyances having been discovered a supplemental bill was filed by Henninger, making the Railroad Company and Chambers defendants, October 7th, 1891. That cause came on for hearing in April, 1892, before Vice-Chancellor Bird, when it became manifest by the examination of Taylor that he was interested in the suit and was a necessary party. Permission was given to amend by making Taylor a party, but believing Henninger would be greatly prejudiced by such an amendment a dismissal was granted, March 15. 1892 (see bill, &c.).

In the meantime Taylor's alleged interest was surrendered to Henninger, and this bill was filed June 14th, 1892 (p. 254).

The complainants claim that by reason of the fraud practised on Henninger by Taylor and Heald he is entitled to have his conveyance of the McCoy farm rescinded; that they are entitled to avail themselves of the agreement made by Heald with the Jardines for the redemption of the farm on payment to them of the amount of their decree with interest and costs; that they are entitled to the same relief as against the Port Reading Railroad Company, Gordon Chambers and Ferdinand E. Canda, because they purchased with full notice of Henninger's claim.

The learned Vice-Chancellor who heard the cause sustained the charge of fraud by Taylor and Heald, and in his dceision says (p. 62):

"In the first place I find that there was a corrupt "agreement between Taylor, as the agent of Hen- "ninger and Heald, which rendered the exchange "voidable, and justifies Henninger in asking for a re- "scission."

But while he held that Heald was bound to account for the money received, in taking the account he charged him with only $4,530.10, from which he deducted $3,000 received by Henninger from sales of the

Blanchard place, with interest from December 25, 1890, p. 74, while the evidence shows that there was paid to Mr. Savage, as Heald's attorney, $9,060.20 in April 1892 (p. 244).

He also held that the Jardines, by the sale under the decree of foreclosure, and a decree entered in the suit of Heald *v.* Jardine by consent, April 22, 1890, obtained an absolute title to the McCoy farm; that they were (if I correctly understand him) *bona fide* purchasers), and being such the Port Reading Railroad Company and Chambers having taken their titles from a *bona fide* purchaser, could not be held liable, though they purchased with notice of the fraud (p. 66), and as to the Jardines and the other defendants he dismissed the complainants' bill.

In both these matters we respectfully insisted the learned Vice-Chancellor erred, and from his decision in regard to them we have appealed.

I.

The question which underlies this case is whether Taylor was employed by Henninger to dispose of his farm and whether he and Heald, who professed to act as agent for Dupuy, entered into an agreement such as is charged and really procured the title to Henninger's farm by means of it.

The agency of Taylor will not, and never has been disputed, nor can it be pretended but that Heald professed to act as agent for Dupuy. (The contract, Exhibit 1, p. 253.)

Henninger's Ev., pp. 80–86.
Heald's own Evidence, p. 180, and his answer, p. 21.
Taylor's Ev., p. 112.

The corrupt bargain between them is conclusively proved by Taylor's evidence, pp. 113, 118, 119.

On page 118 he was asked: Q. What was the agreement between you and Heald at the time?

A. * * * Whatever was received from Henninger in money, and in the farm, was to be equally divided between us.

Page 119. How much money was received?

A. $300 was received.

Q. And subsequently how much?

A. $66.

Q. What became of the $300?

A. Mr. Heald took the check and collected it and took out $225 and gave me $75.

Q. That is, as I understand you, he took out $150 and half the remainder?

A. Yes, sir.

Q. And gave you $75?

A. Yes, sir.

Q. What was done with the $66?

A. I received it by express and gave Mr. Heald half —the half of it, $33.

Q. (Handing the witness a paper.) Is that the envelope that enclosed the $66?

A. Yes, sir; that is the envelope. (Marked Ex. 13.)

Q. Was there any agreement between you as to what should be done with the McCoy place after the exchange was made?

A. Yes, sir; we were to advertise it and try to sell it and whatever we received for it after Mr.———— the mortgagees————

Q. Heald?

A. No, sir; the parties who held the mortgage.

Q. Jardine?

A. Yes, sir; after the Jardines were paid we were to divide the balance equally.

Q. Was that agreement reduced to writing *at that time?*

A. No, sir.

Q. At whose direction was the title to the McCoy place made to Dupuy?

A. By Mr. Heald's direction.

Q. Was there any reason given for that by Heald?

A. That he was to hold the title until we done something with it—until I sold it, or the mortgage was foreclosed—until it was sold.

Q. Subject to your order?

A. Yes, sir.

This is positive proof of the corrupt bargain, and that it was at least partially carried out by a division of the money which they had squeezed out of Henninger.

But the evidence is unanswerable which is presented by the exhibits and by Heald's own evidence. It shows Heald to have not only been cognizant of the various communications between Henninger and Taylor as his agent, but it shows that they conspired together as to the answers sent to Henninger and the way in which the pressure was to be put on him, *Heald himself dictating letters to Henninger and answers to his letters and telegrams to Taylor.*

Look at Exhibit No. 11, p. 257.

This is a letter from *Henninger to Taylor*, dated *Nov. 8, 1889*, in reference to the proposed exchange of his farm for the Blanchard place.

ALLENTOWN, PA., NOV. 8, 1889.

J. W. TAYLOR, ESQ.

DEAR SIR:

"Your letter received. Get your broker to assume "the interest, &c., due and I am agreed to make a trade "if we cannot do better. I will then lose at least "$3,000 cash money, besides the Monroe County will "be of no value to me at all as it is too much out of "the way entirely, but rather to see mortgage fore-"closed will make the trade. You see the broker and "wire me if he will accept. I shall then have deed "made so that we can fix up the whole business when "I come over. The Monroe County property is not "worth more than $5,500 to $6,000, while my prop-"erty if in hands who are in with speculators will

" bring $10,000 without trouble. I this morning " struck a prominent banker who if I am forced to will " place a $5,000 mortgage at 5% on McCoy place and " pay off Jardine, but rather than have more trouble " about it, will make the trade as stated before. In all " probability I cannot leave home before Wednesday " next week. * * * All I ask of you is to strike a " bargain with Blanchard's broker to assume the inter- " est, &c., due, and I am agreed to make a trade when " we will determine what course to pursue with the " Water Gap property afterwards. *Wire me after* " *you get to terms.*

" Resp. Yours,
" W. R. HENNINGER."

That letter, as appears by an indorsement, proved to be in Heald's writing (p. 117, line 10), and not denied to be so by him when examined as a witness, *was opened* by him and he wrote thus:

" *I opened this letter. I have to go away.* You " better write him, it is impossible to do any better " than you wrote him, &c.

(" Signed) C. E. HEALD."

Next *is Exhibit 8*, page 255, a telegram addressed to Taylor and received by him (p. 115, line 39). It is dated *Nov. 11, 1889*, and is as follows:

" Am agreed to pay three hundred, make trade on " that basis. Wire results.

" W. R. HENNINGER."

Look again at Exhibit No. 9, p. 255, proved by Taylor, p. 116. This is a letter dated New York, *Nov 11, '89*, and is as follows:

" J. TAYLOR,

"DEAR SIR:

"I find there is due on the mortgage $383.33 for " interest and $78.45 for taxes, making a total of " $461.78, as you see. Now *you better wire Henninger* " *like this, $300 will not do*, think *I can make trade* for " $400 if you *come Wednesday*. Answer——

"*We will get him* to *take the taxes on the Blanchard* "place $28, and trade this way, Jardines will not wait "a day in foreclosure.

"Yours,

"C. E. HEALD."

Again, look at Exhibit No. 31, p. 270, dated Nov. 13, 1889, and read in Ex. p. 101 and 102:

It was proved to be in Heald's handwriting, p. 110, line 35, and it was not denied to be so by Heald, when under examination as a witness. This is the letter:

NEW YORK, Nov. 13, '89.

"W. R. HENNINGER,

"DEAR SIR:

"I *wired you on Monday* that I could make the "trade if you would pay $400 (instead of the $300 "you offered) and asked you to answer, but have heard "nothing further from you. *Now if you wish to make* "*the deal, and I know it is a splendid deal for you to* "*make*, you will have to come on at once and close it "up, for if a *foreclosure suit is begun* on your farm, I "don't think you can then make the trade at all. I "sent a party to see Shafer & Durand, and they said "they would hold it till Thursday morning, when if "the whole amount was not paid both *principal and* "*interest*, they would be obliged to commence. So "you see there is *absolutely not a day to waste.* The "owner of the Blanchard place is very indifferent "about the deal any way *and unless I hear from you* "*to-morrow*, either by letter or telegraph, I think the "whole thing will be 'off.' *Wire immediately* on re-"ceipt of this what you will do and what day will be "here.

"Yours truly,

"J. W. TAYLOR,

"176 Broadway."

I next direct attention to Exhibit No. 30, p. 269, dated *Nov. 14, 1889*, and purporting to be a letter from Taylor to Mr. Henninger:

NEW YORK, Nov. 14, '89.

W. R. HENNINGER,

DEAR SIR:

"Your last telegram received, and as you cannot "come till Saturday, I will have time to reply by letter. "I *have consulted the parties and after a long argument* "they will do this, and say if it is not done by Satur- "day to *drop it.* They will take $300 cash and "your note for $125 for six months at 6% "provided you will take the taxes on the "Blanchard place, which are $28.00. I wrote you "the taxes were paid but I was mistaken as I now "have the bill. Now this is the very best I can get "them to do but it is possible they might do a few "dollars better after you get here Saturday morning, "and you *may rest assured I will do all I can to make a* "*satisfactory deal for you*, but *be sure* and bring $300 "*cash at least, as they will not take any mortgage*, "with all its formalities, &c., and no doubt you rather "it would be this way. When I *showed your telegram* "to them to-day they at first refused to do anything "more about it and said drop it, but after a time I got "them to make above offer. You had better wire me "as soon as you get this if you will be here on Satur- "day as unless I knew you were coming I might be "away.

"Yours, &c.,

"J. W. TAYLOR,

"176 B'way, Room 42½."

This letter certainly would seem to manifest an honest appreciation by Taylor of his relation to Henninger, and might well have lulled any suspicion of his integrity on Henninger's part, if such suspicion had existed.

But when it is shown that though *signed by Taylor, it was written by Heald, who signed Taylor's name to*

it, what is the inevitable inference as to the nature of the relation existing between them in reference to this business?

It is not only proved to be in Heald's handwriting, which he did not either deny or attempt to explain (p. 110, line 32; p. 115, line 22, etc.), but a reference to Exhibit No. 7, p. 265, will show his own admission that he wrote the letter.

This Exhibit No. 7 is a telegram from Henninger to J. W. Taylor, dated *Nov. 14th, 1889*, as follows:

ALLENTOWN, Nov. 14th, 1889.

J. W. TAYLOR
176 Broadway N. Y.

Will allow four twenty-five provided party accepts mortgage six months six per cent and exchange *papers* Saturday.

W. R. HENNINGER

Evidently the letter above referred to, dated Nov. 14th, 1889, was in reply to this telegram. In the letter Henninger is notified that the *mortgage will not be accepted*, and he is asked *to wire* Taylor at once, that he will be on hand *on Saturday*.

And in this telegram in Heald's handwriting in pencil are the words

"*I replied to this by letter.* HEALD."

To that letter of Nov. 14th, 1889, asking Henninger to wire at once that he would come to New York on Saturday, Henninger replied by telegram, dated

"ALLENTOWN, *Nov. 15, 1889.*

J. W. TAYLOR
Room 42, 176 Broadway N. Y.

Will be at your office ten to-morrow relative to trade.

W. R. HENNINGER."

See p. 110, lines 5 to 10. Exhibit No. 5, p. 254.

But again I direct attention to Exhibit No. 10, p. 256, a letter written by Henninger to Taylor under date of *Nov. 23, 1889.* This is important for several reasons. It incloses a check for $300, &c. It also *tells Taylor that he will pay his commision next week.*

But more important still is the fact that *Heald had full knowledge of its contents*, which is *shown by his indorsement* on it in pencil as follows:

" Better write to Henninger that check is received,
" but as it is on Allentown Bank *will have to wait till*
" *money is rec. before passing deeds*, note, &c. Also
" say I have notified Shafer and Durand to hold up so
" far as Henninger is concerned as title is about to
" change hands, &c. I have put the check in bank for
" collection.

" (Signed) HEALD."

This is proved to be in Heald's handwriting (p. 116, line 20), and Heald did not deny it or explain it when under examination as a witness.

The contract for the sale bears date on the 16th Nov., 1889, Exhibit No. 1, page 253, and by it it appears that Henninger then gave his note for the $300 at fifteen days, which was afterwards paid by the check referred to in his letter of Nov. 23d, above mentioned, but the deeds were not exchanged as will be seen until about December 21 or 22, 1889.

If further evidence is needed to show the collusion we complain of look at Exhibit No. 12, p. 258.

This is a letter, or purports to be a letter from *Taylor* to *Henninger*, dated Dec. 2, 1889.

It states that the money for the check has not yet been received; that Henninger's deed has been shown to Heald, who objects to it and he must make a new deed, precisely according to the contract, and then says:

" Mr. Heald also finds that the farm is under a lease
" which runs to April 1, '90, and that rent at the rate
" of $200 per year has been paid up to that time. I
" think I can get him to waive the matter of posses-

"sion, although under the contract which says nothing "about the farm being subject to a lease. You could be "compelled to give possession, but he demands that you "pay the rent for the unexpired term of the lease which "you have received, and which amounts, as he figures "it, to $66.67, and this amount you will have to send "in cash *with your new deed.* As soon *as received we* "*can close the whole matter at once.* I am sorry there "has been such delay, but as you can plainly see it "has not been the fault of anyone here. I enclose "the deed you sent."

The most significant fact connected with this letter is that it was not only written after Henninger's check had been received, but that it was *written by Heald* himself for Taylor to copy and send to Henninger, which was done, p. 117, lines 20 to 40.

Surely, no man capable of weighing evidence can read these documents without instinctively saying to himself that Taylor and Heald were working in concert for the attainment of some mutually desired end, in which they had a joint interest; or else that Taylor was in the employment of Heald.

No one could for a moment suspect that they were professedly representing diverse interests.

But even this does not comprehend all the evidence of collusion. Taylor says that out of the cash to be squeezed out of Henninger, Heald was first to take $150 on some fanciful claim he made, and the balance was to be equally divided, and that when the $300 check was paid Heald retained the $150 and paid to him $75, and that when he received the $66.66 he paid Heald one-half of it.

Page 119, line 1–12.
Page 123, line 12–28.
Page 124, line 5–10.

Now, Mr. Heald had every opportunity to explain these various matters which would seem to be of a character demanding explanation, but nothing, abso-

lutely nothing, has been said by him relieving in the least degree their condemning character.

In his answer (p. 23), while he denies the existence of any agreement, pending the negotiations, that he and Taylor were to be jointly interested in the McCoy farm, he denies also that any division of the money paid by Henninger, or any part of it, was made between them ; but he admits that by agreement between them " Taylor was to *receive $100 as commission* out of *the moneys* that *were* paid."

Commissions for what? Out of whose money paid? Commissions are usually paid for services rendered. For what service rendered by Taylor were they paid?

His answer to bill filed by Henninger against him March 30, 1891, discloses an agreement, I think, substantially such as we charge (p. 4) in the bill.

When examined as a witness in his own behalf (pp. 184 and 185) he gives his account of the transaction, and distinctly says he *agreed to pay* Taylor $100 if he could *induce Henninger to pay more boot* (p. 185, line 8).

He asserts that Henninger knew of the payment, which Henninger denies (p. 238, line 35).

He asserts that Henninger declined to pay Taylor commissions, which Henninger and Taylor both deny (pp. 121–123).

The proof is that Henninger gave Taylor his note for $100, and in Exhibit No. 10, p. 256, Henninger in his letter to Taylor under date *of Nov. 23, 1889*, distinctly says, " *Your commission I will straighten next week.*"

That letter is competent evidence against Heald, for though addressed to Taylor it was handed to Heald, and he dictated the answer to it.

But if by any possibility any further evidence of the alleged agreement is desirable, look at Exhibit No. 14, p. 260.

It is dated December 21, 1889, and is in the *hand-*

writing of Heald (he has not denied it), Ev., pp. 120 and 121—*and signed by him.*

"NEW YORK, December 21, 1889.

"Whereas on or about the 11th day of November "of the present year, one William R. Henninger con- "veyed to *Abraham B. Dupuy* the equity of redemp- "tion in a certain piece of real estate known as the "McCoy farm, situate in Woodbridge Township, Mid- "dlesex County, New Jersey. Whereas one J. B. "Taylor agrees to *use every effort and advance one-half* "*of all expenses deemed necessary to effect a sale of said* "farm. Now, therefore, I, Charles E. Heald, agent "for said Abraham B. Dupuy, do hereby agree with "said Taylor that *in consideration of said efforts and* "*expenses*, as aforesaid, that *upon any sale of said* "*farm* said Taylor may have and receive *half of the* "*proceeds of said sale* of said equity of redemption.

"(Signed) CHARLES E. HEALD."

Now it is true J. B. Taylor is the wife of Josiah Taylor, but Heald in his answer says he supposed the agreement was with our agent Taylor (p. 24, line 30; p. 199).

And his attempted explanation of it consistently with his denial of any collusive agreement with Taylor, reveals the man. This agreement was not alluded to in the bill of complaint, and Heald and his counsel, not having all the papers before them when preparing his answer, thought they strengthened his denial of the alleged parol agreement by referring to it and calling attention to the fact that while the contract of sale was dated *November 16th*, this agreement was not made until December 21st, apparently long after the exchange was made. And so, in his answer, p. 24, he says this agreement was made "*about a month after said ex-* "*change.*"

That Tayor professed to have a buyer and "*wanted* "*more than regular commissions if he could sell the* "*farm*," and finally it was agreed "that if he

"used every effort and advanced one-half of all "expenses necessary to effect a sale of the farm, that "he should be paid one-half of the net proceeds as "commission."

The date was evidently deemed to be very material. When Heald was under examination as a witness, p. 197, he was asked by his counsel this question:

"Let me ask you this. The deed BEING EXECUTED "AND DELIVERED, say, on *the 23d day of November or* "*within a few days* after that; you say there *was no* "*agreement or suggestion* after the agreement between "you and Taylor with reference to a sale of that "*property at that time.*"

Manifestly while the question is somewhat cloudy, what was meant was to assume that the deed was delivered on *about November 23d*, and that there was no agreement between them prior to the completion of the exchange by the delivery of the deed; but that this agreement of December 21st was made a month after the delivery of the deeds. The witness so understood it evidently and his answer to the question was *No, sir.* Then follows the question:

"Q. *Afterwards state if there was any such agreement*, and, if so, what was it?

"A. There was an agreement made made between "him and I on the 21st day of December following."

Again, on p. 199, he was asked:

"Q. Mr. Taylor swears that that agreement was "signed in excution of an oral agreement had between "you and him *previous to the sale—previous to the deed* "*to you*, is that correct?

"A. No, sir, it is not true. No part of it is true."

Now the value of this evidence was made to depend on the fact that this agreement of Dec. 21st was made long after the sale was completed by the delivery by Henninger of his deed to Heald as agent of Dupuy and his acceptance of Dupuy's deed to him.

Unfortunately for this ingenious theory the memorandum in Heald's handwriting on Exhibit No. 10, p. 256, shows that the deeds had *not then been delivered, Nov. 23, 1889.*

The Exhibit No. 12, p. 258, dated *December 2, 1889,* in Heald's handwriting, says *the deeds had not been exchanged at that date.*

See also answer of the Jardines, p. 39.
See also answer of Port R. R. Co., p. 47.

And Exhibit No. 6, p. 254, which is the *deed from Dupuy to Henninger, is dated Dec. 19, 1889—was acknowledged December 20th before a Notary Public in the City of New York, and the certificate of the Clerk is dated December 21, 1889.* (See original exhibit.)

It will hardly be pretended, I presume, that the deed was delivered therefore before *December 21st.* And *that is the date of this agreement between Heald and J. B. Taylor.*

Thus is Taylor's statement sustained that this agreement was only made as evidence of the previous oral agreement or understanding between Heald and himself, as to their having a joint interest in the McCoy farm after they should procure the title to be made by Henninger to Dupuy.

Surely the evidence places the charge of fraud and collusion of Taylor and Heald beyond doubt. No other conclusion would consist with the written documents.

Such fraud on the part of both Taylor and Heald in reference to the mortgage on the Blanchard property as is proved and substantially admitted, shows that neither of them was above perpetrating the despicable fraud upon which our bill is founded.

The agreement represented the Blanchard property to be subject to a mortgage of $3,000, bearing five per cent. interest, while it was for $3,600 at 6 per cent.

Heald's attempted explanation, p. 183, is absurd on

its face, and its truth is denied by both Henninger and Taylor.

Henninger's ev., p. 82, p. 110.
Taylor's ev., p. 115.

Heald not only deceived Henninger as to the amount of the mortgage he told Taylor, to whom he had previously said, the mortgage was $3,600, *not to tell Henninger* (p. 115, line 19), and he imposed on Henninger the covenant of an impecunious man.

Certainly, the Vice Chancellor was justified in finding "that there was a corrupt agreement between Tay-" lor, as the agent of Henninger, and Heald, which " rendered the exchange voidable and justifies Hen-" ninger in asking for its rescission" (p. 62).

I shall not attempt in the least to extenuate Taylor's conduct, or vindicate him. No language which counsel may use can be too severe in its denunciation of his conduct. His disclosure of the fraud to Henninger it is true was only made after he was advised he could not profit by it by his suit against Heald; nevertheless his evidence is fully sustained by the written evidence, and by Heald's own admissions. If the cause of complainants depended on his unsupported evidence it may well be that admitting himself to have been a *particeps criminis* it would have little or no weight, but, as I have said, he is supported in every material statement, and I hazard little, I think, in the assertion that his evidence is not essential to complainants' recovery.

The only thing which Taylor can have any credit for is his surrendering to Henninger all interest which he had bargained for in case of Henninger's success.

The conveyance of the McCoy farm having been procured from Henninger by the corrupt agreement between Heald and Taylor, the law is too well settled to allow of discussion that such fraudulent conduct justifies Henninger in asking for a rescission of the conveyance, as against Heald, not only, but also against

any and all persons who cannot claim to be *bona fide* purchasers without notice of the fraud.

In addition to the numerous authorities cited by the learned Vice-Chancellor in support of that part of his opinion, I will cite without comment the following :

Condit *v.* Blackwell, 7 C. E. G., 486, 487.
Wright *v.* Smith, 8 C. E. G., 106.
Young *v.* Hughes, 5 Stew., 372.
Porter *v.* Woodruff, 9 Stew., 174.
Fox *v.* McReth, 1 Leading Cases in Equity, pp. 156, 217, 238 and notes.
1 Perry on Trusts, Secs. 217 and 403.

The principles established by all the authorities are to the effect that loyalty and good faith are cardinal duties which every agent owes to his principal.

That any steps taken by an agent with the purpose of securing a personal benefit to himself or a third person without the knowledge of his principal are fraudulent and void.

That any action by an agent professedly for his principal in which the agent has himself an adverse interest, or where he is representing or acting in the interest of the other party to the contract, is voidable at the principal's option, *irrespective of* the honesty *of the agent's intention*, or *whether or not the pricipal has been actually damaged thereby*, because the rescission in such cases is decreed not for the purpose of making the principal whole, but from considerations of public policy.

Wardell *v.* U. P. R. R., 103 U. S., 651.
Marsh *v.* Whittmore, 21 Wall., 178.
Davone *v.* Fanning, 2 Johns. Ch., 260.
E. S. Ins. Co. *v.* A. C. Ins. Co., 138 N. Y., 449.
Wharton on Agency. Sec. 715.
Hone *v.* Wallace, Notes to Lead. Cas. in Eq., 210.

Nowhere I think is the rule stated with more clear-

ness and emphasis than by Justice Magie, in delivering the opinion of this Court in Young *v.* Hughes, 5 Stew. 384.

" The effect " (he says of such fraudulent conduct as is here proved) " does not depend on the question " whether or *not the result was injurious to the princi-* " *pal.* The contract is affected by the misconduct of " the agent from consideration of public policy, rather " than of injury to the principal. * * *

" It matters *not that there was no fraud meditated and no* injury done. The rule is not intended to be remedial of actual injury but preventive of the possibility of it."

And the Court held that the matter of price was utterly inconsequential.

The learned Judge then cited and adopted the strong language of Ld. Justice James in Panama, S. F. I. Co. *v.* India Rubber Co., 10 Ch. Appeals, 515, 526.

" According to my view of the law of this Court, I " take it to be clear that any surreptitious dealing be- " tween one principal and the agent of the other prin- " cipal is a fraud on such other principal cognizable in " this Court. That I take to be a clear proposition and " I take it, according to my view, to be equally clear " that the defrauded principal, if he comes in time, is " entitled, at his option, to have the contract rescinded."

So in Hesse *v.* Briant, 6 De G. M. & G., 623, relief was granted, although there was no pretence that the principal had been injured. In fact he had received the full price he himself had set on the property.

The same was true in Everhart *v.* Searls, 71 Pa. St., 256.

The law requires the most scrupulous fidelity on the part of the agent towards his principal and will not allow either the agent or any person in league with him, or conscious of his unfaithfulness, to profit by it.

And to accomplish such result, though such cases have not a single lineament characterising a trust, the Courts have resorted to a fiction and held the benefi-

ciary of the fraud to be as to the defrauded principal a trustee *in invitum*.

Such a trust is manifestly contrary to any intention on the part of the fraud doers, and as Mr. Pomeroy says, the relation is raised by the doctrines of equity for the purpose of working out justice. It arises out of the unconscientious conduct of the alleged trustee.

Pomeroy Eq. Juris. Sec. 10, 44.

And Lord Chancellor Westbury, in Rolf *v.* Gregory, 4 De Gex., J. & S., 579, says the term "constructive trust" is used for the purpose of describing *the nature and extent of the remedy*, and it denotes that the parties entitled beneficially have the same rights and remedies against the fraud doer as they would be entitled to against an express trustee who has fraudulently committed a breach of trust.

The fraud of Heald and Taylor in procuring from Henninger the title to the McCoy farm constituted Dupuy, even if he was a real interested grantee and not a mere figurehead for Heald, what the law for want of a better name calls a trustee *ex maleficio* for Henninger, if he saw proper to so regard him, and entitled him to a rescission of the conveyance if he sought it within a reasonable time after discovery of the fraud.

Whether Dupuy was an interested grantee or held the title for Heald, as Heald told Taylor he would (p. 192), or for Mary Pratt, is of no moment because he (Dupuy) in June, 1890 (p.), conveyed the property to Heald for a nominal consideration, and such conveyance was with the assent and by the direction of Mary Pratt (p. 192).

The law in such case, as stated by Mr. Perry, is that if the property comes back into the hands of the original trustee or into the *hands of any one affected with the guilt of the original sale*, he will *be a trustee* for the defrauded party although the property may have passed through several innocent hands.

Perry on Trusts, Secs. 221 and 223.

Abbott *v.* The Amer. Co., 33 Barb., 578.
Forbes *v.* Halsey, 26 N. Y., 53.

Nor has there been any undue delay on the part of Henninger in seeking relief from the fraud. It was first disclosed to him by Taylor in January, 1891 (p. 88).

At that time Heald was prosecuting his suit against the Jardines (of which more hereafter). His cause had been tried before and was being considered by Vice-Chancellor Bird, whose decision was announced March 26, 1891, sustaining Heald's claim as against the Jardines to a right to redeem the lands on paying to them the amount of the decree foreclosing their mortgage on these lands with interest.

On March 30, 1891, Henninger, whose claim to relief was of little, if any value, unless Heald's right of redemption was sustained, filed his bill against Heald claiming the benefit of the decision of the Vice-Chancellor.

He has pressed his claim persistently since that time as the proceedings on file in the Court of Chancery and referred to in the printed case fully show.

Nor was Henninger, in order to avail himself of his rights to repudiate the conveyance to Dupuy on account of the alleged fraud practised on him by Taylor and Heald, bound to restore or offer in his bill to restore the Blanchard property, or that which he received for it when it was sold.

It is true that the general rule is as stated by this Court in Doughten *v.* Camden Building and Loan Association, 14 Stew., 566, cited by the Vice-Chancellor, that in ordinary cases the party seeking to rescind a contract must put the other party in *statu quo*; but that rule is by no means an invariable one.

Chief Justice Parsons says that while the general rule requires a restoration of the other party to the same condition that he would have been in if the contract had not been made, yet *where the right to rescind springs from discovered fraud*, there is an excep-

tion to the rule, the defrauded party does not lose his right to rescind because the contract has been partly executed, and the parties cannot be fully restored to their former position.

2 Parsons on Con., 277.

Especially is this true where the action is against subsequent purchasers with notice of the fraud. "In such case," says Mr. Willard, "the vendor may disaffirm the sale and reclaim the property *without restoring or offering to restore* to the original purchaser the amount paid, and such subsequent purchaser cannot set up as a defense that the plaintiff has failed to perform his duties to the original purchaser by returning the purchase money paid.

Willard's Eq. Juris. Mar., p. 379.

In Seylar *v.* Carson, 19, P. F. Smith (p. 81), the Court held that where defendant purchased at Sheriff's sale in fraud of an agreement with the defendant in the execution to protect his interest, a recovery could be had in equity against the purchaser without tendering a return of the amount paid by him as consideration for a title under the Sheriff's deed.

That the rule requiring an offer to restore what has been received by the defrauded party is not an invariable one, I think, appears by the decision of our own Courts.

In Byard *v.* Holmes, 4 Vroom, 120, the Court said: "A party seeking to rescind a contract must put the opposite party in *statu quo* so *far as he is able to do so*"—but the Court also said that "a contract may be *avoided for discovered fraud*, although the *fraud doer cannot be put in statu quo.*"

And in Guild, Exr., *v.* Parker, Receiver, 14 Vroom 437, this Court said the rule requiring restoration "means that the party must restore what he himself has received, and by force of the contract *has under his own control*, citing, with evident approval, Hammond *v.* Pennock, 61 N. Y., 153. In that case this

Court said: "As between the receiver representing the *cestui que trust*, and a third person who has got possession of the assets of the company by a voidable contract with the trustee, the rule of tender does not apply. Otherwise the inability to make a tender of what *was not in the possession* of the *cestui que trust* would *often prevent an action to recover property misappropriated by the trustee.*" If this is the rule in the case of a breach of an express trust *ex fortiori* must it be so in the case of constructive trust.

Again, in Doughton *v.* Camden Building and Loan Association, already cited, the rule is said to require "restoration as far as possible," "so far as practicable he must put the party in *statu quo.*"

And in Pidcock *v.* Swift, 6 Dick., 408, Vice-Chancellor Van Fleet, after citing the foregoing case, said: "But this," (*i. e.*, the rule requiring a tender) "like all other rules of justice, must be so applied in the practical administration of justice as shall best subserve in each particular case *the undoing* of wrong and the vindication of the right."

In this case restoration of the Blanchard place was impossible, for it fully appears by the case that long before the discovery of the fraud by Henninger he had sold the property for $3,000 to his father, who had conveyed it to Mrs. Henninger, subject to the mortgage, for $3,600; and long before the bill was filed in this case that mortgage had been foreclosed and the property sold. (Exh. P. R., 3, page 299.)

See answer of Port. R. R. Co., p. 48.
Er. of Henninger on Cross-Ex., p. 86.

The supplemental bill was filed October 7, 1891, and in their answer to it the Port R. R. Co. alleges that before the filing of that bill Henninger had, by reason of said foreclosure and sale, become unable to restore the Blanchard place.

It was not *practicable*, therefore, for him to make restoration.

Nor was he bound to offer to account to the defend-

ant for the $3,000 received by him on sale of the Blanchard place.

If he failed in his suit he would, of course, retain that money, and if he succeeds the evidence clearly shows, indeed the decree of the Vice-Chancellor shows, that he is entitled to recover much more than the $3,000.

In such case no offer to restore is necessary.

Hay *v.* Hay, 13 Hun., 315.
Gould *v.* Cayuga Co. Nat. Bk., 99 N. Y., 333–336.
Kley *v.* Healy, 127 N. Y., 555.

In Kley *v.* Healy the reliance on the appeal was mainly that there had been a failure to allege any return of the money paid by the defendant to the plaintiff, and the Court said such failure, if essential, might have been cured by amendment, but "a more satisfactory answer could be found in the principle that one who *attempts to rescind a transaction on the ground of fraud is not required to restore that which in any event he would be entitled to retain.*"

If, however, such offer was necessary in order to recover against Heald it should have been taken advantage of by demurrer, in which case the bill could have been amended.

It cannot, as Mr. Willard says, be taken by either the Jardine or the Port Reading R. R. Co. or Canda.

The complainants were therefore entitled to recovery, as the Vice-Chancellor found against Heald, but while he found that he was "liable to account for so much of the consideration money as he received" (p. 67), he erred in finding that amount to be $4,530.10 (p. 74).

The amount paid to Heald by Ferdinand E. Canda, or the Canda Manufac. Co., for the part of the farm which the Jardines conveyed to Gordon Chambers (Ex. H. No. 17 and H. No. 18, p. 278) as stated in the deed from Heald and wife to Canda, dated April 26, 1892, is $10,000.

On page 244 Mr. Savage says, "the Canda people put *into my hands $15,400* for that tract, out of which there was paid, he says, $6,339.80," the amount of the Jardine decree, with interest up to that time—which decree the Jardines had assigned to the P. R. R. Co. on the 12th May, 1891, when the whole property was conveyed to that company and Chambers.

It appears by the evidence that the $15,400 was paid to Mr. Savage and he settled for the amount due on the decree, which left on his hands $9,060.20, of which he says he was entitled to one-half, which the Vice-Chancellor allowed him on the ground that Heald had in some way conferred on Mr. Savage an interest in the property which the Court was bound to recognize, and which, so far as Mr. Savage is concerned, was for some cause relieved from the effect of Heald's fraud.

The learned Vice-Chancellor (p. 73) says that if Heald and Savage occupied towards each other the relation of agent and principal, such allowance could not be made, but that Mr. Savage must be regarded as acting entirely in his own behalf or on his own account in the arrangement with Heald."

Whether or not the Vice-Chancellor's view is correct, must be settled by an appeal to the law and to the testimony—both seem to me to have been gravely misinterpreted.

1st. It seems to me that to permit Mr. Heald to impose on this property any lien which could take it from under the effect of the fraud proved, except by a sale and conveyance to a *bona fide purchaser without notice* is to disregard the acknowledged rule governing cases of constructive fraud.

No one can maintain such a claim unless he can show a conveyance to him of the property, or some interest in it, and that he has paid and not *merely agreed to pay*, a valuable consideration, so that if his

claim is not sustained he will suffer some pecuniary loss. There must have been an actual payment; a mere security given for the purchase money is not sufficient.

Perry on Trusts, Secs. 217-221.

Now there is no pretence in this case of any such conveyance, much less of any payment of money by Mr. Savage *until April, 1892*, and *that money* which he *claims to have paid to Mr. Parker was part of what he received from the Canda Company at that time* (p. 244).

Even that sum he was under no legal obligation to pay, and the propriety of it was a matter of discussion between Heald and himself *at the time of payment.*

Mr. Savage says, p. 245 :

By Mr. Parker :

"Ques. You say that you agreed to pay me my fees *out of the Jardine case, out of your own share ?*

Ans. Yes, sir.

Ques. Was that your arrangement, *or did you think that just ?*

Ans. Well, it was discussed ; I think *in your presence* or in the presence of Mr. Heald, and I think *it was just* and agreed to.

Ques. *Under the circumstances ?*

Ans. Under the circumstances.

Ques. That came out of your share ?

Ans. That came out of my share."

Now, a reference to page 243 will disclose the fact that even that payment was not made for the purchase of any interest in the property, but because Heald thought he (Mr. Savage) "had been *remiss, so he said in not getting that agreement in writing*, and as I was to benefit from it, I ought to pay the expense of the litigation in which he might engage."

When that conversation took place does not clearly appear, nor is it at all important ; suffice it to say the

payment was not made on any purchase, or the agreement for the purchase of any interest in the property.

Mr. Savage, then, cannot be regarded as in any sense a *bona fide* purchaser, or, indeed, a purchaser of any kind.

What his true relations to Heald were must be sought for from the other evidence in the case.

I will ask attention first to Mr. Savage's own statement on p. 243. Heald employed him to see whether the Jardines would accept such an arrangement as he suggested. He found they would not, and so informed Heald, who wanted more time. Mr. Savage thereupon attended the Sheriff's sale and got the verbal agreement for the redemption of the property. Then he adds :

"Mr. Heald had agreed with me that if I *could sell this property and so save a foreclosure* he would give me for *my services* one-half interest of whatever might be realized over and above the amount due on the mortgage, or if *I would raise the money to pay off these mortgages he would deed me a half interest in the property.*"

Such money was not paid, and no such conveyance was ever made.

Mr. Savage was examined as a wituess on the part of the complainants, and on pp. 154, 155, says he was employed by *Heald as his attorney* to procure the adjournment of the Sheriff's sale ; that as attorney he procured the agreement for the redemption of the property ; that as Heald's attorney he filed a bill for him for the enforcement of that agreement.

The affidavit to the bill filed by Mr. Savage for Heald in July, 1890, says he was acting as attorney for Heald.

Heald, in his answer, pp. 25 and 26, says Mr. Savage acted as his solicitor in procuring the agreement for the redemption of the property ; also that the written

agreement with Elwood Byers in July, 1890, was made by him "through his solicitor."

Again, on p. 201, he says that after the property was advertised for sale by the Sheriff he put the matter in the hands of Mr. Savage, as his attorney, and also the power to negotiate the sale of the property ; that Mr. Savage reported to him the agreement made with Byers, and he confirmed it.

Page 249, line 28.
" 250, " 4–12.
" 213, " 10–28.

On page 250 he says he considered the amount he agreed *to pay* Mr. Savage a *fair compensation* for his services.

It seems to me the evidence shows that Mr. Savage acted throughout as the attorney and agent of Heald, if this evidence proves anything, and if so, the learned Vice-Chancellor admits he committed a grave error when he found otherwise ; and the decree against Heald should have been for $9,060.20, with interest.

II.

The complainants are entitled to recover from the Jardines, not because they were parties to or their titles was directly affected by the fraud of Taylor and Heald, but because when they purchased the property at the Sheriff's sale under the decree foreclosing their mortgage, the purchase was not an absolute one, but was made under an agreement between them and Heald (through his attorney, Mr. Savage), that if Mr. Savage would permit the sale to be made he or Heald, his client, might redeem it by the payment within thirty days of the full amount of the decree with interest and costs, and within the specified time the money was tendered and the conveyance demanded.

If that agreement was out of the case, or the making

of it was even doubtful, the sale would have given them an absolute title, unimpeachable by Henninger whose equity of redemption had been foreclosed, or by Heald whose title accrued in June, 1890, after the decree of foreclosure was made.

Their defense, however, in that case would have rested on the fact that their title antedated the fraud of Taylor and Heald and was referable to the date of the mortgage, August 4, 1886 (Ex. P. R., 7, p. 280), and was in no way tainted with their fraud, and did not depend in any possible sense on their being *bona fide purchasers* as the learned Vice-Chancellor seems to have thought.

The doctrine of *bona fide* purchase without notice, has absolutely no relevancy whatever to their title, and if it had, I am sure the evidence would not sustain their claim to be such purchasers.

But their purchase under the agreement for redemption, to which I have alluded, stamped the property with an equity in favor of Heald which this Court will enforce against the Jardines in favor of Heald or any person having acquired or being entitled to his interest in that agreement.

That proposition cannot be considered debatable in this State at least. It was so held more than fifty years ago in Combs *v.* Little, 3 Gr. Ch., 310, and has been so repeatedly decided since.

Marlatt *v.* Warwick & Smith, 3 C. E. Gr., 108.
Same in Error, 4 C. E. Gr., 440.
Walker *v.* Hill's Exe'r, 6 C. E. Gr., 201.
Dodd *v.* Wakeman, 11 C. E. Gr., 485.

The rule I understand to be to the effect that the Jardines by that agreement with Heald, or Mr. Savage as his agent, consented that Heald might stand in their place as mortgagees.

And so Mr. Perry says, Sec. 215, that the purchaser under such an agreement will be held to be a trustee for the *benefit of the parties interested in the property.*

Merritt v Power

"

See also Cutter *v.* Babcock, 81 Wis., 29 Amer., St. Rep., 887.

See note to Combs *v.* Little, 40 Amer. Dec., 207.

Haughwout *v.* Murphy, 7 C. E. Gr., p. 531.

If this was the relation between the Jardines and Heald after the making of the agreement for the redemption of the property, and especially after the tender of the amount agreed on—and if as Mr. Pomeroy says, quoting the language of Lord Cottenham, "a Court of Equity will wrest property fraudulently acquired, not only from the perpetrator of the fraud, but from his children, and his children's children," the case ought to disclose some strong ground to justify the learned Vice-Chancellor finding that the Jardines were the holders of the title unaffected by Heald's admitted fraud.

I trust I am not outside the limits of strict propriety when I say that this result reached by the Vice Chancellor seems to me strangely incongruous with the principles of equity so vigorously stated by him and that in this as well as other respects his opinion is quite illogical.

The learned Vice-Chancellor recites the various matters alleged in the original bill of Henninger *v.* Heald and the supplemental bill of Henninger *v.* Heald, the Jardines and the Railroad Company which were proved, and also the fact that Heald had filed his bill against the Jardines for the specific performance of the agreement for the redemption of the property, and that "that cause went to a hearing before one of the Vice-Chancellors (p. 60, line 28) *who* filed his conclusions sustaining the complainant"—but he says notwithstanding such finding, in April, 1892, on the hearing of the supplemental bill "the complainants' bill

was dismissed"—that within a few days thereafter and before the present bill was filed the "Jardines procured a decree dismissing the bill of complaint which Heald had filed against them as aforesaid seeking a specific performance of their agreement to convey the said premises to him" p. 61.

That decree (he says) left the title *absolutely in the Jardines* upon the foreclosure and sale by virtue of the mortgage under which they purchased—and after which they conveyed to the railroad company as aforesaid.

That decree, he says, p. 66, effectually secured to the Jardines the absolute fee of the land, and while it is unreversed it "is an *effectual bar to the complainant in that suit and to all who seek to stand in his stead since that case was fully heard on its merits.*"

To prevent misunderstanding I may be permitted to say that there were two decrees of dismissal. On the 15th day of March, 1892, the cause of Henninger *v.* Heald, the Jardines *et als.* under the supplemental bill was being heard before the Vice-Chancellor (Bird) and it having become manifest that certain parties in interest (Taylor being one of them) should have been made parties, leave was given complainants to amend, but for reasons which may easily be conceived, the complainant preferred to submit to a dismissal and it was "on motion of the said counsel of the complainant ordered that the said bill be and the same is hereby dismissed with costs to be paid to the defendants."

That decree the Vice-Chancellor said on demurrer *was not* a bar to the present suit. (See opinion on file.)

But on the 22d day of April a decree was signed by *the Chancellor* in the case of Heald *v.* Jardine of which this is a copy :

"In Chancery of New Jersey.

"Between
"Charles E. Heald, Complainant,
"and
"Thomas Jardine, Vreeland Jardine
"and Margaret Jardine.
} On Bill, &c.

"By consent of the parties to the above cause it is on "this twenty-second day of April, one thousand eight "hundred and ninety-two, on *motion of Cortland & "Wayne Parker, Solicitors and of Counsel with the "complainant*, by Alexander T. McGill, Chancellor of "the State of New Jersey, *ordered* that the bill of "complaint in this cause be and the same is hereby dis- "missed *without costs.*

"Alex. T. McGill,
"C."

"The parties consent hereto.

Cortland & Wayne Parker,
Solicitors of Complainant.
Shafer & Durand,
Solrs. of all Defendants."

This is the decree which the Vice-Chancellor held to be a bar to complainant's recovery against the Jardines, and in so holding I submit he greatly erred, because:

1st. Though the cause was as the Vice Chancellor says, "fully heard on its merits," there was no decision or judgment rendered on the merits, and without such decision or judgment there is no estoppel or bar. Indeed an examination of the proceedings clearly shows that there was no decision upon any question involved in the case, but on the contrary, if regarded as a decision at all, it is directly contrary to the decree which the Chancellor under the finding and advice of the Vice-Chancellor, should have made, and I think I may say which he would have made if he had been fully possessed of the case.

See Vice-Chancellor's opinion.

I submit that though this is called, technically, a decree of dismissal it amounts to nothing more than a consent of the Court that the parties may get out of Court without payment of costs either to the others. It is not a decree in favor of anyone or against any one, nor does it decide anything.

It is simply evidence that Mr. Heald agreed not further to prosecute that suit; possibly evidence of such an abandonment of his claim, that he could not afterwards renew it.

I need hardly cite authorities for the principle that a judgment or decree is only a bar when it is an adjudication of the merits of the case.

Justice Story says, "an order of dismission is a bar only when the Court has *determined* that the plaintiff *had no title to the relief sought by his bill.*"

Hughes v U S. 4 Wall 232
Wells Res Adjudicata 455

Story, Eq. Pl., Sec. 793. 784. 783b. 786
Dan. Ch. Pr. p. 754 (Mar.).
Mitford Ch. Pl., p. 238, 4th ed.
Jones v Davenport 18 Stew 78

2. It was not between the same parties or their privies.

Heald did not in any sense represent Henninger; he became by his fraud *constructively* a trustee for him, but he did not file his bill against the Jardines as our trustee or for our benefit. He was a trustee in *invitum* and was acting in hostility to Henninger for the purpose of securing to himself the benefit of his fraud on Henninger. So the Vice-Chancellor held, p. 69.

Neafie *v.* Neafie, 7 John Ch. 1.

There was no privity between Heald and Heninger.

"The term privity," Mr. Greenleaf says in his work on Evidence, Vol. I., Sec. 189, "denotes mutual or successive relationship to the same rights of property."

Agents and principals do not as such have any mutual or successive relationship to rights of property. They are not in privity with each other.

Freeman on Judgments, Sec. 164.

Wells Res Adjudicata 58

Privity by representation can only arise where there is an actual de facto representation. In this case there was no common interest between

And in the case of trustee and *cestui que* trust they are so independent that proceedings against one have no effect on the other unless prosecuted or defended *in his behalf and with his consent.*

Collins *v.* Loftus & Co., 10 Leigh, p, 5.
Freeman on Judgs., Secs. 173 and 174, 176.

No principle is better settled than that where persons whose rights are affected by a decree have not been made parties to the suit they are unaffected by it. Justice Story declares such a decree to be as to these parties "fraudulent and void," and further says, therefore where a decree has been made *against a trustee*, the *cestui que trust not being before the Court and the trust not discovered*, the concealment of the trust ought to be treated as a fraud.

Story Eq. Pl., Sec. 427.

Ex fortiori must this be true in the case of a constructive trust which originates in fraud, and where the decree is manifestly only obtained to hinder the *cestui que* trust from successfully asserting his rights.

3. That decree cannot be a bar against complainant's claim, because it was procured by collusion and fraud.

That it may be impeached collaterally for that cause is beyond controversy.

Freeman Sup., Sec. 335, 336–337.

Wells, Res Adjudicata 1 469-471

In Sec. 250, he says, quoting Lord Brougham in the Earl of Bandon *v.* Becker, 3 Cla. & F., 516, a judgment or decree to receive credit as an estoppel must be "a judicial determination of a cause agitated between real parties, upon which a real interest has been settled. In *order to make a sentence* there must be a real interest—a real prosecution—*a real defence and a real decision.* Of all these requisites, not one takes place in a fraudulent or collusive suit."

Wharton on Evidence, Sec. 764.

Pomeroy, Eq Juris Sec 919

The Duchess of Kingston's case is the leading case.

Our own Courts have recognized the rule as I claim it to be in several cases :

In Metropolitan Bank *v.* Durant, 7 C. E. Gr., 41, Chancellor Zabriskie applied it, and his words will need no interpretation or comment. "It would be a disgrace to our Courts," he said, "if they could not give a remedy against fraud and abuse of trust like this. *That the forms of law have been pursued* is no protection in a Court of Equity, if *the result aimed at and reached is a fraud.*"

In Doughty *v.* Doughty, Vice-Chancellor Van Fleet, 12 C. E. Gr., 318, said : "There can be no doubt that a Court of Equity has power to look into the judgments of other Courts, and if it appears they are infected with fraud to give relief against them."

In Dringer *v.* Receiver of Erie Railway, 15 Stew., 573, 577, Vice-Chancellor Van Fleet said while the Court of Chancery "has no power to sit in judgment "on the lawful acts of other tribunals, and no juris- "diction to try their acts, to see whether they, in the "exercise of their rightful powers, have committed er- "rors, either of law or fact, yet its power to give relief "against a judgment or decree which has been pro- "cured by fraud, whether it be the sentence of a tri- "bunal standing above or below it, is beyond all "question."

What, then, are the grounds on which we charge the decree dismissing the cause of Heald *v.* Jardine, above set out, was collusive and fraudulent?

1st. If it was a decree at all affecting the merits of the case it was directly contrary to the finding and advice of the Vice-Chancellor who heard the cause.

2d. It was obtained from the Chancellor manifestly without his knowledge of the finding of the Vice-Chancellor.

This is, I admit, an inference, and is not supported by any direct testimony ; but it is inconceivable that

the learned Chancellor, if he had been informed of the true state of the case ; if, for instance, the decided opinion of the Vice-Chancellor had been read to or by him, would have signed any decree so utterly contrary to that opinion.

Such treatment of one of the Vice-Chancellors by the Chancellor, I repeat, is inconceivable upon any other theory than that the true state of the case was withheld from him.

3rd. Much less would he have signed such a decree without requiring notice of the application to be given to Henninger if he had known that Henninger for a year had been seeking to obtain relief from Heald's fraud.

4th. In fact, when that order was obtained, the Jardines, as fully appears by the proceedings, had no interest whatever in the suit. They had in May, 1891, conveyed all their interest in the property to which that suit related, to the Port R. R. Co., or Chambers, received their $22,000 and also an agreement that that company would indemnify them against all proceedings had or that might be had in that suit.

They had then no interest in procuring that order.

It would seem, at first blush, that Heald's interest was opposed to the making of such an order. He had brought his suit against the Jardines to enforce their agreement with him, and the Vice-Chancellor had decided in his favor and recommended a decree accordingly.

But, in the meantime, Heald had been charged by Henninger with the fraud, and Henninger pursued his claim for a year, claiming that Heald, by his fraud, became in equity his trustee and *that he, and not Heald*, was entitled to redeem the property.

If he succeeded, Heald saw he could realize no profit from his fraud. He had, as he says, made an agreement with Hanghian in 1890 to sell him part of the

property for $10,000. If Henninger succeeded he would lose that.

What, then, did Heald do? He procured or consented to this order dismissing his suit on April 15th, 1892. That gave him no interest in the property, all which had been conveyed by Jardines to the railroad company and Chambers almost a year previous.

But within a few days after said order was signed there was a new shuffle; *on April 19, 1892*, four days after the date of the decree, *Chambers*, who held title for the railroad company, conveyed a portion of the property to Ferdinand Canda (Exhibit H 18, p. 278). And on the *26th April, 1892*, Heald and wife made to Canda a deed for the same lands for, as stated, the consideration of $10,000. (Ex. H 17, p. 278.)

On the 28th April Mr. Savage (p. 244) received from the Canda people $15,400, out of which he paid the R. R. Co. $6,339.80 for the amount of the decree of forclosure; divided the remainder into two equal parts, retained for his services $4,530.10 and paid a like amount to Heald. So through that order of dismissal Heald immediately received all that he originally contemplated receiving.

So that by obtaining that order of dismissal he claims to have circumvented Henninger and secured to himself $9,060.10.

Long before that deed, in March, 1891, Henninger had filed his original bill against Heald, charging upon him his fraud. The Jardines knew of the filing that bill before their deeds were made—certainly before they were delivered to the P. R. R. Co. and Chambers and the payment of the purchase money.

In Henninger's supplemental bill, filed Oct. 7, 1892, Henninger distinctly charged that at the time the Jardines conveyed to the R. R. Co. and Chambers they "knew that Heald's claim had been wholly or partially sustained by the Court" (p. 18 of that bill).

In their answer (p. 8) they admit knowledge of the filing of Heald's bill when the conveyancce to the R.

R. Co and Chambers were made, but deny any knowledge of the filing of Henninger's bill against Heald (p. 8).

Such notice to their attorney was proved beyond any dispute (pp. 161 and 162, and Exhibits E 16½, p. 267, and E 18, p. 268).

I submit also that no other inference can be drawn from the agreement for their indemnity (E. 14, p. 260) than that they or their attorney knew of Henninger's suit and that they intended to protect themselves against it by that agreement.

Notice to the attorney is sufficient.

Wade on Law of Notice, Sec. 672.
1 Perry on Trusts, Secs. 222, 223.
Pomeroy Eq. Juris., Sec. 667.

The mysterious omission to procure the decree in accordance with Vice-Chancellor Bird's findings and advice, and notwithstanding the request of Henninger's counsel, as shown by Exhibits E 16 and E 16½ (pp. 266 and 267), is utterly unexplained and raises, I submit, grave suspicions of the party's intentions.

Such omission was grossly inequitable towards Henninger.

The Jardines admit that, when they conveyed to Chambers and The Port R. R. Co., May 12th, 1890, *and even before that time*, they knew that in Heald's suit against them the Vice Chancellor had found that they must perform their agreement to permit Heald to redeem the property (answer, p. 44, line 30).

They took no steps to have a rehearing or to have the decree signed so that they could appeal from it. In *other words they submitted to it*, and as to them, so far as Henninger was concerned, the case stood, up to April 15, 1892, as if the decree had actually been signed.

What they did was to attempt to evade that finding

of the Vice-Chancellor by conveying to Chambers and The P. R. R. Co., in defiance of it and to protect themselves against it, by exacting from the grantees a bond of indemnity.

That finding of the Vice-Chancellor was that they held the property in trust for Heald, and they, by conveying to the R. R. Co., were guilty of a fraud on Heald, as well as an attempted evasion of the judgment of the Court of Chancery.

In spirit, if not in the letter, their conduct was a contempt of the Court.

They also committed a fraud on Henninger, whose suit had been commenced, as they well knew, claiming the benefit of the decision in Heald's suit against them.

They speculated on the chances of defeating Henninger, having secured about $17,000 more than their decree and a bond of indemnity also against his claim.

And with no further interest in the matter they consented to the dismissal of Heald's suit in April, 1892. Why? They received no benefit or protection by the dismissal.

What motive could have induced such consent except that the dismissal might (as they now claim it does) embarrass if not defeat any further prosecution by Henninger of his claim.

They knew that in the supplemental bill (p. 8) it was charged that the omission to file a decree in Heald's suit against them was by reason of some agreement or understanding between them for the purpose of prejudicing, hindering and if possible defeating Henninger in his effort to enforce his claim to the property.

They knew, their counsel certainly did, and they are presumed to have known that the decree of April 15, 1892, dismissing the supplemental bill for want of

parties did not prevent a new bill being filed bringing in the parties.

They did not wait even a reasonable time to see whether such new bill would be filed, but on the 22d of April, *applied to the Chancellor*, who knew nothing of the previous proceedings, and procured his order dismissing the case of Heald *v.* Jardine *by consent* of the parties.

That order was made on the 15th April and on *the 19th* Gordon Chambers conveyed that part of the land which had been conveyed to him by Thomas Jardine (Exhibit H. 18, p. 278) to Canda.

On *the 26th April*, 1892, Heald also conveyed such title as he was supposed to have in that tract to Canda for $10,000, which was paid to Mr. Savage, his counsel (Exhibit H. 17, p. 278).

Under this statement of the facts, especially taken in connection with the claim that the order of dismissal *is a bar* to this suit, can there be any doubt as to the truth of the charge that that order of dismissal was collusive and ought not to be permitted to interfere in any way with the prosecution of Henninger's suit.

It may be said that we ought to have filed a bill to set aside the order, or, as it is called, the decree of dismissal. We could not make any such application by petition or bill of review as we were not parties to the suit.

We might have filed an original bill for that purpose and asked that Heald and the Jardines should be restrained from setting it up as a defense in this suit—if it can be used as a bar to the suit.

It is manifest from our bill that counsel was not aware that any such order had been made when the bill was prepared, but the bill (p. 9, line 38) charges

that "the adjudication establishing such right of redemption in favor of said Heald was an adjudication to all intents and purposes in favor of your orator William R. Henninger, and if necessary for his protection this Honorable Court will compel said Heald to have a decree in conformity to said decision placed on file or will permit your orator to have said decree drawn and filed."

I submit therefore that *as all the parties* to be affected or who have a right to be heard are before the Court such relief can be given as could have been obtained by a separate original bill which could only have asked that if such order of dismissal stands in the way of complainant's recovery, the use of it by the defendants for such purpose shall be restrained.

Jones *v.* Fayerweather, 1 Dick., 251.

The Court of Equity never permits mere matters of practice to interfere with its doing equity and justice, and especially in matters of fraud it will disregard mere technicalities and artificial rules in order that it may reach the real merit of the case.

It matters not that there is no special prayer for relief against the order or decree of dismissal—the general prayer is sufficient. No other prayer could have been made inasmuch as it was not then known that the order had been made. If necessary the Court will permit a special prayer for relief against the order to be made.

As against the Jardines, therefore, complainants are entitled to relief and the order of dismissal was erroneous.

III.

The Port Reading R. R. Co., Chambers aud Canda, can occupy no better position than their grantors the Jardines, for the evidence does not show them to have been bona fide purchasers without notice.

The R. R. Company and Chambers for it took their title May 12, 1892, with full knowledge of Heald's suit against the Jardines, and agreed to indemnify the Jardines against Heald's claim.

Their agreement declares, p. 262 Exh. E. 14, that "the conveyances are made subject to the result and "final determination of the litigation in the said suit "of said Heald against said Jardines."

And they further agree to indemnify the Jardines "against any and all other suit and suits in law or "in *equity now pending*, or which may hereafter be "brought against them or either of them by whomso-"ever instituted, for or by reason of or arising out of "any alleged right of said Heald, or the right of any "one claiming under him in any way or *claiming his* "*alleged rights on any ground to redeem the said mort-*"*gaged premises so conveyed as aforesaid.*"

They also admit in their answer, p. 55, that "they knew when they took their conveyances, that the opinion of the Court upon the hearing of said suit (*i*, *e*., of Heald *v*. Jardines) had been filed."

They knew then that they were purchasing a title which was in litigation. They purchased *pendente lite* in the strictest sense of the term. They knew moreover that Heald's claim to redeem had been affirmed by the Court. At the time of the conveyance Henninger's bill had been on file for more than a month, and if they did not have actual notice of it, it was because they willfully closed their eyes. The language

of their agreement substantially admits that they had heard of some other claim than Heald's.

They knew then perfectly that they were purchasing an imperfect title, and, as the Court said in Sergeant *v.* Ingersoll, 7 Barr., 340, the principle is rudimentary that he who purchases such a title must stand or fall by the case of his vendor.

They were bound to know that by virtue of the decision in favor of Heald, the Jardines were declared to hold the title in trust for him or for any one entitled to claim the benefit of that adjudication.

There can be no pretence that they were bona fide purchasers without notice or that, as the learned Vice-Chancellor says, the Jardines from whom they purchased were bona fide purchasers.

The bill was therefore erroneously dismissed as to them.

IV.

It is unnecessary to say anything as to Canda's claim as his conveyance from Chambers was not made until April 19, 1892 (Exh. H. 18, p. 278).

The agreement between Heald and Hanghian, dated November 20, 1890, cannot avail him, if for no other reason because it recognizes the fact that Heald's supposed title depended on its being established by *a decree* in his favor in his suit against Jardines (H. 13, p. 275).

V.

What, then, is the measure of relief to which complainants are entitled?

As to all the defendants, except Heald, we claim a right to redeem the property of which we were deprived by fraud, by paying the amount of the decree of foreclosure of the Jardines, which was assigned to the Port R. R. Company.

As to the Jardines, certainly that would be the rule if they still held the title, in accordance with the decision of the Vice-Chancellor in the suit of Heald against them.

Kintner *v.* Blair, 4 Hals. Ch., 485.
Melick *v.* Creamer, 10 C. E. Gr., 429.
Judge *v.* Reese *et al.*, 9 C. E. Gr., 387.

But as they have parted with the title to the Port R. R. Co., who took title with notice, they (the Jardines) must account for what they received, and the Railroad Company must surrender the property, or if it has been so improved, or become so necessary to it as to make a surrender inequitable, it must account for its value at certainly not a lower valuation than it agreed to pay for it.

Any other rule would permit the parties to profit by their fraudulent venture, which would be in direct violation of the principles on which equity deals with constructive frauds.

The relief, as this Court has said, is not intended to be remedial, but to be preventive of such frauds, and to promote the safety and interests of society, and is grounded on public policy, and the Courts will not even consider the question of how far and how much Henninger was damaged by the fraud of Heald.

Nor has the Court any means of determining that question. Who can say that but for the fraud practised on him, by which he was induced to convey his

property to Dupuy he would have continued to hold it, and either raised sufficient money to have paid the Jardines' mortgage, or that he could have made with them as favorable an agreement as Heald made.

The decree was not procured until May, 1890, and the sale was not till July, 1890.

Nor should there be any sympathy for either the Jardines or the Railroad Company. The Jardines, by refusing to perform the agreement with Heald, committed a fraud on him, and by selling the property to the Railroad Company, knowing of Henninger's claim, and so attempting to evade the decision in Heald's favor and to embarrass Henninger in his suit have shown themselves no more entitled to profit by their conduct than Heald was to profit by his fraud.

Manifestly, the conveyance to the Railroad Company tended greatly to embarrass Henninger and to compel him to carry on his suit not alone against Heald, or even against Heald and the Jardines, but also against an incorporated company, besides giving the Jardines a strong inducement to contest Henninger's claim by payment to them of $22,000.

I submit that on every principle, and by every rule of equity, all of said parties should be held to a strict account, and that neither should be permitted to profit by their fraud.

THEO. LITTLE,
Counsel for Complainants.

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IN CHANCERY OF NEW JERSEY.

To the Honorable Alexander T. McGill, Chancellor of the State of New Jersey:

Humbly complaining shows unto your Honor your orator, Charles E. Heald, of the City, County and State of New York.

1. That about the fourteenth day of June last your orator became the purchaser and owner of certain lands and premises in the Township of Woodbridge, County of Middlesex, and State of New Jersey, which were then and there conveyed to him by Abraham B. Dupuy, by deed in your orator's possession, and ready to be produced and proved, and which premises are described as follows:

All those tracts and parcels of land and premises, hereinafter particularly described, situate, lying, and being in the Township of Woodbridge, in the County of Middlesex, and State of New Jersey, viz.:

First Tract.—Being a tract of upland bounded formerly southerly by the road leading to Blazing Star Landing, northeasterly by land formerly of Jacob F. Randolph, northwesterly partly by land formerly of John Noe, partly by land formerly of Nathan Bunn, southwesterly and northwesterly by land formerly of said Bunn, and southwesterly by the Mootey Kinsey property. Containing eighty-nine acres of land, more or less. Excepting and reserving from and out of the above-described tract twenty-one acres, more or less, formerly sold and conveyed by Benjamin Shotwell to Abraham B. Miller, by deed dated August 14th, 1856, and recorded in Book 72, page 263.

Second Tract.—Being a lot of salt meadow in "Sunken Marsh" and containing eighteen acres, more or less. Bounded southerly by the Sound in part, southerly, southwesterly, westerly, northwesterly and

northerly by Hog Hill Creek, easterly by meadow formerly belonging to Job Thorp, deceased, and afterwards to Mootey Kinsey, and being the same premises conveyed by William McCoy and wife to Anson B. Moore on August 3d, 1886.

Together with all and singular the rights, liberties, privileges, hereditaments and appurtenances thereunto belonging or in any wise appertaining.

2. That at that time said premises were subject to a mortgage securing the principal sum of five thousand dollars and interest, held by Thomas Jardine, Vreeland Jardine and Margaret Jardine, of the City of Rahway, County of Union, and State of New Jersey, which mortgage was then under process of foreclosure on bill of complaint filed by said mortgagees against Anson B. Moore and wife and others in this Court.

3. That under decree in said suit of foreclosure and the proceedings to which this complaint prays reference, said premises were advertised for sale by Peter W. Fick, Sheriff of the County of Middlesex, to be had on Wednesday, the sixteenth day of July, one thousand eight hundred and ninety, at two o'clock P. M., at the Sheriff's office at the City of New Brunswick.

4. That your orator was desirous of saving said premises and his title thereto, and that needing time for that purpose and expecting to be away on other business on the day of the sale he instructed his attorney, Edward S. Savage, to attend said Sheriff's sale, and procure the usual adjournment of four weeks. That in pursuance of such instructions your orator's attorney, Edward S. Savage, attended at the time and place of said sale to ask for the adjournment, your orator being then absent from the City and State and unable to attend for himself, and at the same time and place your orator's said attorney met the said Thomas Jardine and Vreeland Jardine, complainants, and also Thomas H. Shafer, their solicitor, in said foreclosure,

and requested of them and of the Sheriff an adjournment of four weeks of the said sale; that thereupon said complainants, both personally and by their said solicitor, urged that your orator's attorney should not put them to the expense and trouble of going to New Brunswick again, and specially because of the illness of said Thomas H. Shafer, and requested that said sale should go on and that your orator's attorney should not bid thereon, but allow them to purchase at a less amount than the decree, offering in consideration thereof that they as purchasers would at any time within thirty days of the date of said sale give him, said Savage, the privilege of taking a deed of said premises for and convey the same to your orator for the amount due on said mortgage and decree and interest and expenses of sale. And your orator shows that in consideration of said offer and of the state of health of said solicitor of complainants, your orator's said attorney agreed with the said complainants that they might proceed with said sale; they agreeing on their part that at any time, within thirty days therefrom, your orator should have the right to ask them for a conveyance of said premises upon paying the amount due upon said mortgage with interest and expenses of said sale. And your orator shows that his said attorney then began to write out such said agreement, whereupon said complainants, both personally and by their said solicitor, stopped his doing so, and represented to him that the matter was thoroughly understood; that any written agreement was unnecessary; that their word was as good as their bond. Thereupon, on said assurance, and on the faith between the parties, and in consideration of said agreement for said deed, your orator's said attorney allowed said sale to proceed, and waived his request for an adjournment, and made no bid upon the same, whereupon the premises were struck off to Thomas Jardine (but on behalf of said mortgagees and in trust for them) for the sum of four thousand dollars, in pursuance of which sale the Sheriff hath executed unto the said Thomas Jardine a deed conveying said prem-

ises, which deed is now recorded in the Clerk's office of Middlesex, and to which your orator prays reference. And your orator shows that shortly after the said sale your orator was informed by his attorney that he had made arrangement by which your orator had the right to purchase as aforesaid within thirty days on payment of the decree and interest and costs.

5. And your orator further shows unto your Honor that said agreement or option does not expire until the fifteenth day of August, eighteen hundred and ninety, and that although said complainants in said former suit and their solicitors have always admitted the making of said agreement, nevertheless, about the thirteenth day of August, one thousand eight hundred and ninety, your orator received information that they did not intend to carry out the same or to deliver the deed, and thereupon, at a meeting had between your orator and the said Thomas Jardine and Vreeland Jardine in the office of said Thomas H. Shafer their counsel (the said Margaret Jardine being in Europe), your orator tendered to the said Thomas Jardine and Vreeland Jardine the sum of five thousand eight hundred and twenty-three dollars and twenty-five cents, being the amount of the decree, Sheriff's fees, and interests and costs of sale, said tender being made in actual cash in legal tender notes of the United States, which tender was then and there admitted to be made in proper form and for the proper amount, but was refused.

6. And your orator further shows unto your Honor that the said Thomas and Vreeland Jardine claim that they are not bound by the said agreement, and utterly refuse to carry out the said agreement or make conveyance of the said premises.

7. And your orator further shows unto your Honor and expressly charges that the actions of said Thomas and Vreeland Jardine are a fraud upon him, and that by means of said agreement and the representation and assurance that your orator should have the right

to purchase of said property as aforesaid ; that they are attempting to take from your orator his property and said lands, and to deprive him thereof by fraud and misrepresentation ; and your orator shows that until immediately before filing this bill and until the 13th day of August, 1890, he supposed that a good and valid agreement in writing had been entered into, or else he would immediately have applied to set aside said sale.

8. And your orator shows and charges that he is entitled to have said agreement specifically performed and have said premises conveyed to him upon payment of the said sum of money so tendered by him to the said Thomas Jardine, which payment he holds himself ready to make, or else that he is entitled to have said sale and the deed thereon made to the said Thomas Jardine set aside as obtained by fraud and misrepresentation.

In tender consideration whereof and for as much as your orator is without remedy at and for the strict rules of common law, but only in this Court, to the end therefore the said Thomas Jardine, Vreeland Jardine and Margaret Jardine, who are the defendants in this suit, may answer the premises as fully and completely as if the same were repeated, and they thereto respectively interrogated, and that it may be decreed that said agreement be carried into effect, and that said premises be conveyed unto your orator by the said Thomas Jardine, from and clear of all incumbrance upon the payment of said sum of money as aforesaid, or else that it may be decreed that said sale was obtained by fraud and that the said sale and the deed thereof may be set aside, and that your orator may have leave to redeem said premises from said mortgage by payment of said mortgage and the interest thereon, and the costs of said suit, and that the defendant may be enjoined from conveying and incumbering said premises, and that your orator may have such other and further relief as to your

Honor may seem meet and may be agreeable to equity and good conscience.

May it please your Honor, the premises considered, to grant unto your orator the State's most gracious writ of subpœna issuing out of and under the seal of this Honorable Court to be directed to the said defendants respectively and commanding said defendants on a certain day and under a certain penalty, to appear before your Honor in this Honorable Court, then and there to answer the premises, and to stand to, abide by and perform such order and decree as to your Honor shall seem meet and shall be agreeable to equity and good conscience.

CORTLANDT & WAYNE PARKER,
Solicitors of Complainants.
R. WAYNE PARKER,
Of Counsel.

IN CHANCERY OF NEW JERSEY.

Between CHARLES E. HEALD, Complainant,	On Bill, &c.
AND	
THOMAS JARDINE, VREELAND JARDINE & MARGARET E. JARDINE, Defendants.	Answer.

The joint ard several answer of Thomas Jardine, Vreeland Jardine and Margaret E. Jardine, the defendants to the bill of complaint of Charles E. Heald, complainant. These defendants for answer unto so much and such parts of the complainant's bill of complaint as these defendants are advised is material or necessary for them to make answer unto, answer and say:

1. They know not, and have not been informed save

by the complainant's bill of complaint that complainant became the purchaser of the lands and premises in the first clause of said bill of complaint particularly described by deed from one Abraham B. Dupuy in the said clause of said bill of complaint mentioned.

2. And these defendants further answering say, that it is true that said premises were at the time in said bill of complaint named encumbered by a mortgage made by one Anson B. Moore to secure the payment to these defendants of the principal sum of five thousand dollars and interest thereon, and that said mortgage was then under foreclosure on bill of complaint filed in this Court by these defendants against said Anson B. Moore and Julia J., his wife, and one William R. Henninger and Lizzie his wife.

3. And these defendants further answering say, it is true that under the decree in said suit and the writ of *Fieri Facias* issued thereon said premises were advertised to be sold by the Sheriff of the County of Middlesex, on Wednesday, the sixteenth day of July last, at the Sheriff's office in the City of New Brunswick.

4. And these defendants, Thomas Jardine and Vreeland Jardine, further answering say, that a short time prior to the sale of said mortgaged premises by the said Sheriff, and about the first week in July last, Thomas H. Shafer, then solicitor, informed them that Edward S. Savage had requested him to consent to the sale of said premises in parcel, that he said Savage desired, on behalf of a client, to have the Salt Meadow, in said mortgage described, sold by itself, and in case it did not bring enough to satisfy the decree, interest and costs, then to sell the upland; that defendants declined to accede to said request, and instructed their said solicitor so to inform said Savage, that thereupon said Savage declared his intention to ask for an adjournment of said sale, for the purpose of obtaining an order from the Chancellor for the sale of said lands in parcels, that their said solicitor informed them that

said Savage would ask for an adjournment of said sale for the purpose of obtaining said order, and at the same time further informed them that the Sheriff had power, under the Statute, to grant two adjournments not to exceed four weeks each, and would without doubt adjourn said sale at Mr. Savage's request, but these defendants deny that they or either of them had any notice or knowledge of any right in, or title to, said premises or any part thereof by said complainant, or that he pretended to have, or claim any title thereto, or interest therein, nor did they or either of them know at that time who the client of said Savage was, neither had it been made known to them, or either of them, that said complainant had any claims or title to said premises, either by deed of conveyance, mortgages or otherwise, till shortly before the time of the filing of the bill of complaint in this cause.

And these defendants, further answering, say, it is true that said Savage attended at the time and place of said sale, as they believed for the purpose of asking for an adjournment of said sale for four weeks, as they had been advised by their solicitor he intended to do, and believing that an adjournment of said sale would be granted, these defendants did not intend to oppose the same; that these defendants, Thomas Jardine and Vreeland Jardine, with their said solicitor, went to New Brunswick on the day of sale and found said Savage already at the Sheriff's office, but they had no conversation whatever with him in relation to said property or the sale thereof, until a few minutes before said sale, when they were informed though their solicitor, who came outside the railing running across the Sheriff's office, that said Savage had proposed that if these defendants would agree to convey to him said premises, at any time within thirty days from and after the date of said sale, provided he, said Savage, paid to these defendants the amount of their decree, with interest and the costs of suit and the expenses of said sale; then he said Savage would not request an

adjournment, but said sale should or might take place at that time; that these defendants thereupon went within said inclosure where said Savage was sitting, when he said Savage made the said proposition to them, which they then and there accepted, whereupon their solicitor, the said Thomas H. Shafer, said to said Savage, "You better put your proposition in writing and have the boys (referring to these defendants) sign it"; said Savage replied, "It is not necessary, the matter is understood, their word is as good as their bond;" these defendants deny that said Savage requested of them or either of them, or their said solicitor, or of the said Sheriff, any adjournment of four weeks of said sale; they further deny that they or either of them personally, or by their said solicitor, urged that said Savage should not put them to the trouble or expense of going to New Brunswick again, or urged that he should not ask an adjournment because of the illness of the said Thomas H. Shafer; they deny that they requested that said sale should go on, and that said Savage should not bid on said sale, but allow these defendants to purchase at a less amount than their decree, and they aver that no such requests were made by them or either of them, and that no such conversations as are alleged in the said fourth clause of said bill in relation to said sale and the adjournment thereof (save and except as hereinbefore set forth, in relation to the proposal of said Savage to take a conveyance of the said premises upon the payment of said decree, etc.), took place or occurred between them or either of them and said Savage.

And these defendants deny that said Savage began to write out an agreement of sale, such as is hereinbefore set forth, or any agreement whatever, or that said defendants or either of them, personally, or by their said solicitor, stopped his doing so and represented to him that the matter was thoroughly understood, and that any agreement was unnecessary, or that their word was as good as their bond—on the contrary, they and each of them aver that whatever was said at that

time in relation to a written agreement was said by the solicitor of these defendants, as hereinbefore, stated, and not by said Savage.

And these defendants, further answering, admit that said sale did proceed and that said Savage made no bid thereon and that said premises were struck off to this defendant, Thomas Jardine, on behalf of said defendants, and in trust for them for the sum of four thousand dollars and that said Sheriff hath executed unto this defendant, Thomas Jardine, a deed conveying said premises to him and that said deed is recorded in the Clerk's Office of Middlesex County as in said bill of complaint alleged, but these defendants severally deny that they or either of them or their solicitor made any request of said Savage that he, said Savage, should not bid for said premises; on the contrary, they aver that said Savage was entirely free and at liberty to bid at said sale if he desired or chose so to do, and that he was under no restraint, or in any way prevented from bidding at said sale by reason of any contract, agreement or understanding with these defendants or either of them not to bid therefor.

And these defendants, further answering, say that they know nothing of any information imparted by complainant's attorney to him said complainant shortly after said sale that an agreement had been made granting to complainant the right to purchase said premises within thirty days on payment of the decree, interest and costs, save as informed by said bill of complaint.

5. And these defendants admit that said agreement or option would not have expired until the fifteenth day of August last, save and except for the cause or reason hereinafter set forth; and they admit that they and their solicitor have always admitted the making of said agreement and that said complainant and his attorney, the said Edward S. Savage, at, or about the time in said bill mentioned at the office of their solicitor met these defendants, Thomas Jardine and Vreeland Jardine, and that said Savage made a tender of

money amounting, as said Savage declared, to the sum of five thousand eight hundred and twenty-three dollars and twenty-five cents, the amount of the decree, Sheriff's fees, interest and costs of sale; they admit that said tender was in proper form, but they did not count said moneys; they admit that they refused to receive the same.

6. And these defendants, further answering, say that they admit that they have refused to carry out said agreement or make conveyance of said premises to said complainant or to his attorney, because they and each of them believed and do now believe and insist that they were discharged and released from any and all obligation to carry out said agreement by the said Edward S. Savage.

And for a further answer to said bill of complaint these defendants respectively show unto your Honor that on, or about the fifth day of August last, in the forenoon of that day the said Edward S. Savage met these defendants, Thomas Jardine and Vreeland Jardine, on Cherry Street, in the City of Rahway, and said to them that he had seen his client, and that he would do nothing; that he could not raise the money to purchase the McCoy farm; that this defendant, Thomas Jardine, said to said Savage, "You don't think he will buy?" and that said Savage said, "No," and that it was not worth while to wait any longer in expectation that his said client would take said premises; that this defendant, Thomas Jardine, then said to said Savage that he, said Thomas Jardine, was sorry he had not been informed of this sooner; that he just had a chance to sell said farm that morning that two gentlemen met him up the street and enquired what he said defendant would sell said farm for, and he told them he could not sell the same at that time, as Mr. Savage had an option or privilege of purchasing the same which privilege would not expire for some days, and that he told said Savage the names of said gentlemen, thereupon said

Savage asked this defendant what they offered him for the farm, defendant replied that they enquired his price for the salt meadow, and that he told them he supposed salt meadow was worth five dollars an acre, they said they would give ten dollars an acre, and before they parted they said they would do better than that by him, whereupon said Savage said to these defendants that is what they all want, the salt meadow that is where the money is, you can get two hundred dollars per acre for it, and don't you take any less, and these defendants insist that complainant by his attorney then and there waived any and all right or privilege which he had or could claim under said agreement and thereby released and discharged these defendants from all obligations to said complainant under or by virtue thereof.

And these defendants, further answering, show that on the seventh day of August last this defendant Vreeland Jardine went to the City of New York, and there met one William Renfrew, a dealer in real estate, who had some knowledge of said McCoy farm, to whom this defendant made known the fact of the purchase of said farm at Sheriff's sale by said defendant Thomas Jardine, and the circumstances attending the said purchase and also the conversation with said Savage on Cherry street above stated, and of his waiver of his rights under said agreement and of the value placed thereon by said Savage, that said Renfrew offered to purchase said farm, and that this defendant, relying upon what said Savage had said in said conversation on Cherry street and of his positive assurance that his client would not buy said farm, sold said farm to said William Renfrew, and then and there entered into an agreement for the sale thereof to said Renfrew and gave to him a memorandum in writing signed by this defendant for the sale thereof, and this defendant, further answering, says he would not have entered into any agreement for the sale of said premises to said Renfrew, had he not truly and honestly believed that these defendants were fully released from all obliga-

tions under said agreement, and that said Savage intended in good faith to waive all claims under said agreement.

And these defendants, further answering, show that they were not acquainted with said complainant, that these defendants Vreeland Jardine and Margaret Jardine had never seen said complainant at the time of said sale to said Renfrew to their recollection, and this defendant Thomas Jardine had seen him but once some six to nine months since, and then for a few minutes only while waiting for the cars at the railroad station at Rahway.

And these defendants has never had disclosed to them or either of them the name of his client, the said complainant, prior to the time of said conversation on Cherry street, and that all their negotiations and interviews in relation to said farm and the sale thereof prior to that time had been with said Savage and never with the complainant, and they were entirely ignorant of any claim or interest that said complainant had or pretended to have in or to said farm, or any part thereof they knew no one in said negotiations but said Savage.

And these defendants Thomas Jardine and Vreeland Jardine, further answering each for himself denies that their actions, or the action of either of them are a fraud upon the complainant, they aver that they made no agreement, representations or gave any assurance except as in this answer set forth, and which they and each of them did not intend in good faith to perform, and would have performed at any time prior to the said fifteenth day of August last, upon the payment of said decree, interest and costs to them by said Savage had not said Savage as they insist he did waive the privilege to purchase said farm under said agreement and thereby released them from all obligations to perform said agreement on their part.

And these defendants, further answering, deny that they or either of them are attempting to take from complainant his property and said lands or any lands

belonging to him, or to deprive him thereof by fraud or misrepresentation, and they and each of them expressly deny that they or either of them have practised any fraud upon or made any misrepresentations whatever to said complainant.

7. And these defendants further answering deny that said lands and premises at the time of said Sheriff's sale were worth more than the amount of their decree, interest and costs, that their bid of four thousand dollars therefor was the only bid made at said sale, that they would have bid up to the amount of their claim had it become necessary to do so, but they would not have bid beyond the amount of said claim, and so far as they know, there was no reason why complainant or his said attorney should not have bid more for said lands, if he had seen proper so to do, but these defendants deny that said premises were at the time of said sale worth over ten thousand dollars, or that said sale was for an inadequate price on the contrary, these defendants show that they endeavored to dispose of their said claim about the time of or shortly before said sale to persons who lived in the neighborhood of said lands, and who knew the value thereof for the amount of their said claim, but they were unable to sell the same unless they would consent to sacrifice a large sum from the amount due thereon, and these defendants were informed and believe it to be true that said lands were worth no more than the amount of their said decree, and they further show that no person from the neighborhood of said lands were present at said sale.

And these defendants, further answering, insist that if this complainant ever had any claim in equity to redeem said premises under said agreement that he voluntarily waived said claim and surrendered all rights under said agreement for the reasons hereinbefore stated.

And these defendants further say that by an Act of the State of New Jersey entitled "An Act for the

prevention of frauds and perjuries it is among other things enacted that no action shall be brought upon any contract or sale of lands, tenements or hereditaments, or any interest in or concerning them unless the agreement upon which action shall be brought or some memorandum or note in writing should be signed by the party to be charged therewith, or some other person thereunto by him or her lawfully authorized," and these defendants insist that said agreement is void as against them and insist upon the said statute and claim the same benefit as if they had pleaded the same.

All which matters and things these defendants are ready to aver, maintain and prove as this Honorable Court shall direct, and humbly pray to be hence dismissed with their reasonable costs and charges in this behalf most wrongfully sustained.

SHAFER & DURAND,
Solicitors, &c., of Defendants.

New Jersey, }
Union County, } ss.:

Thomas Jardine, Vreeland Jardine and Margaret E. Jardine, being duly sworn according to law upon their oaths say, that they are the defendants named in the foregoing answer and that the matters and things therein contained are true as far as they relate to their own acts, and so far as they relate to the acts of others, they believe them to be true.

THOMAS JARDINE,
VREELAND JARDINE,
MARGARET E. JARDINE.

Sworn and subscribed to before me this 25th day of October, A. D., 1890.

G. R. Lindsay,
Master in Chancery,
of N. J.

IN CHANCERY OF NEW JERSEY.

Between CHARLES E. HEALD,
Complainant,

AND

THOMAS JARDINE, VREELAND JARDINE and MARGARET E. JARDINE,
Defendants.

} On Bill, &c,

By consent of the parties to the above cause, it is on this twenty-second day of April, one thousand eight hundred and ninety-two, on motion of Cortlandt and Wayne Parker, solicitors, and of counsel with the complainant, by Alexander T. McGill, Chancellor of the State of New Jersey, ordered that the bill of complaint in this cause be and the same is hereby dismissed without costs.

ALEX. T. McGILL,
C.

The parties consent thereto.

CORTLANDT & WAYNE PARKER,
Solicitors of Complainant,

SHAFER & DURAND,
Solicitors of all Defendants.

IN CHANCERY OF NEW JERSEY.

To the Honorable ALEXANDER T. McGILL, Chancellor of the State of New Jersey :

Humbly complaining showeth unto your Honor, your orator, William R. Henninger, of Allentown, in the State of Pennsylvania :

1. That in the month of November, in the year of our Lord one thousand eight hundred and eighty-nine, and prior thereto, your orator was the owner in fee simple of a certain farm, situate in the Township of Woodbridge, in the County of Middlesex, in the State of New Jersey, known as the McCoy farm, and described as follows:

The first tract being a tract of upland, bounded southerly by the road leading to Blazing Star Landing, northeasterly by land formerly of Jacob F. Randolph, northwesterly partly by land formerly of John Noe, and partly by land formerly of Nathan Bunn, southwesterly and northwesterly by land formerly of said Bunn, and southwesterly by land of Mootey Kinsey, containing eighty-nine acres of land more or less, excepting out of the same twenty-one acres formerly sold and conveyed by Benjamin Shotwell to Abraham B. Miller, by deed dated on or about August 14, 1856, and recorded in the record of deeds of Middlesex County, in Book 72, page 268, &c.

The second tract, being a lot of Salt Meadow in "Sunken Marsh," containing eighteen acres more or less, bounded southerly by the Sound in part, southerly, southwesterly, westerly, northwesterly and northerly by Hog Hill Creek, easterly by meadow formerly belonging to Job Thorp, now deceased, and afterward to Mootey Kinsey, and being the same premises conveyed by William McCoy and wife to Anson B. Moore in August, 1886. Which said farm was subject to a mortgage of five thousand dollars, held by Thomas Jardine and Vreeland Jardine and Margaret E. Jardine.

2. And your orator not being a resident of the State of New Jersey, was desirous of disposing of said McCoy farm, and for that purpose employed one Josiah Taylor, a real estate agent or broker, residing in the City of Brooklyn, but carrying on his business in the City of New York, and subsequently said Taylor, acting as your orator's agent, brought the matter to the notice of one Charles E. Heald, who, as your orator, has since learned, was also a real estate agent or broker in the City of New York, who then professed to act as the agent of one Abraham B. Dupuy, of the City of Brooklyn, and whom said Heald represented to be the owner of a farm known as the Blanchard Place, situated in Middle Smithfield Township, in the County of Monroe, in the State of Pennsylvania, which he wished to dispose of, and which was subject, as said Heald represented to your orator to a mortgage of three thousand dollars, bearing interest at the rate of five per cent. per annum.

3. That said Heald acting professedly as the agent of said Dupuy, proposed to exchange said Blanchard farm for your orator's McCoy farm, and after various efforts and considerable negotiations between said Taylor, as your orator's agent, and said Heald, as the agent, as he alleged, of said Dupuy, your orator was induced to enter into a written agreement with said Heald, as such agent, on the sixteenth day of November, A. D. 1889, by which your orator agreed to convey unto said Abraham B. Dupuy, or his assigns, by warranty deed the said McCoy farm free from all incumbrances except the aforesaid mortgage held by Thomas Jardine and others for five thousand dollars and the interest thereon together with such taxes as might be a lien on said farm and to pay also the sum of three hundred dollars in fifteen days and the further sum of one hundred dollars in six months, and the said Heald as agent of said Dupuy agreed to deliver to your orator a warranty deed for the Blanchard place free from all incumbrance except

a mortgage thereon of three thousand dollars and interest at five per cent. from the first of November, A. D. 1889, together with such taxes as might be a lien on said farm.

4. That your orator never saw said Dupuy in reference to said exchange, but on the said sixteenth day of November when said contract was signed your orator gave to said Heald his promissory note of fifteen days for the three hundred dollars which was to be paid in cash and said note was afterwards paid ; that he also gave to said Heald at the same time his promissory note for the one hundred dollars payable at four months from date to the order of said Taylor as provided in said agreement, and in the month of December he delivered through his agent said Joseph Taylor a warranty deed for said McCoy farm made to said Dupuy to said Heald as his agent and received a deed executed by said Dupuy for the Blanchard farm ; that before said agreement was so executed by the said deeds respectively said Heald made a further claim on your orator of sixty-six dollars for the rent of the McCoy farm until the succeeding April which rent had been paid to your orator and your orator paid said claim; that your orator's deed was made subject to the aforesaid Jardine mortgage for five thousand dollars as the agreement specified, and the deed of said Dupuy was made subject to the mortgage on the Blanchard place of three thousand dollars, as provided in the agreement, but your orator found afterwards, much to his surprise, that said mortgage was really thirty-six hundred dollars and bore interest at six per cent., instead of five as the agreement stated.

5. That during all the time said negotiations were being carried on your orator never saw said Dupuy, but treated and bargained with said Heald who professed to be said Dupuy's agent, and said Taylor acted only as your orator's agent, which relation to your orator on the part of said Taylor said Heald fully understood;

that, as your orator's agent, your orator relied implicitly on said Taylor's representations and acted on them in entire confidence, not for a moment suspecting that there was any understanding or agreement between said Taylor and said Heald by which said Taylor was to be in any way interested in the transfer of the said McCoy farm to said Dupuy, or that said Taylor had any interest in the matter beyond his lawful commissions for negotiating the sale, and your orator has, much to his surprise, but recently learned that in a short time after the completion of said exchange by the delivery of the deeds, said Dupuy conveyed the McCoy farm to said Healdfor the nominal consideration of one dollar, and he now believes and charges that said Dupuy, in fact, held the title to said Blanchard farm in some way in trust for or for the benefit of said Heald, and your orator has been yet more surprised to learn, as he very recently has, that in fact there was at and during the negotiations for said exchange a distinct understanding and agreement between said Heald and said Taylor, that after your orator should convey said McCoy farm to said Dupuy the same should be resold, if possible by the joint efforts of said Heald & Taylor and the proceeds of such sale over and above paying the Jardine mortgage, taxes and necessary expenses attending such sale should be equally divided between them, and that in fact the money paid by your orator on said exchange was wholly or partly divided between them immediately after the exchange was completed, and no part thereof was paid to said Dupuy as your orator has reason to believe and distinctly charges.

6. That the procuring from your orator of the conveyances of the said McCoy farm to said Dupuy and through him to said Heald, through the agency of said Taylor under the circumstances and on the agreement between said Heald and said Taylor as hereinbefore stated was a fraud upon your orator and justly entitles your orator to have said conveyance rescinded and to

require said Heald to reconvey the same to your orator subject to the said Jardine mortgage of five thousand dollars, but free from any other incumbrance whatsoever, placed thereon by said Heald, or in case said mortgage has been paid on the payment by your orator of that amount less the sum paid by your orator on said exchange and on the reconveyance to said Heald of the said Blanchard place by your orator subject to the mortgage of thirty-six hundred dollars, which reconveyance your orator tenders himself ready and willing to make and that your orator may have such further or other relief in the premises as the nature of the case may require and as shall be agreeable to equity and good conscience.

In tender consideration whereof and for as much as your orator is without remedy by the strict rules of the common law to the end that the said Charles E. Heald may answer the premises as fully and completely as if the same were here again repeated and he thereto interrogated, and that said Charles E. Heald may be decreed to have procured the title to said McCoy farm from your orator by fraud, and the conveyance thereof by your orator may be rescinded and the said Charles E. Heald may be further decreed to convey the said McCoy farm to your orator subject to the said mortgage of five thousand dollars, or if the same has been paid, on the payment to him by your orator of the sum of five thousand dollars, less the amount paid by your orator on the delivery of the deed to said Dupuy, and on the conveyance to him by your orator of the said Blanchard place, subject to a mortgage of thirty-six hundred dollars.

May it please your Honor, the premises considered, to grant unto your orator not only the State's writ of Injunction, issuing out of and under the seal of this Honorable Court, to be directed to the said Charles E. Heald, restraining him from conveying or disposing in any way of said McCoy farm, or in any way incumbering the same, but also the State's writ of subpœna issuing out of and under the seal of this Honorable

Court to be directed to said Charles E. Heald, commanding him by a certain day, and under a certain penalty therein to be expressed, to be and appear before your Honor in this Honorable Court, then and there to answer all and singular the said premises and to stand to, abide by and perform such order and decree therein as to your Honor shall seem meet and shall be agreeable to equity and good conscience.

And your orator, as in duty bound, will ever pray, &c.,

THEO. LITTLE,
Sol. for and of Counsel with Complainant.

STATE OF PENNSYLVANIA, }
County of Lehigh. }

WILLIAM R. HENNINGER, the complainant in the foregoing bill of complaint, being duly sworn according to law, on his oath saith that he is a resident of Allentown, in the State of Pennsylvania, and resided there in November, A. D. 1889; that he then owned in fee simple a farm known as the McCoy farm, situate in the Township of Woodbridge, in the County of Middlesex, in the State of New Jersey, which was subject to a mortgage of five thousand dollars, as stated in said bill; that, being desirous of selling said farm, he employed Josiah Taylor, a real estate agent, doing business in New York City, for that purpose, who in some way brought the matter to the notice of one Charles E. Heald of said city, also a real estate agent, who professed to be the agent of one Abraham B. Dupuy of the City of Brooklyn, and who, as such professed agent, proposed to exchange a farm of which said Dupuy had title, which was known as the Blanchard Place and was situated in Middle Smithfield Township, in the County of Monroe, in the State of Pennsylvania, which, as he said, was incumbered by a mortgage of three thousand dollars, that through the agency of said Taylor an agreement was effected for the exchange of this deponent's farm for said Dupuy's, as stated in said bill of complaint, and the deeds were executed

and delivered as in said bill stated, this deponent paying at the time three hundred and thirty-six dollars and giving his note for one hundred dollars; that after receiving his deed for said Blanchard Place he learned, much to his surprise, that the mortgage was thirty-six hundred dollars instead of three thousand and the interest six per cent. instead of five as stated in the agreement. This deponent further saith that he had not the remotest suspicion at the time of making the agreement for said exchange, or when the deeds were delivered, that there was any understanding or agreement between said Heald and said Taylor that either was in any way interested in said exchange beyond their usual and legal commissions, or that they were to be interested in said McCoy farm after said exchange; that he never knew of any such agreement until during this month of January, A. D. 1891, when he was greatly surprised to learn that not long after said exchange said Dupuy, as the deponent is informed and believes, conveyed the McCoy farm to said Heald for the nominal consideration of one dollar, and the deponent is also now informed and believes it to be true that before said exchange was made said Heald and said Taylor had an agreement between them that the McCoy farm, after the conveyance to said Dupuy, should be resold by their joint efforts, if possible, and the amount realized from such sale over and above paying the mortgage of five thousand dollars, the taxes and necessary expenses attending such sale, should be equally divided between said Heald and said Taylor, and that in fact the money paid by this deponent was divided between said Heald and said Taylor, and was not paid to said Dupuy.

W. R. HENNINGER.

Sworn before me this 29th day of January, A. D. 1891, I being a Notary Public duly sworn and commissioned in and for the State of Pennsylvania, in witness whereof I have hereto affixed my Notarial Seal.

JAMES HAUSMAN,

[L. S.] Notary Public.

STATE OF NEW YORK, }
County of New York. } ss.:

JOSIAH TAYLOR, of full age, being duly sworn according to law, on his oath saith that he has heard the foregoing bill read and that he is the Josiah Taylor therein referred to, that in November and December, A. D. 1889, he was carrying on business in the City of New York, as a real estate agent or broker, and was employed by William R. Henninger of Pennsylvania, the complainant named in said bill of complaint, to sell for him a farm situated in Woodbridge Township, in County of Middlesex, and State of New Jersey, known as the McCoy Farm, and had an interview with one Charles E. Heald, who was also engaged in the real estate business in the City of New York, who professed to be the agent of one Abraham B. Dupuy of the City of Brooklyn, who owned or had the title to a farm situated in Middle Smithfield Township, in Monroe County, in the State of Pennsylvania, known as the Blanchard Place, which said Heald represented to be encumbered for the sum of three thousand dollars, secured by a mortgage thereon bearing five per cent. interest, that said Heald proposed to effect an exchange of said Blanchard Place for the said McCoy farm. That the matter was by this deponent brought to the notice of said Henninger and was favorably entertained by him; that thereupon negotiations for such exchange were carried on by this deponent and said Heald, this deponent never having seen said Dupuy, in said negotiations, and an agreement for the exchange was effected in the month of November, A. D. 1889, upon the terms stated in the annexed bill of complaint, the agreement being signed by said Henninger and by said Heald as agent of said Dupuy; that during said negotiations and before the contract for the exchange was made said Heald proposed that he and this deponent should,

if said exchange could be effected with their efforts to resell the McCoy farm and should be equally interested in whatever money should be received from said Henninger on the exchange and also in the proceeds of such sale, which should be realized over and above paying the mortgage thereon for five thousand dollars and the taxes and expenses incident to the sale, said Heald first retaining for himself one hundred and fifty dollars.

And this deponent not at the time thinking there was any impropriety whatever in his making such agreement, consented to it, and after the exchange this deponent did make various efforts to sell said McCoy farm by advertising it, and by taking persons there to see it.

That as part of said agreement between himself and said Heald this deponent and said Heald did divide the amount which said Henninger paid on the exchange, said Heald first retaining one hundred and fifty dollars.

That the deed for said McCoy farm was made by said Henninger to said Dupuy, this deponent understanding at the time that said Dupuy held the title for said Heald, and some months afterwards said Dupuy conveyed said farm to said Heald for the nominal consideration of one dollar.

That this deponent never supposed that he was doing anything wrong, or had done anything illegal or unjust towards said Henninger until he recently claimed to have an interest in the proceeds of the sale of said farm or some part thereof, having learned that said Heald had contracted to sell it or some part of it, when to his surprise said Heald for the first time denied that this deponent had any interest therein and repudiated his agreement made as hereinabove stated, when this deponent was advised that said agreement was of doubtful validity, because when it was made

this deponent was acting as the ageut of said Henninger.

JOSIAH TAYLOR.

Sworn before me this third day of February, A. D. 1891, I being a Notary Public duly appointed and commissioned in and for the County of Kings and authorized to act in the City and County of New York, and State of New York. In witness whereof I have hereto subscribed my name and affixed my Notarial Seal.

PAUL GORHAM,
Notary Public,
Kings Co., N. Y.

[L. S.]

Cert. filed in N. Y. Co.

IN CHANCERY OF NEW JERSEY.

To his Honor ALEXANDER T. McGILL, Chancellor of the State of New Jersey:

Complaining shows unto your Honor your orator William R. Henninger of Allentown, in the State of Pennsylvania, that on the thirteenth day of March, in the year of our Lord one thousand eight hundred and ninety-one, your orator exhibited his original bill of complaint in this Honorable Court against Charles E. Heald, of the City of Brooklyn, in the State of New York, therein stating that in the month of November, in the year eighteen hundred and eighty-nine, your orator was the owner in fee simple of a certain farm situate in the Township of Woodbridge, in the County of Middlesex, in this State, consisting of two tracts of land in said bill particularly described, one tract containing sixty-eight acres more or less. and the other tract containing eighteen acres more or less, which said farm was known as the McCoy farm and was subject to a mortgage for five thousand dollars held by Thomas Jardine, Vreeland Jardine and Margaret E. Jardine;

that your orator being desirous of disposing of said farm, employed for that purpose one Josiah Taylor, a real estate agent residing in Brooklyn, in the State of New York, but doing business in the City of New York, who brought the matter to the notice of said Charles E. Heald, also a real estate agent residing in Brooklyn, but carrying on his business in the City of New York; that in the negotiations which followed, said Heald represented himself to be the agent of one Abraham Dupuy, who he said, owned a farm known as the Blanchard place situate in Middle-Smithfield Township, in the County of Monroe, in the State of Pennsylvania which was as said Heald represented incumbered by a mortgage for three thousand dollars, bearing interest at five per cent. ; that said Heald as agent of said Dupuy, as he said, proposed to exchange said Blanchard Place for said McCoy farm, which proposition was communicated to your orator by said Josiah Taylor, and after considerable negotiations carried on professedly between said Taylor as your orator's agent and said Heald as the agent of said Dupuy, an agreement for the exchange of said properties was agreed to, and a written agreement was prepared bearing date November sixteenth, A. D. eighteen hundred and eighty-nine, by which your orator agreed to execute to said Dupuy a warranty deed for the said McCoy farm free from any incumbrance except the said Jardine mortgage of five thousand dollars, and such taxes as might be a lien thereon, and to pay to said Dupuy the sum of four hundred dollars ; and said Dupuy was to execute and deliver to your orator a warranty deed for said Blanchard Place subject to a mortgage for three thousand dollars, bearing five per cent. interest, which agreement was signed by your orator and by said Heald as agent for said Dupuy ; that after said agreement was signed but before the deeds therein referred to were delivered, said Heald demanded of your orator the payment of a further sum of sixty-six dollars for rents which had been paid to your orator for the McCoy farm ; that in the month of December, A. D. 1889, your orator executed and

forwarded to said Josiah Taylor, his agent, a deed in accordance with his said agreement, and the same was delivered to said Heald as agent of said Dupuy; and said Taylor also received from said Heald a deed for the Blanchard Place executed by said Dupuy, by which said property was conveyed to your orator subject to a mortgage for three thousand dollars, bearing five per cent. interest, and your orator subsequently paid to the said Heald three hundred dollars, part of the four hundred mentioned in the said agreement, also sixty six dollars for rents received by him and claimed by said Heald, and gave to said Heald his promissory note for the remaining one hundred dollars, which has not been paid, but is as your orator supposes still held by said Heald; that during all the negotiations in reference to the said exchange of property your orator never saw said Heald until the day said written agreement was signed, nor had he any acquaintance with him, but your orator relied entirely on the representations made by said Heald, professedly acting as agent of said Dupuy, to said Taylor, and by said Taylor communicated to your orator; that your orator never for a moment suspected any collusion betwen said Heald and said Taylor, or that they were. or were to be, personally interested in bringing about said exchange of property beyond their usual commissions, but that after the delivery of said deeds your orator found that the Blanchard property was in fact covered by a mortgage for thirty-six hundred dollars bearing interest at six per cent., and a short time before filing his said original bill learned that during the negotiations, which led to said exchange of property, and at the time of the exchange of deeds, there was a distinct understanding and agreement between said Heald and said Taylor that whatever money your orator could be induced to pay, should be divided between said Heald and Taylor, and that after the exchange was completed they would use their efforts to re-sell the said McCoy farm and divide between them whatever money

could thereby be realized over and above paying the said Jardine mortgage and such taxes and expenses as they might be required to pay anterior to such sale; and that, in fact, the money paid by your orator as aforesaid was divided between said Heald and said Taylor in pursuance of their said agreement; that subsequently, and in or about the month of June, A. D. 1890, said Dupuy conveyed the said McCoy farm to said Heald for the nominal consideration of one dollar; that said Dupuy held said title as your orator charged in trust for said Heald; that the procuring of the conveyance of said McCoy farm to said Dupuy by your orator was a fraud committed on your orator by said Heald and Taylor, such as entitle him to have said sale rescinded and to have the same reconveyed to your orator, subject to said Jardine mortgage; and praying that said Heald might be decreed to have procured the conveyance of said McCoy farm from your orator by fraud, that the conveyance might be rescinded, and said Heald be required to reconvey the same to your orator, subject to the Jardine mortgage, or if the same has been paid subject to the payment by your orator of the amount thereof, less the amount paid by your orator at the time of the exchange and the reconveyance to said Heald of said Blanchard Place, subject to a mortgage of thirty-six hundred dollars. And that your orator might have such other and further relief as equity and good conscience might require.

And your orator further states that Charles E. Heald appeared to your orator's said bill, and put in his answer thereto, wherein he admitted the making of said written agreement mentioned in your orator's bill alleged that he acted in said exchange as agent for the owner of said Blanchard Place, who he alleged to be one Mary Pratt, denied that said Dupuy held the title to the Blanchard Place in trust for him, or that he had any interest in it at the time of said exchange, denied that he represented to your orator or his agent Taylor that the Blanchard Place was subject to a mortgage for only

three thousand dollars; denied that there was any understanding or agreement between himself and said Taylor by which said Taylor was to be interested in said exchange in any way beyond receiving his lawful commissions for negotiating the same, or that he, said Heald, was interested therein beyond receiving his regular commissions, or that there was any agreement or understanding between himself and said Taylor before said exchange, that they should unite their efforts to resell said McCoy farm and divide either the money paid by your orator, or any proceeds of said sale if they amounted to more than the amount due on the Jardine mortgage, or that, in fact, the money paid by your orator was divided between himself and said Taylor, in pursuance of their alleged agreement. That said Heald in his said answer further admitted that in June A. D. eighteen hundred and ninety said Dupuy conveyed to him said McCoy farm for the nominal consideration of one dollar, but alleged that said conveyance was made by the request of said Mary Pratt, to whom he alleged he paid the real consideration therefor; that he further answered that said Jardine had not only commenced proceedings for the foreclosure of their said mortgage, but had obtained a decree of foreclosure, on which an execution had been issued to the Sheriff of Middlesex County, who had sold said McCoy farm at public sale to said Thomas Jardine; that such sale was made under a certain agreement between himself and said Jardines by which said Heald was to be permitted to redeem said farm; that he had offered to redeem it in pursuance of said alleged agreement, and said Jardines had repudiated said agreement; that he had thereupon filed his bill in this Court against Thomas Jardine, Vreeland Jardine and Margaret E. Jardine to enforce said right of redemption and to compel said Jardines to execute to him a conveyance of said lands, and had obtained an opinion of this Court in his favor, and sustaining the alleged right of redemption.

And your orator further shows that said answer has

been replied unto by your orator, but no witnesses have been examined on either side, as by the said original bill and proceedings now remaining as of record in this Honorable Court reference being thereunto had will more fully appear.

And your orator shows by way of supplement that at the time said Heald filed his bill in this Court to enforce his alleged right to redeem said McCoy farm he also filed in the office of the Clerk of the Court of Common Pleas of the County of Middlesex a notice of the pendency of his said suit, as provided by law, which said notice has never been cancelled or discharged of record, and that your orator also as soon as his said original bill was filed in this Court, filed in the office of the said Clerk of the Court of Common Pleas of Middlesex County a like notice of the pendency of his said suit, and the purpose of it, in accordance with the provisions of the law in that regard.

And your orator further shows that he has lately discovered that on or about the thirtieth day of April last said Thomas Jardine while the suit of said Heald against said Jardines was still pending in this Court, executed and delivered to The Port Reading Railroad Company, a corporation organized under the laws of this State, a deed of conveyance for a portion of said McCoy farm containing eighteen acres for the consideration, as stated in said deed, of twelve thousand dollars, and that said Thomas Jardine also about the same time conveyed the remainder of said McCoy farm to one Gordon Chambers of Philadelphia, in the State of Pennsylvania, for the consideration, as stated in said deed, of ten thousand dollars; and your orator charges that said conveyance to said Chambers was made to him, and the title is now held by him in trust or in some way for the benefit of the said The Port Reading Railroad Company, and that said Company and said Chambers are now in possession of said lands, claiming title to the same under said conveyances.

And your orator further shows and charges that at the time the said Gordan Chambers and The Port

Reading Railroad Company entered into the contract with said Thomas Jardine for the purchase of the portions of said McCoy farm conveyed to them respectively, or at the time of the conveyance thereof to them severally, as aforesaid, or at and before the payment of the purchase money for the same, if said purchase money has actually been paid, they well knew, or had been informed, or had received some intimation, or had reason to believe, or suspect, that said Heald had instituted proceedings in this Court, by filing his bill as hereinbefore stated, against said Thomas Jardine, Vreeland Jardine and Margaret E. Jardine, claiming an interest in said McCoy farm and praying that the Jardines might be compelled to reconvey the same to him said Heald, and that said Heald's claim had been wholly or partially sustained by this Honorable Court, and that they also well knew, or had been informed, or had reason to believe, that your orator had also filed his said original bill against said Heald, claiming that said Heald had induced your orator to convey said farm to said Dupuy by fraud, and praying that said Heald might be required to reconvey the same to your orator.

And your orator further charges that if in fact said Gordon Chambers and The Port Reading Railroad Company, or either of them, have paid the purchase money mentioned in their respective deeds to said Thomas Jardine, they did so under some agreement with said Heald, or some person claiming to represent him, or to have power to control said Heald as to the further prosecution of his said claim to said land, and that said Gordon Chambers and The Port Reading Railroad Company, or one of them, gave to said Jardines or to said Thomas Jardine some agreement to protect or indemnify him or them against the claim to said land made by said Heald as aforesaid, and also against the claim made by your orator to said land in his said original bill.

And your orator further shows that although the decision of this Court in favor of said Heald's claim

to said McCoy farm, and to have the same reconveyed to him by said Thomas Jardine, according to the prayer of his said bill hereinbefore referred to was made in the month of March last, no decree has ever been filed, although your orator's counsel has repeatedly requested the solicitor of said Heald to have such decree filed, and your orator believes and charges that the omission to file said decree is in pursuance of some agreement or understanding between said Heald, said Thomas Jardine and the said grantees of said Thomas Jardine, for the purpose of prejudicing, hindering and if possible defeating your orator in the effort to enforce his claim to said McCoy farm as stated in his said original bill.

To the end therefore that the said Charles E. Heald, Thomas Jardine, Vreeland Jardine, Margaret E. Jardine, Gordon Chambers and the Port Reading Railroad Company may, if they can, show why your orator should not have the relief hereby prayed, and may on their respective and several corporate oaths, full, direct and perfect answer make to all and singular the premises as fully and particularly as if the same were here again repeated and they interrogated thereto, and more especially, that said Thomas Jardine, Vreeland Jardine and Margaret E. Jardine may answer whether said Thomas Jardine did not purchase said McCoy farm at the Sheriff's sale as stated in your orator's bill for their joint benefit, and whether the said Vreeland Jardine and Margaret E. Jardine gave their consent to the conveyances to said Gordon Chambers and the Port Reading Railroad Company as stated in your orator's bill, and as hereinbefore set forth; that said Thomas Jardine may also answer when first, and by whom, application was made to him to convey said tracts of land to said Chambers or the Port Reading Railroad Company, whether the agreement to sell said property was in writing, and if so with whom it was made, and the date thereof, and whether he has the said agreement or a copy of it, when and from whom

he received the purchase money for each tract if the same has been paid, whether such payment was made in cash or by check or draft, and if by check or draft, by whom and on whom the same was drawn, whether the amount of purchase money for each tract is correctly stated in the deed, whether when said agreement for the sale was made or before the purchase money was paid the said Thomas Jardine did not know or had not been informed of your orator's claim to said land, and if so how he was informed of it, and whether he had not read a copy of your orator's original bill against said Heald or heard the same read, and whether he did or did not require from said Gordon Chambers, or The Port Reading Railroad Company before he would consent to convey said lands to them respectively, some agreement to indemnify said Thomas Jardine, Vreeland Jardine and Margaret E. Jardine against the claim made to said lands by said Heald in his said proceedings in this Court and also against your orator's claim as set up in his said original bill, and if any such indemnity was given that he state its contents, and by whom made, and whether he did not know or had not heard that your orator had filed in the office of the Clerk of the Court of Common Pleas of Middlesex County a notice of the pendeney of his said suit against said Heald. That said Gordon Chambers and The Port Reading Railroad Company may also severally answer whether said Chambers did not take title to a part of said McCoy farm as hereinbefore stated, or does not now hold such title, in trust for, or in some way for the benefit of The Port Reading Railroad Company, and in what way, if at all, he is connected with said company ; that said Gordon Chambers may also answer when and by whom he was requested to contract with said Thomas Jardine for the purchase of the said tract conveyed to him by said Thomas Jardine, whether he ever did make any contract for such purchase with said Jardine before said deed was executed, at whose request or suggestion he made such contract or accepted the deed, when he paid the pur-

chase money of ten thousand dollars, and to whom it was paid, and where, and whether the same was paid in cash, or by check or draft, and if by check or draft, by whom and on whom the same was drawn, whether the deed was delivered to him personally, and if so when, where and by whom and what he did with it when he received it; if not delivered to him personally by said Thomas Jardine, to whom it was delivered and by whom it was received for him, and by whose direction it was placed on record, and whether he gave to said Thomas Jardine any agreement or bond to indemnify him against any claim made, or which might be made to said lands, or against said Jardines, by said Charles E. Heald, or by your orator, and whether before accepting his said deed, or before payment of the purchase money to said Thomas Jardine he did not know, had not heard, or received some information, or had not been led to suspect, that the title to said lands was in controversy, and that either said Heald or your orator was making some claim to them.

That the Port Reading Railroad Company may also answer when and by whom as its agent, or representative, negotiations were first begun with said Thomas Jardine for the purchase of said McCoy farm, or any part of it, whether any contract was made with it, verbally or in writing, by said Thomas Jardine, for the sale to it of any part of said McCoy farm other than or before the execution of the deed hereinbefore mentioned, whether any contract for such sale was made by said Thomas Jardine with any one, which was afterwards assigned to said Company, and, if so, with whom it was made and when, when the deed made by said Thomas Jardine to it was in fact executed and delivered to it, or its agent, and who such agent was, when, where, and to whom the purchase money was paid if the same has been paid, whether it was paid in cash, or by check or draft, and if by check and draft, by whom and on whom the same was drawn, and whether, before said purchase money was paid, it did not know, had not heard, or had reason to believe or suspect, that

said Charles E. Heald claimed said McCoy farm, or some interest therein, and that proceedings were pending in this Court on the part of said Heald and against said Thomas Jardine to enforce said claim, and whether it did not know, had not notice, had not heard, or had reason to believe, or suspect, before said purchase money was paid that your orator made some claim to said McCoy farm, and had filed his bill in this Honorable Court against said Charles E. Heald setting up a claim to said farm, and whether it did not know or had not heard that your orator had filed his notice of the pendency of his said suit against said Heald in the office of the Clerk of Middlesex County, and whether at the time of receiving its said deed from said Thomas Jardine, it made any agreement with said Heald, or any one representing or professing to represent said Heald, or to be able to control the prosecution of his said suit against the Jardines, by which any part of the purchase money was to be paid then, or at any future time, or upon any condition, to said Heald, or any one else than Thomas Jardine, and if so what said agreement was, and with whom made and whether it has made any agreement with said Thomas Jardine to indemnify him against any claim of said Heald, or your orator, to said land, or which might be made by said Heald or your orator against said Thomas Jardine, by reason of, or growing out of the conveyance of said McCoy farm to said Gordon Chambers, or to said Port Reading Railroad Company, and if so whether said agreement is in writing, when it was made and what it was?

And that your orator may have the same relief against the said Charles E. Heald, Thomas Jardine, Vreeland Jardine, Margaret E. Jardine, Gordon Chambers and The Port Reading Railroad Company, as he might have had if the facts hereinbefore stated and charged by way of supplement had been stated in your orator's original bill; that said Charles E. Heald may be decreed to have procured the conveyance of the said McCoy farm from your orator by fraud, and

the said conveyance to him by your orator may be rescinded; that the deeds made respectively to said Gordon Chambers and The Port Reading Railroad Company may also be decreed to be fraudulent and void and may be set aside, and said Thomas Jardine may be decreed to convey said McCoy farm to your orator, subject to the payment to him of the amount of principal and interest of said mortgage for five thousand dollars with the interest and costs of foreclosure, or that said Gordon Chambers and The Port Reading Railroad Company may be decreed to hold the title to said lands in trust for your orator, subject only to the lien of the amount of the said Jardine mortgage of five thousand dollars, or in case the said deeds to said Gordon Chambers and The Port Reading Railroad Company are held by the Court to be valid as against your orator's claim, and to vest the title in said grantees that said Thomas Jardine may be required to account to your orator for, and pay over to him, all the purchase money mentioned in said deeds after deducting therefrom the amount due on said five thousand dollar mortgage, with the costs of said decree of foreclosure and sale, and that your orator may have such other and further relief in the premises as the circumstances of the case may require and to your Honor may seem meet.

May it please your Honor, the premises considered to grant unto your orator the State's writ of subpœna, issuing out of and under the seal of this Honorable Court, to be directed to the said Charles E. Heald, Thomas Jardine, Vreeland Jardine, Margaret E. Jardine, Gordon Chambers and The Port Reading Railroad Company, commanding them and each of them, by a certain day and under a certain penalty therein, to be expressed, to be and appear before your Honor in this Honorable Court, then and there to answer all and singular the said premises, and to stand to, abide by and perform such order and decree therein as to your Honor shall seem meet and shall be agreeable to

equity and good conscience, and your orator, as in duty bound, will ever pray, &c.

THEO. LITTLE,
Solicitor of Complainant.

IN CHANCERY OF NEW JERSEY.

Between WILLIAM R. HENNINGER,
Complt.,

AND

CHARLES E. HEALD,
Deft., — On Bill.

Onsupplemental Bill.

WILLIAM R. HENNINGER,
Complt., — Order to dismiss Bill.

AND

CHARLES E. HEALD *et als.*
Defts.

These matters coming on to be heard on bill and supplemental bill, answer and replication thereto before this Court in the presence of Theodore Little, solicitor and of counsel with the complainant, Richard Wayne Parker, counsel for Charles E. Heald, and John R. Emery, counsel for other defendants, and the evidence being begun on the part of the complainant, whereby it appears that at the time of the institution of this suit the complainant had assigned a one-half interest in this suit to Josiah Taylor and one-quarter interest to the attorney of the said Josiah Taylor, and upon such disclosure being made by the evidence of the complainant and upon motion by the defendant's counsel to dismiss the said bills and said motion was denied

by the Court and the cause continued until this day, the Court giving the complainant leave to amend his bill by adding as parties the said Josiah Taylor and his said attorney, and directing that upon said amendment the cause should at once proceed to hearing; and now on this day to which the cause was adjourned, counsel for the complainant stating that he did not desire to make the amendment, and desired a dismissal of his bill without prejudice, and the Court having been heard, the argument of the respective counsel thereon, and being of the opinion that the said reservation should not be made. It is on this 15th day of March, A. D. one thousand eight hundred and ninety-two, on motion of the said counsel of the said complainant, ordered that the said bill be and the same is hereby dismissed, with costs, to be paid to the defendants.

And that the injunction heretofore allowed be and the same is hereby dissolved.

ALEX. T. McGILL,
C.

Respectfully advised,
JOHN T. BIRD,
V. C.

Answers were filed to the supplemental bill by the Port Reading R. R. Co., and the Jardines, Chambers, Canda and Heald, which set up the same facts and defences found in the several answers to the bill filed in this case (except the bar of the former suit) which last-named answers are printed on page 18–58 of the foregoing record. It is agreed that copies thereof may be referred to on the argument if necessary.

THEO. LITTLE,
for Appellants.
F. W. STEVENS,
for Respondents,
Port R. R. R. Co., *et als.*

This agreement made this twenty-ninth day of January, A. D. eighteen hundred and ninety-one, between Wiiliam R. Henninger, of Allentown, Pennsylvania, party of the first part, and Josiah Taylor, of the City of Brooklyn, County of Kings, and State of New York, party of the second part, witnesseth :

Whereas, in the month of December, A. D. eighteen hundred and eighty-nine, said party of the first part, was owner of certain premises in Woodbridge Township, Middlesex County, State of New Jersey, known as "The McCoy Farm," subject to a mortgage of five thousand dollars, foreclosure whereof was threatened, which premises he was very desirous of selling;

Whereas, through the instrumentality of said Taylor, said party of the first part, in said month of December, made an exchange of said farm for property in Middle Smithfield Township, Monroe County, State of Pennsylvania, known as the Blanchard Place, which was represented to be encumbered by a mortgage of three thousand dollars, with interest thereon from November first, then just past, at the rate of five per cent. per annum, together with taxes then due, title to which was held by one Abraham B. Dupuy, who was represented in said transaction by one Charles E. Heald; while in fact, the mortgage encumbrance upon said Blanchard Place was thirty-six hundred dollars, bearing interest at six per cent ;

Whereas, it is now represented to said party of the first part, that at the time of the said transaction there was agreement between said Taylor and said Heald, that they would divide between themselves all that might be realized out of such exchange over and above said five thousand dollar mortgage, which agreement was not then known to said party of the first part;

Whereas, part of the consideration paid by said party of the first part for said exchange was a cash payment of three hundred and sixty-six dollars, which was divided between said Taylor and said Heald ;

Whereas, since said exchange said five thousand dollar mortgage has been foreclosed, and the premises sold

by the Sheriff, and bought by the mortgagees; and said Heald, claiming to be interested therein, has a suit now pending in the Court of Chancery of New Jersey, to set aside said sale and to be permitted to redeem said premises, which it is claimed can now be sold for considerable more than said mortgage debt;

Whereas, said Heald now denies that said Taylor has any interest in said McCoy farm, and said Taylor has filed a bill of complaint against said Heald and others, in said Court of Chancery, to establish his interest in said farm; to which bill said Heald has answered, admitting said exchange of properties, and that he and Taylor were agents in said transaction, but insisting that said Taylor, by the terms of the agreement between them was only to have an interest in proceeds of the sale of the McCoy farm in case a sale thereof should be made by him; and denying that said Taylor has now any interest therein;

Whereas, it is represented to said party of the first part, that, if a suit should be instituted in said Court of Chancery by him, said exchange could be rescinded in case said Heald is successful in his said action.

Now, in consideration of the premises, and of the sum of one dollar to him paid and of the agreement by said party of the second part, to institute and prosecute, without expense to said party of the first part, such proceedings as may be necessary to rescind said exchange, said party of the first part agrees that said party of the second part shall have the sole, and full management and control of said claim, and of such proceedings; with authority to engage counsel to institute and conduct such proceedings in the name of said party of the first part; or to compromise and settle such claim upon such terms as he may deem wise; to receive the proceeds thereof, and to execute all such deeds, releases or agreements as may be deemed by his counsel necessary to accomplish such rescission, or a sale of said McCoy farm, or a proper settlement of such claim, upon condition that one-fourth of the proceeds of said claim shall be paid by said party of the second

part to said party of the first part, and that the remainder thereof shall be retained by said party of the second part, to reimburse him for his risk, trouble and expenses incident to the enforcement of said claim.

And said party of the first part doth hereby constitute and appoint said Josiah Taylor, his attorney, irrevocable, with full authority in his name, but at the cost and expense of said party of the second part, to do all things necessary for the enforcement or compromise of the aforesaid claim, and particularly, in case said claim is compromised, or settled, or a decree rescinding said exchange shall be obtained, to execute all such deeds, releases or agreements as may be necessary to perform such decree, or to sell and convey said McCoy farm. Said party of the first part hereby agrees that he will not do, cause or permit to be done anything contrary to the terms of this agreement; and that he will by all reasonable and proper means aid said party of the first part in the enforcement of said claim by executing or procuring the execution of all such deeds and other instruments as may be necessary to perform any decree that may be rendered in said action, or that may be necessary to effect a sale of said McCoy farm.

In witness whereof said William R. Henninger and Josiah Taylor have hereunto set their hands and seals the day and year first above written.

W. R. Henninger, [seal].
Josiah Taylor, [seal].

Signed, sealed and delivered
in presence of
S. H. Little.

This agreement made the 31st day of January, A. D. 1891, between Josiah Taylor and Jane B. Taylor, of the City of Brooklyn, Kings County, New York State, parties of the first part and Stephen H. Little of Morristown, Morris County, State of New Jersey, party of the second part, witnesseth.

Whereas, said parties of the first part claim to be entitled to a half interest in the equity to a certain property known as "The McCoy Farm" located in Middlesex County, New Jersey, title to which is now claimed by Charles E. Heald, such interest however being denied by said Heald;

Whereas, said party of the second part, in consideration of the sum of fifty dollars to him paid and of the agreements hereinafter stated, has undertaken to enforce said claim by a suit in Chancery of New Jersey, in the names of said parties of the first part against said Charles E. Heald and others, which suit is defended by said Heald;

Whereas, said parties of the first part have been advised by said party of the second party, that by reason of the defence made by said Heald, there is great doubt whether their said action can be maintained, but that an action by one Wm. R. Henninger, can be successfully maintained against said Heald;

Whereas, at the request of said parties of the first part, said party of the second part has procured from said Henninger, an agreement authorizing the bringing of such action in his name upon the terms in said agreement specifically stated, and has procured one Theodore Little to act as solicitor and counsel for said Henninger in said matter.

Now, in consideration of the premises and of the prosecution of said actions, or action, or the settlement of said claim of said Henninger, pursuant to the terms of his said agreement with said Josiah Taylor, dated January 29, 1891, without further expense to said parties of the first part, it is hereby agreed by them that in case their said action against said Heald is successfully prosecuted or compromised and settled that

said party of the second part as compensation for his services, herein shall have and receive for his own use, four-twelfths of the sum so realized, and said parties of the first part shall have the remaining eight-twelfths, but in case the claim of said Henninger is enforced or settled pursuant to the said agreement, that then said party of the second part shall have and receive for his services herein four-twelfths of the amount so realized; three-twelfths shall be paid to said Henninger, and four-twelfths to said parties of the first part.

In witness whereof, said parties hereto have hereunto subscribed their names the day and year first above written.

JOSIAH TAYLOR, [SEAL.]
JANE B. TAYLOR, [SEAL.]

Sealed, signed and delivered
in presence of

Per J. T.

INDEX.

New Jersey Court of Errors and Appeals.

Between—

WILLIAM R. HENNINGER and al.,
Appellants,

AND

CHARLES E. HEALD and als.,
Respondents.

Petition of Appeal.

To the Honorable the Court of Errors and Appeals in the last resort in all causes:

The humble petition of William R. Henninger and Stephen H. Little, the appellants in the above stated cause, respectfully shows that your petitioners find themselves aggrieved by a final decree made in the Court of Chancery by his Honor Alexander T. McGill, Chancellor of New Jersey, bearing date the fifth day of March, A. D. 1895, wherein the said appellants were complainants and the said Charles E. Heald, Abraham B. Dupuy, Josiah Taylor, Jane B. Taylor, Thomas Jardine, Vreeland Jardine, Margaret E. Jardine, Gordon Chambers, The Port Reading Railroad Company and Ferdinand E. Canda were defendants in these respects, to wit: That said decree adjudges that as to the defendants, The Port Reading Railroad Company, Gordon Chambers, Thomas Jardine, Vreeland Jardine, Margaret E. Jardine and Ferdinand E. Canda, the complainants' bill be dismissed, with costs, and that said Charles E. Heald pay to the complainants the sum of nineteen hundred and ten dollars and seventy-three cents, with their costs to be taxed. And your petitioners humbly appeal from said

decree for the reason and on the ground that the same is erroneous, for that the decree as against said defendants should have been in accordance with the prayer of the complainants' bill. Your petitioners therefore pray that the said decree of the Chancellor may be reversed and set aside and for nothing holden. And that your petitioners may have such relief in the premises as to this honorable Court shall seem meet.

THEO. LITTLE,
Sol. and of Counsel with the Appellants.

"Filed April 18, 1895.
HENRY C. KELSEY,
Clerk."

NEW JERSEY COURT OF ERRORS AND APPEALS.

Between—
WILLIAM R. HENNINGER and al.,
Appellants,

AND

CHARLES E. HEALD and als.,
Respondents.

} Petition of Appeal.

The answer of Thomas Jardine, Vreeland Jardine, Margaret E. Jardine, Gordon Chambers and The Port Reading Railroad Company, respondents to the petition of appeal of William R. Henninger and Stephen H. Little, appellants in the above stated cause.

These respondents, not acknowledging all or any of the matters which in the said petition of appeal are contained to be true, for answer thereto, nevertheless, say and admit that a decree was, on the fifth day of March last past, made and entered in the Court of

Chancery, in the cause for that purpose mentioned in the said petition, as is therein stated; but as to the substance and form thereof, these respondents pray to refer thereto when the same shall be produced. And these respondents are advised and believe that the said decree is aggreeable to equity, and they pray that the same may be affirmed, with costs to be adjudged to these respondents.

F. W. STEVENS,
Solr. and of Counsel.

IN CHANCERY OF NEW JERSEY.

To the Honorable ALEXANDER T. McGILL, Chancellor of the State of New Jersey:

Humbly complaining showeth unto your Honor your orators, William R. Henninger, of Allentown, in the State of Pennsylvania, and Stephen H. Little, of Morristown, in the State of New Jersey, that in the month of November, in the year of our Lord one thousand eight hundred and eighty-nine, and prior thereto your orator, William R. Henninger, was the owner in fee simple of a certain farm situate in the Township of Woodbridge, in the County of Middlesex, in the State of New Jersey, known as the McCoy Farm, bounded and described as follows:

The First Tract being a tract of upland bounded southerly by the road leading to Blasing Star Landing, northeasterly by land formerly of Jacob F. Randolph, northwesterly partly by land formerly of John Noe and partly land formerly of Nathan Bunn, southwesterly and northwesterly by land formerly of said Bunn and southwesterly by land of Mootey Kinsey, containing eighty-nine acres of land, more or less, excepting out of the same twenty-one acres formerly sold and conveyed by Benjamin Shotwell to Abraham B. Miller by deed dated on or about August 14th, 1856, and re-

corded in the Record of Deeds of Middlesex County, in Book 72, pages 268, &c.

The Second Tract being a lot of salt meadow in "sunken marsh," containing eighteen acres more or less, bounded southerly by the Sound in part southerly, southwesterly, northwesterly and northerly by Hog Hill Creek, easterly by meadow formerly belonging to Job Thorp, now deceased, and afterward to Mootey Kinsey, and being the same premises conveyed by William McCoy and wife to Anson B. Moore in Augnst, 1886, which said farm was subject to a mortgage of five thousand dollars held by Thomas Jardine, Vreeland Jardine and Margaret E. Jardine.

2.—That although your orator, William R. Henninger, considered the said farm worth at least double the amount of the said mortgage in the summer of eighteen hundred and eighty-nine, on account of financial embarrassment he could not meet promptly the interest due on the mortgage and the holders began to press him for the payment of the principal sum secured by it, and your orator determined to place said farm in market, and for that purpose employed one J. W. Taylor, a real estate broker doing business in the City of New York, and subsequently on his removal from the city he employed one Josiah Taylor, the father of said J. W. Taylor, who was also a real estate broker in said City of New York, who in some way brought the matter to the notice of one Charles E. Heald, who was also professed to be a real estate agent or broker, and to be the agent of Abraham B. Dupuy of the City of Brooklyn, and who, as said Heald represented, owned a farm known as the Blanchard place, and was situated in Middle Smithfield township, in the County of Monroe, in the State of Pennsylvania, which he was anxious to dispose of, and which, as said Heald stated, was subject to a mortgage of three thousand dollars bearing interest at five per cent. per annum.

3.—That said Heald, acting professedly as the agent

of said Abraham B. Dupuy, proposed to said Josiah Taylor, the agent of your orator, William R. Henninger, to exchange the said Blanchard place for your orator's, said McCoy farm, and after considerable negotiation your orator was induced to enter into a written agreement with said Heald, as agent, as he claimed of said Dupuy, on the sixteenth day November, A. D. eighteen hundred and eighty-nine, by which your orator agreed to convey the said McCoy farm to said Abraham B. Dupuy, or his assigns, by a warranty deed and free from all encumbrances, except the aforesaid Jardine mortgage of five thousand dollars, and the interest thereon, and subject also to such taxes as might be a lien thereon; and also to pay to said Dupuy the sum of three hundred dollars in cash in fifteen days thereafter, and the further sum of one hundred dollars in six months; and the said Heald as agent, as he claimed, of said Dupuy, agreed that said Dupuy would deliver to your orator, William R. Henninger, a warranty deed, duly executed, for the Blanchard place, free from all encumbrance, except a mortgage thereon then existing for three thousand dollars, and interest at five per cent. from the first day of November, A. D. eighteen hundred and eighty-nine, together with such taxes as might then be a lien on said farm.

4. That at the time said written agreement was signed, on the sixteenth day of November, A. D. eighteen hundred and eighty-nine, your orator, William R. Henninger, gave to said Heald his promissory note for three hundred dollars, payable in fifteen days after date, for the cash payment he was then to make, and said note was afterwards paid, and that he also gave to said Heald his promissory note for one hundred dollars, payable in four months after date, as provided in said written agreement and in the month of December in the year aforesaid your orator delivered to said Heald (through his agent said Josiah Taylor) a warranty deed duly executed by himself and

wife to said Abraham B. Dupuy for the said McCoy farm subject to the aforesaid mortgage of five thousand dollars and such taxes as might be found to be a lien thereon, and said Taylor as your orator's agent received from said Heald a deed, executed or purporting to be executed by said Dupuy for the Blanchard place and describing said lands as subject to a mortgage for three thousand dollars bearing five per cent. interest as provided in said written agreement, and before the exchange of deeds your orator William R. Henninger paid to said Heald a further sum of sixty-six dollars which he had received in advance for rent of the McCoy farm.

5.—And your orators further show that during all the negotiation which led to said exchange of property said Taylor acted as agent of your orator William R. Henninger, and your orator relied implicitly on said Taylor's representations and advice as said Heald well knew ; that at no time during said negotiations did your orator see said Dupuy though he fully believed said Dupuy to be in reality the owner of said Blanchard place and said Heald to be his agent, and he never for an instant suspected that either said Heald or said Taylor had any personal interest in said exchange beyond receiving the usual commissions for their services, and when said deeds were delivered he accordingly gave to said Taylor his promissory note for the amount of his commissions, but your orator, William R. Henninger, about the month of January, eighteen hundred and ninety-one, learned and charges the same to be true, that in fact said Dupuy had no interest in said Blanchard property, but simply held the legal title in trust for, or for the benefit of, and subject to the order of said Heald, and that said Heald was not in any sense the agent of said Dupuy in making said exchange, and that said Dupuy was and is utterly impecunious ; that while said negotiations for said exchange were pending, said Heald and Taylor entered into an agreement that

they would use their efforts to induce your orator, William R. Henninger, to make such exchange on terms proposed by said Heald, and that after the exchange was completed and the McCoy farm should be conveyed to said Dupuy, (who it was agreed was to hold the title for the benefit of said Heald and Taylor and subject to their order, or the order of said Heald), they would unite their efforts to dispose of said farm, contributing jointly to such expenses as might become necessary, and that they should share equally in whatever might be realized on such disposition over and above the amount required to pay the said Jardine mortgage; and in fact the three hundred dollars paid to said Heald on said exchange, as hereinbefore stated, together with the further sum of sixty-six dollars, which had been received for rent in advance and which was also paid to said Heald on his demand, was divided between said Heald and said Taylor in pursuance of their said agreement, and no part thereof was paid to said Dupuy. That said Taylor thereafter claimed to have under said agreement some interest in said McCoy farm, and by some transfer, assignment or other means, gave to one J. B. Taylor a part of his said interest as your orators are informed, who thereafter claimed to be in some way interested in said farm, and such interest was recognized by said Heald.

6.—And your orators further show that the mortgage on the said Blanchard farm subject to which said farm was conveyed to your orator William R. Henninger, instead of being for the sum of three thousand dollars at five per cent. interest was for thirty-six hundred dollars bearing six per cent. interest; and your orators are advised and claim that by reason of such misrepresentations and especially by reason of the fraudulent agreement between said Heald and said Taylor as aforesaid, under which your orator William R. Henninger was induced to convey his said farm to Dupuy as herein stated, your said orator is justly entitled to have the conveyance made by him of said McCoy farm to

said Abraham B. Dupuy rescinded, and to have said property re-conveyed to him—that the effect of said conveyance was in equity to constitute said Dupuy a mere trustee for your said orator, and that such trusts so attached to and inhered in said farm in the hands of said Dupuy and any person to whom he might convey the same unless such conveyance should have been made to a *bona fide* purchaser for a valuable consideration and without notice, and that it especially affected the title to said farm when it was conveyed by said Dupuy to said Heald, as hereinafter stated.

7.—Your orators further show that they are informed and believe it to be true that sometime in the year eighteen hundred and eighty-nine, but whether before or after the conveyance of said McCoy farm to said Dupuy, they do not know, Thomas Jardine, Vreeland Jardine and Margaret E. Jardine, holders of the five thousand dollar mortgage on said farm, commenced proceedings to foreclose said mortgage and in due time obtained a decree in this Honorable Court, and under an execution issued on said decree the Sheriff of the County of Middlesex advertised the said farm in the month of July, A. D., eighteen hundred and ninety, and the same was sold to Thomas Jardine, who purchased for himself and his said co-complainants. That in the month of June prior to said sale, as your orators are informed and charge to be true, said Heald had procured said Abraham B. Depuy to convey to him, the said Heald, the equity of redemption in said farm for the nominal consideration of one dollar, that said Heald having procured a deed from said Depuy he personally or by his counsel attended said Sheriff's sale and there entered into an agreement with the said complainants, the said Jardines, by which they were to be permitted to bid off said farm for a less sum than the amount due on said decree, and said Heald was to have the right to redeem the same at any time within thirty days by payment to said Jardines of the amount due on the said decree with interest and costs of sale; that

under said agreement said Thomas Jardine bid off the farm for the sum of four thousand dollars, a sum much less than the amount due on the said decree, and a deed was made to him therefor by the said Sheriff; that within the said thirty days said Heald tendered to said Thomas Jardine or one of the said mortgagees the full amount due on said decree, including the interest and costs and costs of said sale, and demanded a conveyance to him of said McCoy farm; that said Jardines declined to accept said tender or to permit such redemption, or to make any reconveyance to said Heald, who thereupon filed his bill in this Honorable Court against said Jardines to enforce said agreement for redemption of said farm, and such proceedings were thereon had that in the month of March, A. D. eighteen hundred and ninety-one said Heald's right of redemption of said farm was sustained, and a decree to that effect and requiring a conveyance thereof to him by said Jardines was ordered, but for reasons unknown to your orator such decree has never been filed, although counsel of your orator, William R. Henninger, has repeatedly requested said Heald's counsel to have such decree placed on file.

8.—Your orators further show that they are advised, and they respectfully insist that when said Dupuy conveyed to said Heald the equity of redemption in said McCoy farm, as herein stated, said Heald became thereby a trustee for your orator, William R. Henninger; that the agreement made by him with said Jardines giving him the right to redeem said farm on payment of the amount due to said Jardines enured to the benefit of said William R. Henninger, and said Jardines, or said Thomas Jardine, became thereby a trustee for him, and the tender of the amount due said Jardines within the time agreed on secured to said Henninger the right to redeem said farm, and that the adjudication by this Honorable Court establishing such right of redemption in favor of said Heald was an adjudication to all intents and purposes in favor of your

orator William R. Henninger, and, if necessary for his protection, this Honorable Court will compel said Heald to have a decree in conformity to said decision placed on file, or will permit your said orator to have said decree drawn and filed.

9.—Your orators further show that your orator William R. Henninger first learned of the said fraudulent agreement between said Heald and said Taylor and of the fraud practiced on him by them in the month of January in the year one thousand eight hundred and ninety one; that he was informed at the same time of the pendency of the said cause hereinbefore referred to between said Heald and said Jardines for the redemption of the said McCoy farm; that he made preparation at once to assert his claim against said Heald as soon as said cause should be decided, if said Heald's alleged right of redemption should be thereby sustained, and as soon as he was informed of the decision of said cause, which was in the latter part of the month of March, A. D. eighteen hundred and ninety-one, he caused his bill to be filed in this Honorable Court against said Heald, praying that said Heald might be decreed to have been a trustee for him by reason of the fraud practiced on him; that the deed made by him to said Dupuy might be set aside and the said McCoy farm reconveyed to him; that afterward a supplemental bill was filed against said Heald, the said Jardines, Gordon Chambers and the Port Reading Railroad Company, which bill has recently been dismissed for the want of necessary parties—your orator William R. Henninger's claim not having been heard or disposed of on its merits.

10.—Your orators further show that at the time said Heald filed his bill as hereinbefore stated against said Jardines he also filed with the Clerk of the County of Middlesex a notice of the pendency of his said cause; that your orator William R. Henninger also, as soon as his bill against said Heald was filed in this Court, filed with the said

Clerk of Middlesex County a notice according to the requirements of the law of the pendency of his said cause and that he also, immediately after filing his said bill and before the execution and delivery of the conveyance hereinafter mentioned, made by said Thomas Jardine for said McCoy farm, caused said Thomas Jardine, Vreeland Jardine and Margaret E. Jardine to be notified of his claim to said McCoy farm, as set out in his said bill, and that he had filed his bill against said Heald to enforce said claim, and yet with full notice of the decision of this Honorable Court in favor of said Heald, as hereinbefore mentioned, and of the filing of the said notices with the Clerk of Middlesex County, and with full notice of the claim of your orator, William R. Henninger, to said McCoy farm, and that his bill had been filed to enforce the same as herein stated, said Thomas Jardine, acting for himself and also for said Vreeland Jardine and Margaret E. Jardine, and with their consent, conveyed a portion of said McCoy farm in the month of May, in the year last aforesaid, containing about eighteen acres, to the Port Reading Railroad Company, a corporation organized under the laws of this State, for the sum of twelve thousand dollars, and at or about the same time conveyed the remainder of said farm to one Gordon Chambers, of Philadelphia, in the State of Pennsylvania, for the sum of ten thousand dollars, said Chambers being, as your orators charge, an employee of said Railroad Company, and taking said conveyance in trust for said Company, which paid the whole purchase money of twenty-two thousand dollars to said Thomas Jardine at or about the time of the delivery of the deed. That said Port Reading Railroad Company before the purchase of said property from said Jardines and before receiving said deeds or paying the purchase money, knew of the pendency of the cause between said Heald and said Jardines and of the decision of this Honorable Court therein, and also knew, or had notice of the claim made to said McCoy farm by your orator William R. Henninger, and of the filing of the

said notices hereinbefore referred to, by said Heald and your orator with the Clerk of Middlesex County; that said Thomas Jardine exacted, and said railroad company gave, to said Jardines as one of the conditions of said conveyances its bond of indemnity against any claim which said Heald or your orator should make upon said McCoy farm.

11.—That your orators have found on the record of deeds of Middlesex County a deed of bargain and sale dated and acknowledged on the nineteenth day of April, 1892, by which said Gordon Chambers conveyed to one Ferdinand E. Canda the tract first herein described as part of the McCoy farm in consideration of ten thousand dollars, but your orators charge that before said conveyance was made and before the purchase money was paid said Canda knew, or had some notice of the claim herein made by said William R. Henninger, or that he made some claim to said lands.

12.—Your orators further show that when your orator William R. Henninger accepted the deed as hereinbefore stated from said Dupuy for the Blanchard property, he fully believed that the same was subject to a mortgage for only three thousand dollars bearing five per cent. interest as provided in the written agreement between your said orator and said Heald as agent of said Dupuy as he claimed, but after he had accepted said deed he found to his great surprise that the mortgage was executed by said Dupuy to Leon F. Blanchard for thirty-six hundred dollars and bore interest at six per cent.; that by reason of losses sustained by your said orator in his business, he became financially embarrassed and was unable to pay said mortgage or to pay the interest which became due thereon, and in consequence thereof one Mary R. H. Meyer, claiming to be the assignee of said mortgage, obtained a judgment for the thirty-six hundred dollars, the principal, and three hundred and twenty-four dollars for interest in the Court of Com-

mon Pleas of Monroe County, in the State of Pennsylvania, under which said property was sold and was purchased by said Mary R. H. Meyer, and has therefore passed beyond the control of your orators; that on account of his said losses your said orator, William R. Henninger, found himself unable to provide the necessary money to carry on a prosecution to set aside the said conveyance by him of the McCoy farm to said Dupuy, and the conveyance by said Dupuy to said Heald and to induce his co-complainant to make such advances of money as might become necessary, and to secure him for the same, and for such services as he might render in such prosecution, he assigned to his said co-complainant an interest in his said claim, and in said land if the same shall be recovered, so that your said orators have a joint interest in said claim.

13.—To the end therefore that the said Charles E. Heald, Abraham B. Dupuy, Josiah Taylor, Jane B. Taylor, Thomas Jardine, Vreeland Jardine and Margaret E. Jardine, The Port Reading Railroad Company, Gordon Chambers and Ferdinand E. Canda may (but not under oath, an answer under oath being waived,) severally, full and direct answer make to all and singular the premises, as fully and particularly as if the same were here again repeated and they interrogated thereto, and more especially and particularly that said Abraham B. Dupuy may state whether he at any time, and if so, when, and at whose request, executed a deed to William R. Henninger for a tract of land situate in Middlesmithfield Township, in the State of Pennsylvania, and what consideration he received for such conveyance, and by whom the same was paid to him. Whether he at any time owned, or held the title to, the farm hereinbefore described, situate in Middlesex County, in this State, and known as the McCoy farm, if so, from whom and for what considertion paid, he received such title; whether Charles E. Heald acted as his agent in the procuring the title to said McCoy farm,

if so, when he became such agent and when his agency ceased, if it has ceased; whether it was created by parol or in writing, and what were its terms and whether said Heald had any interest in said farm while the said Dupuy held the title, and whether he conveyed said farm to said Heald at any time, and if so, when and for what consideration. That said Heald may answer whether said William R. Henninger did not pay to him three hundred and sixty-six dollars on the conveyance of said MCoy farm to said Dupuy, or what amount, if any, he did pay to him in cash, and what disposition he made of the same, how much, if any, was retained by him for his own use and why; whether any part was paid by him to said Josiah Taylor and, if any how much and for what reason it was so paid, and how much of it he paid to said Dupuy, if any.

14.—That the said Thomas Jardine, Vreeland Jardine and Margaret E. Jardine may also answer whether or not they have sold and conveyed part of said McCoy farm to said Gordon Chambers, and the remainder to the Port Reading Railroad Company, and if so, when said conveyances were executed and delivered, and for what consideration; when the purchase money was paid to them, and by whom and how paid, and whether before said conveyances were made they did not know that this Court had delivered its decision in the suit brought by said Heald against them, to the effect that said Heald was entitled to redeem said McCoy farm by paying to them the amount of the decree in the foreclosure suit hereinbefore mentioned, with the interest and costs. Whether they communicated said decision or the pendency of said suit to the purchasers of said farm or either of them, their attorney or agents, and if not, why not; whether they did not know or had not heard before said conveyances were executed, or before the purchase money was paid, that said William R. Henninger had made some claim to said McCoy farm and had filed his bill against said

Heald in this Court alleging that the deed or title of said farm had been procured from him by the fraud of said Heald and said Tavlor; and whether he communicated such information to the said grantees, and if not, why not; and whether before said conveyances were executed and delivered, and as part of the consideration therefor they did not require said grantees or either of them to give to them, the said grantors, an agreement in writing to indemnify them against the claim of said Heald, or against the claim of said Henninger, and if such indemnity was given that they may state by whom said agreement was made and set it out fully in their answer and state why they demanded it.

15.—And that said Port Reading Railroad Company and said Gordon Chambers may answer whether said conveyance to said Chambers was, or was not, made to him said Chambers at the request of, and in trust for, said company; whether it did not pay the purchase money; when and in what way and to whom the purchase money mentioned in each of said deeds was paid; whether said company did not, before the delivery of said deeds and the payment of the purchase money know of the pendency of the said suit by said Heald against said Jardines, and whether it did not know or had not heard of the decision in said suit, that said Heald had a right to redeem said McCoy farm, as hereinbefore stated; and whether they had not heard that said Henninger claimed that the title to said farm had been procured from him by said Heald and Taylor, or by said Heald, by fraud, and that he had filed his bill in this Court to enforce his said claim, or some claim, in said farm; whether it did not give to said Jardines to procure the conveyances of said McCoy as before stated, its bond of indemnity, agreeing to indemnify them against any claim made, or that might thereafter be made, against them by either said Heald or said Henninger and arising out of said conveyances. That they may also answer whether or not

the conveyance hereinbefore mentioned has been made by said Chambers to said Ferdinand E. Canda, and, if so, for what price, and when, to whom and in what manner said consideration money was paid; whether said conveyance was made by consent or request of said Port Reading Railroad Company. Whether either of said parties communicated to said Canda the fact that either said Heald or said Henninger made any claim to said lands and if so, what they did communicate to him on that subject. If no communication was made to said Canda in reference to said claim, why it was not made. Whether said company has now any interest in said land, and if so, what. Whether said company gave to said Canda any assurance or agreement, either by parol or in writing to indemnify him against any defect in the title or any claim against said lands, and if so, what the agreement was.

16.—That said Ferdinand E. Canda may also answer when said deed was delivered to him, and when the purchase money was paid, and how much was paid, and to whom and in what manner. Whether before the payment of the purchase money he had not heard that there was or had been some claim made to said lands by either said Heald or said Henninger, and what he had heard on that subject, or in reference to any alleged defect of the title of said Gordon Chambers. Whether he had any examination of the title made before said conveyance, and if so, by whom; and whether said Port Reading Railroad Company has now any interest in said lands, and if any what, and whether said company gave to him by parol or in writing, any agreement to protect or indemnify him against any claim which had been made or might be made to said land by either said Heald or said Henninger, and if so what said agreement was.

And that the conveyance of the said McCoy farm by your orator William R. Henninger to said Abraham B. Dupuy may be decreed to have been procured from

him by fraud, and that he is entitled to have the same rescinded and said farm reconveyed to him subject to the lien of the mortgage held by said Jardines; that it may also be decreed that by the conveyance of said McCoy farm to said Charles E. Heald by said Abraham B. Dupuy, said Heald became in equity a trustee of said William R. Henninger; that under and by reason of the agreement between said Heald and said Jardines hereinbefore mentioned, said William R. Henninger became entitled to redeem said farm after said sheriff's sale on payment to said Jardines of the amount due to them on their said decree, and said Jardines thenceforth held the title to said farm in trust for your orator, William R. Henninger; that said Jardines conveyed the said farm to said Port Reading Railroad Company and Gordon Chambers, and said Chambers conveyed to said Ferdinand E. Canda, with full knowledge or with notice, on the part of both grantors and grantees of the equitable rights and claim of said William R. Henninger; and that your orator, William R. Henninger, may be declared to be entitled to redeem said farm on the terms of the said agreement between said Heald and said Jardines; and said the Port Reading Railroad Company and Gordon Chambers and Ferdinand E. Canda may be required to reconvey said farm to your orators or to said William R. Henninger on payment of said decree in favor of said Jardines, or, if for any reason, such reconveyance may be impossible, they may be required to account to your orators for the full value of said lands and at least the amount at which they were valued in the said conveyance of them, or, if for any reason the conveyance by said Jardines to said railroad company and said Gordon Chambers are held to be valid as against the claim of said William R. Henninger, that the said Thomas Jardine, Vreeland Jardine and Margaret E. Jardine may be decreed to pay over to your orators all the purchase money received by them on the sale of said farm after deducting the amount due to them on said mortgage of five thousand dollars held by them on

said farm, or on the aforesaid decree of foreclosure, and your orators may have such other and further relief in the premises as the circumstances of the case may require as to your Honor may seem meet.

May it please your Honor the premises considered to grant unto your orators the State's Writ of Subpoena issuing out of and under the seal of this Honorable Court, to be directed to the said Charles E. Heald, Abraham B. Dupuy, Josiah Taylor, Jane B. Taylor, Thomas Jardine, Vreeland Jardine, Margaret E. Jardine, the Port Reading Railroad Company, Gordon Chambers and Ferdinand E. Canda, commanding them and each of them by a certain day and under a certain penalty therein to be expressed to be and appear before your Honor in this Honorable Court, then and there to answer all and singular the premises and to stand to, abide by and perform such order and decree therein as to your Honor shall seem meet and shall be agreeable to equity and good conscience, and your orators will ever pray, etc.

THEO. LITTLE,
Sol. for and of Counsel with Complainants.

IN CHANCERY OF NEW JERSEY.

Between
WILLIAM R. HENNINGER & al,
Complainants,
AND
CHARLES E. HEALD & others,
Defendants.

On Bill, &c. Demurrer & Answer.

The demurrer of Charles E. Heald, one of the defendants, to the bill of complaint of William R. Henninger and Stephen H. Little filed June 14 last

past, and also the answer of the said Charles E. Heald to the said bill :

This defendant by protestation, not confessing all or any of the matters in the complainant's bill to be true in such manner and form as therein alleged, doth demur to said bill, and says that the complainants have not made or stated such a case as entitled them in a court of equity to any discovery from the defendant, or any relief against him, as to the matters set forth in said bill, or any of said matters, and for further cause of demurrer he shows that said bill does not set forth what interest the said complainant Little had in said action, nor when and how acquired, nor set forth any contract with said Little in such certainty as can be considered by a court of equity, and for further cause of demurrer, the said defendant shows that the pretended cause of action set forth in said bill is such as cannot lawfully be assigned, and that such assignment is unlawful and vitiated any pretended equities of the complainant, so that they will not be considered by a court of equity nor relief granted thereon.

And for further cause of demurrer this defendant says that it appears by said bill that the Blanchard place, conveyed to said Henninger as therein alleged, has been sold to other parties and is not in the complainants' possession or control and could not be returned by them, and that the parties could not be replaced by a Court of Equity in the original position, and that the complainants have no claim to the rescission of the exchange set forth in said bill in a Court of Equity, but must seek their relief for any pretended fraud alleged in said bill in a Court of law.

And for further cause of demurrer, this defendant says, that it appears by said bill that as early as March, eighteen hundred and ninety-one, said Henninger filed his bill in this Court, praying substantially the same relief as by the bill in this cause prayed, and that said bill was dismissed for the want of necessary parties, and this defendant is advised and charges that such dismissal is upon the merits, that under the practice of

this Court any necessary parties could have been brought in, and that this Court will not entertain a new suit for the same cause of action.

And for further cause of demurrer, this defendant says that it appears by said bill that the complainants could have brought their bill herein at least as early as the said original suit by said Henninger, and that the complainants claim them to have known all that is alleged by them as foundation for the rescission of said exchange of lands, and that on their own allegations they are in laches for more than a year and that the interest of purchasers have intervened and this Court will not entertain any action for such recission, but will leave the complainants to their remedy, if any, at law.

And for further cause of demurrer this defendant says that it appears by said bill, that the same is exhibited against this defendant and the several other defendants therein named, for distinct matters and causes, in several whereof as appears by said bill, this defendant is not in any manner interested or concerned, and that the said bill is altogether multifarious.

And for further cause of demurrer this defendant shows that this bill on its face is supplemental to the suit formerly brought by said Henninger and claims so to be, and that the proceedings in said former suit should have been set forth and the pleadings therein and make part of the record hereln, so that the defendants herein might fully have the benefit of the same according to the practice of this Court in such cases.

Wherefore and for divers other good causes of demurrer appearing in said bill this defendant doth demur thereto and humbly prays the judgment of this Honorable Court, whether he should be compelled to make any answer thereto. And prays to be hence dismissed with his costs, and charges in this behalf most wrongfnlly sustained.

And this defendant, subject to said above demurrer and the judgment of this Court thereon, this defendant an-

swering, but without oath, as prayed by said bill, says that in said bill filed by said Henninger above-mentioned in March, 1891, and on a supplemental bill filed by said Henninger thereon, this defendant has made full, true and complete answer to most of the matters set forth in this bill, and all matters concerning the exchange made with said Henninger, and that said bill and supplemental bill have been dismissed and he prays reference to the files and record of said action, and that the same be taken as part hereof, and that the defendant may have the benefit herein of his answer filed as aforesaid.

And this defendant admits the first paragraph of said bill that in November, 1889, said Henninger held the equity of the McCoy farm, subject to mortgage held by the defendants Jardine, and says that interest thereon had not been paid for over a year, that foreclosure was ordered, and that the farm was hardly worth the mortgage, was uncultivated and the buildings small and dilapidated and rented as a tenement house at sixteen dollars a month.

2.—This defendant believes and admits that said Henninger employed one Josiah Taylor as real estate agent to sell said farm, who approached this defendant, representing that he had authority to sell or exchange said farm. That this defendant was then agent of the owner of the Blanchard place mentioned in said bill, said property being in the name of Abraham B. Dupuy, but really held at that time for one Mary Pratt.

This defendant denies that he represented that said property was subject to a mortgage of three thousand dollars bearing interest at five per cent., and says that not only in the negotiations with Taylor preceding the agreement for said exchange, but also at the time of signing said agreement, which was the only time that he met said Henninger; he told said Taylor and then told said Henninger that the face of said mortgage was three thousand six hundred dollars, but that it had been

agreed between this defendant and C. W. Meyer of Philadelphia, the owner of said mortgage, that when any purchaser of said property should pay his first six months' interest the said Meyer would give a stipulation that said mortgage should be reduced to three thousand dollars, with interest at five per cent. per annum, and would so indorse the bond, and this defendant says that said Meyer had so agreed with this defendant.

3.—And this defendant says that to the best of his recollection said Taylor first proposed the exchange of the Blanchard place for the McCoy farm, and that after considerable negotiation a written agreement was made between said Henninger and this defendant, as agent for the owner of the Blanchard farm, as then held in the name of said Dupuy, about November sixteenth, eighteen hundred and eighty-nine, substantially to the best of defendant's recollection, as set forth in the third paragraph of said bill, but this defendant having no copy thereof prays inspection and proof thereof for greater certainny.

4.—And this defendant admits that at the signing thereof said Henninger gave defendant a fifteen-day note for three hundred dollars, which was paid, and a four months note for one hundred dollars, which was never paid, and that deeds were thereupon exchanged, and that said Henninger, about that time, accounted for sixty-six dollars advance rents received by him from the McCoy farm.

5.—And this defendant admits that said Henninger did not see Depuy in the matter but bargained with this defendant, as agent of the owner of the premises, and that Taylor acted only as said Henninger's agent, this defendant so understood him to act, and this defendant denies that there was then any understanding or agreement between said Taylor and this defendant that said Taylor was to be in any way interested in the McCoy farm, or that Taylor had any interest in

the matter except his commissions for negotiating the exchange. And as to the allegation in said bill that the complainant, much to his surprise, had learned in January, 1891, that said Depuy had no interest in said Blanchard property, but simply held the title in trust for said Heald, this defendant says that said Dupuy held the title at that time for said Mary Pratt; that afterwards, about the month of June, 1890, this defendant bought of said Mary Pratt her interest in said farm, which was subject to foreclosure and needed protection, and on the fourteenth day of said June, at her request, Abraham B. Dupuy conveyed this farm to this defendant by deed expressed, to be in consideration of valuable considerations and the sum of one hundred dollars, and this defendant says that said valuable consideration were moneys advanced by this defendant to said Mary Pratt, as well as expenses and services of this defendant for her in connection with said Blanchard property and the original purchase thereof by or for her.

And this defendant says that at the time of the exchange for the McCoy farm, said Dupuy did not in any way hold the title for this defendant, and this defendant likewise denies that while the negotiations for such exchange were pending any agreement was made as set forth in said bill or otherwise or in any way, by which this defendant and said Taylor should become jointly or severally interested in said McCoy farm or in the proceeds thereof, and he likewise denies that the money paid or agreed to be paid by said Henninger on said exchange was wholly or partly divided between them the said Heald and the said Taylor, and on the contrary thereof this defendant says that at the time of the said exchange it was understood that said Taylor should receive one hundred dollars as commissions out of the moneys that were paid, and that this was by the assent of said Henninger. And this defendant says that said Henninger knew of said payment of said one hundred dollars at the time that said agreement for the exchange was signed, and this de-

fendant says that all moneys received by him upon said exchange over and above said one hundred dollars paid said Taylor, were accounted for and paid to said Mary Pratt, this defendant taking as his commission the note of one hundred dollars made by said Henninger hereinbefore mentioned, and which has never been paid.

And this defendant further answering says that it is entirely untrue that said Josiah Taylor had any interest whatever in said McCoy farm at the time of said exchange, but defendant says that about a month afterwards, and about December 21st, 1889, said Taylor met this defendant and told him he had a man who would pay a large sum for the farm and had actually offered it, but that Henninger would not not take it; that said expected purchaser was ready to renew his offer, and this defendant thereupon authorized said Taylor to sell the farm at the price so named by him; that Taylor thereupon said he wished more than regular commission if he could sell said farm, which was then utterly unsaleable, and after some consideration it was agreed that if he used every effort and advanced one-half of all expenses necessary to effect a sale of said farm, that he should be paid one-half of the net proceeds as commission. And this defendant says that said Taylor continued to act as such agent for a few months, but that he effected no sale of the farm, and finally abandoned all effort on that behalf in the spring of the year eighteen hundred and ninety.

This defendant says that said agreement of said Taylor that he should so act as agent was taken by him in the name of J. B. Taylor, which this defendant then supposed was said Josiah Taylor, but which said Taylor afterwards claimed belonged to his wife as hereafter mentioned.

6.—And this defendant says that said mortgage on the Blanchard place was known at the time of said exchange to be for thirty-six hundred dollars, but it was understood that the holder

thereof would reduce the same to three thousand dollars upon payment of interest, and that there was no misrepresentation or fraud with reference to said mortgage, and that as late as the seventeenth day of June, after said exchange, the offer so to reduce said mortgage remained open, and he prays reference to the letters from said Henninger whereof copies are annexed to his answer to said Henninger's suit originally brought, and says that said Henninger paid and offered to pay no part of said mortgage, and allowed the property to be sold under foreclosure, and paid no part of the taxes thereof, and proved shortly after said exchange to be utterly irresponsible and insolvent, and he denies that there were any fraudulent misrepresentations or any fraudulent agreement between said Taylor and this defendant at the time of said exchange whereby said Henninger was induced to convey his farm to said Dupuy or that he or the complainants are entitled to any rescission of said sale, as against this defendant or any other person.

7. And this defendant says that it is true that foreclosure of the Jardine mortgage was begun about the time of said exchange; that final decreee for five thousand five hundred and thirty-nine dollars and sixteen cents, besides costs one hundred and thirteen dollars and twenty-nine cents was taken May 21st, 1890, in this Court; that under execution on said decree the said farm was advertised for sale July 17th, 1890 and that on that day the same was sold to Thomas Jardine purchasing for said mortgagees. And this defendant says that said sale was made under an oral agreement between the solicitor of said Jardines and this defendant's solicitor that this defendant might have a conveyance of said property from said purchaser at any time within thirty days upon payment to said Jardines of the amount of said decree with interest and cost of sale. And this defendant admits that he tendered said amount and demanded said conveyance, and that on refusal to make the same he immediately filed his bill in this

Court, and that an opinion was obtained in his favor about January, 1891.

And this defendant says that meanwhile and until the filing of said Henninger's bill in March, 1891, no demand or suggestion of demand was made by said Henninger that said exchange should be set aside, and no intimation was conveyed to this defendant of any such claim.

8.—And this defendant says that meanwhile in the summer of the year 1890, owing to the unexpected growth of the prosperity of the neighborhood, and the laying out of new railroads and terminals in that vicinity, the McCoy farm and all lands in that neighborhood suddenly advanced in value, and that as early as July, 1890, this defendant, through his solicitor, by written agreement, sold said salt meadow of said McCoy farm to one Elwood Byers, for five thousand four hundred dollars; that thereupon said Jardines refused to carry out their oral agreement and insisted that said Sheriff's sale had given them an absolute right in said property. And this defendant says that said agreement of said Elwood Byres was afterwards assigned to said Gordon Chambers who had the right to insist upon a performance thereof against this defendant.

And this defendant says that he is advised by counsel and insists that under said agreement said Elwoood Byers and his assigns were honest purchasers free from any alleged equity of the said William R. Henninger and his assigns, and he prays all benefit of this defence as if made by plea.

And this defendant further answering says that about the 20th day of November, 1890, and without any notice of any alleged claim of the said Henninger, this defendant by written agreement, signed by him, agreed to sell the remainder of said lands to one C. P. Hangian for the sum of ten thousand dollars to be paid as soon as this defendant could make clear title to said property. And this defendant says that said con-

tract and the benefit thereof, a duplicate whereof is in his possession ready to be produced and proved, gives to said C. P. Hangian a right in said property as an honest purchaser free from any claims of the said William R. Henninger and his assigns, and that said contract having been assigned to said Ferdinand E. Canda, title has been made in said Ferdinand E. Canda free of all claims of the said Henninger, and his assigns, and he prays all benefit of this defence as if the same had been made by way of plea.

9.—And this defendant further answering says, on information and belief, that this action is part of a fraudulent conspiracy between said Josiah Taylor and the said Henninger and others attempting to obtain a recission of said sale expressly on account of an alleged fraud by said Taylor upon said Henninger, but really for the benefit of said Taylor and his assigns. And this defendant says that in fact, said Josiah Taylor and Jane B. Taylor, his wife, on the 23d day of September, 1890, filed their bill against this defendant and said Jardines alleging that this defendant had an interest and equity of redemption of said premises from said Jardines, and that said Taylor was entitled to have the net proceeds of said property under the agreement constituting Josiah Taylor, agent, for the sale thereof hereinbefore set forth to which action this defendant filed an answer on January 17th, 1891, and that after various notices to speed said cause given by this defendant, the same was abandoned by said Taylor, and decree entered dismissing the cause; that said bill was filed by the complainant Little as the solicitor of said Taylor; that about March, 1891, the said complainant Little then being the solicitor of said Taylor, went to see said Henninger in Pennsylvania, informed him that said Taylor had been jointly interested with this defendant in the purchase of said property, and obtained from him, the said Henninger, as assignment of half his claim against this defendant to said Taylor and one-fourth to said Little, and on the same day

said Henninger signed an affidavit to his original bill of complaint that he had not known of any such agreement between said Taylor and this defendant. And this defendant says that these facts were testified to by said Henninger in his presence, on the trial of said bill and supplemental bill of complaint, said Henninger speaking of said Stephen H. Little as his solicitor. And this defendant says that to said original bill brought by said Henninger against this defendant, this defendant promptly filed an answer about the month of May, 1891; that in the summer and fall of that year this defendant pressed for a trial of this cause, so that he might carry out his agreement for the sale of said land; that said Henninger thereupon alleged that said Jardines had made the conveyances set forth in the tenth paragraph of the complainants' bill and asked for and obtained leave to file a supplemental bill against the purchasers under said conveyance, which bill was filed about October 7th, 1891, that thereupon after answer filed to said supplemental bill, said cause came on for trial before the Vice Chancellor on the 13th dayof April,1892,whereupon upon the cross-examination of said William R. Henninger, a witness produced for himself as complainant, the facts as to the assignment of his interest were obtained as hereinbefore stated; that thereupon upon the request of the complainant, the cause stood over until the 15th day of April last, so that the said complainant might make application, if he saw fit, to amend his bill by setting forth and producing said assignment and making the proper persons parties; that on said last day the complainant, Henninger, through his counsel, Theodore Little, asked leave to dismiss the suit, reserving the right to the complainant to file another bill, and that upon argument the Court refused permission to dismiss without prejudice, saying that he could not prevent the complainant taking an order dismissing his suit with costs and deciding that it was the duty of the complainant to make all parties defendants, so as to defend their rights, and thereupon the said complainant, William R. Henninger, through

his counsel, elected that an order be taken dismissing said bill and supplemental bill with costs, and said order was made, and this defendant says and charges that said action of said complainant was in abandonment of his claim in that regard, and prays all benefit of this defense as if made by way of plea.

And this defendant, further answering, says that the said complainant William R. Henninger has not paid to this defendant or to any of said defendants his costs of suit upon said bill or supplemental bill, and that he is not entitled to bring suit in this Court until said costs are paid, and he prays all benefit of this defence as if made by way of plea.

And this defendant further answering says that thereupon, there being no suits pending in regard to said property, the sale to Ferdinand E. Canda was closed by the deed mentioned in the eleventh paragraph of said bill, the Port Reading Railroad Company already having title to the lands sold to said Byers, and which had been bought in their interests, and he insists that thereby complete titles in said farm have vested in the persons to whom said deeds were made, and this defendant denies all unlawful combination or conspiracy in said bill charged, without this, that any other matter or thing therein set forth and necessary for this defendant to answer unto, is true to the knowledge or belief of this defendant, and this defendant prays to be hence dismissed with his costs of suit in this behalf most wrongfully sustained.

CORTLANDT & WAYNE PARKER,
Solicitors of Charles E. Heald, Def't,
Richard Wayne Parker, of Counsel.

New Jersey, }
Essex County. } ss. :

Richard Wayne Parker, being duly sworn according to law upon his oath, saith that the above demurrer is not intended for the purpose of delay, but is filed in good faith for the reasons therein set

forth, and that said Heald is out of the State of New Jersey.

R. WAYNE PARKER,

Sworn and subscribed before me this 22d day of October, 1892.

EDWARD KENNEY,
Master in Chancery.

I hereby certify that I have perused the bill in this cause, and am of opinion that the above demurrer is well founded in point of law.

RICHARD WAYNE PARKER,
Of Counsel.

IN CHANCERY OF NEW JERSEY.

Between—

WILLIAM R. HENNINGER, *et al.*,
Complainants,

AND

CHARLES E. HEALD and others,
Defendants.

The demurrer of Ferdinand E. Canda, one of the defendants, to the bill of complaint of William R. Henninger and Stephen H. Little filed June fourteenth last past, and also the answer of the said Ferdinand E. Canda to the said bill:

This defendant by protestation, not confessing all or any of the matters in the complainants' bill to be true in such manner and form as therein alleged, doth demur to said bill, and says that the complainants have not made or stated such a cause as entitled them in a court of equity to any discovery from this defendant,

or any relief against him as to the matters set forth in said bill or any of said matters, and for further cause of demurrer he shows that said bill does not set forth what interest the said complainant Little had in said action, nor when and how acquired, nor set forth any contract with said Little in such certainty as can be considered by a court of equity, and for further cause of demurrer the said defendant shows that the pretended cause of action set forth in said bill is such as cannot lawfully be assigned, and that such assignment is unlawful and vitiates any pretended equities of the complaint so that they will not be considered by a court of equity, nor relief granted thereon.

And for further cause of demurrer the defendant says that it appears by said bill that the Blanchard place, conveyed to said Henninger, as therein alleged, has been sold to other parties and is not in the complainants' possession or control and could not be returned by them, and that the parties could not be replaced by a court of equity in their original position, and that the complainants have no claim to the rescission of the exchange set forth in said bill in a court of equity, but must seek their relief for any pretended fraud alleged in said bill in a court of law. And for further cause of demurrer the defendant says that it appears by said bill that as early as March, eighteen hundred and ninety-one, said Henninger filed his bill in this Court, praying substantially the same relief as by the bill in this cause prayed, and that said bill was dismissed for the want of necessary parties, and this defendant is advised and charges that such dismissal is upon the merits; that under the practice of this Court any necessary parties could have been brought in, and that this Court will not entertain a new suit for the same cause of action.

And for further cause of demurrer this defendant says that it appears by said bill that the complainants could have brought their bill herein at least as early as the said original suit by said Henninger, and that the complainants claim then to have known all that is al-

leged by them as foundation for the rescission of said exchange of lands, and that on their own allegations that they are in laches, and the interest of purchasers have intervened, and this Court will not entertain any action for such rescission, but will leave the complainants to their remedy, if any, at law.

And for further cause of demurrer, that it appears by said bill that the same is exhibited against this defendant and the several other defendants therein named for distinct matters and causes, in several whereof, as appears by said bill, this defendant is not in any manner interested or concerned, and that the said bill is altogether too multifarious.

And for further cause of demurrer this defendant shows that this bill, on its face, is supplemental to the suit formerly brought by said Henninger, and claims so to be, and that the proceedings in said former suit should have been set forth and the pleadings therein and made part of the record therein, so that the defendants herein might fully have the benefit of the same, according to the practice of this Court in such cases.

Wherefore, and for divers other good causes of demurrer appearing in said bill, this defendant doth demur thereto and humbly prays the judgment of this honorable Court whether he should be compelled to make any answer thereto, and prays to be hence dismissed with his costs and charges in this behalf most wrongfully sustained

And this defendant, subject to said above demurrer and the judgment of this Court thereon, this defendant answering, but without oath, as prayed by said bill, says that this defendant admits the first paragraph of said bill, that in November, 1889, said Henninger held the equity of the McCoy farm, subject to mortgage held by the defendants Jardine, and he says that interest thereon had not been paid, and that foreclosure was ordered, and that the farm was then not worth the mortgage.

This defendant has no knowledge whatever as to the

transactions between said Heald and said Henninger or his agent, Taylor, except that the said McCoy farm was duly conveyed by said Henninger to said Dupuy, mentioned in said bill, and by said Dupuy to said Heald. And this defendant denies that any fraud whatever was practiced by said Heald on said Henninger, and leaves the complainants to make such proof of their allegations in this regard as to them may seem advisable.

And this defendant says that it is true that foreclosure of the Jardine mortgage was begun about the time of said exchange; that final decree for five thousand five hundred and thirty-nine dollars and sixteen cents, besides costs one hundred and thirteen dollars and twenty-nine cents was taken May 21st, 1890, in this court; that under execution on said decree the said farm was advertised for sale July 17th, 1890, and that on that day the same was sold to Thomas Jardine, purchasing for said mortgagees.

And this defendant says he believes that said sale was made under an oral agreement between the solicitor of said Jardines and said Heald's solicitor, that said Heald might have a conveyance of said property from said purchaser at any time within thirty days upon payment to said Jardines of the amount of said decree, with interest and costs of sale.

And this defendant believes that said Heald tendered said amount and demanded said conveyance, and that on refusal to make the same he immediately filed his bill in this court, and that an opinion was obtained in his favor about January, 1891.

And this defendant believes and says that meanwhile, and until the filing of said Henninger's bill in March, 1891, no demand or suggestion of demand was made by said Henninger that said exchange should be set aside, and no intimation was conveyed to any one of any such claim.

And this defendant says that meanwhile, in the summer of the year 1890, by reason of new railroads and

terminals in that vicinity, the McCoy farm advanced in value, and about the 20th day of November, 1890, and without any notice of any alleged claim of the said Henninger, said Heald, by written agreement, signed by him, agreed to sell all said lands, except the salt meadow tract, to one C. P. Hangian for the sum of ten thousand dollars, to be paid as soon as said Heald could make title to said property as against said Jardines.

And this defendant says that said contract and the benefit thereof, a duplicate whereof is in his possession, ready to be produced and proved, gives to C. P. Hangian a right in said property as an honest purchaser, free from any claims of the said William R. Henninger and his assigns, and that said contract has been assigned to this defendant, Ferdinand E. Canda, and that title has been made in this defendant free of all claims of the said Henninger and his assigns, and he prays all benefits of this defense as if the same had been made by way of plea.

And this defendant, further answering, says, on information and belief, that this action is part of a fraudulent conspiracy between said Josiah Taylor and the said Henninger and others attempting to obtain a rescission of said sale expressly on account of an alleged fraud by said Taylor upon said Henninger, but really for the benefit of said Taylor or his assigns.

And this defendant says that, in fact, said Josiah Taylor and Jane B. Taylor, his wife, on the 23d day of September, 1890, filed their bill against said Heald and said Jardines, alleging that this defendant had an interest and equity of redemption of said premises from said Jardines, and that said Taylor was entitled to have the net proceeds of said property under an agreement constituting Josiah Taylor agent for the sale thereof hereinbefore set forth, to which action answer was filed, and that after various notices to speed said cause the same was abandoned by said Taylor and decree entered dismissing the cause; that said bill was filed by the complainant, Little, as the solicitor of said

Taylor; that about March, 1891, the said complainant, Little, then being the solicitor of said Taylor, went to see said Henninger in Pennsylvania, informed him that said Taylor had been jointly interested with this defendant in the purchase of said property, and obtained from him (the said Henninger) an assignment of half his claim to said Taylor and one-fourth to said Little, and on the same day said Henninger signed an affidavit to his original bill of complaint.

And this defendants says that these facts were testified to by said Henninger on the trial of said bill and supplemental bill of complaint, said Henninger speaking of said Stephen A. Little as his attorney.

And this defendant says that to said original and supplemental bill brought by said Henninger the defendants promptly filed answers, and that finally said cause came on for trial before the Vice Chancellor, on the 13th day of April, 1892, whereupon, upon the cross-examination of said William R. Henninger, a witness produced for himself, as complainant, the facts as to the assignment of his interest were obtained as hereinbefore stated, that thereupon upon the request of the complainant the cause stood over until the 15th day of April last, so that the said complainant might make application if he saw fit, to amend his bill by setting forth and producing said assignment and making the proper persons parties; that on said last day the complainant Henninger, through his counsel, Theodore Little, asked leave to dismiss the suit, reserving the right to the complainant to file another bill, and that upon argument the Court refused permission to dismiss without prejudice, saying that he could not prevent the complainant taking an order dismissing his suit with costs and deciding that it was the duty of the complainant to make all parties defendants so as to defend their rights, and thereupon the said complainant, William R. Henninger, through his counsel, submitted to an order dismissing said bill and supplemental bill with costs, and this defendant says and charges that said action of said complainant was in abandonment of his claim in that re-

gard, and prays all benefit of this defence as if made by way of plea.

And this defendant, further answering, says that the said complainant, William R. Henninger, has not paid to the said defendants his costs of suit upon said bill or supplemental bill, and that he is not entitled to bring suit in this Court until said costs are paid, and he prays all benefit of this defence as if made by way of plea.

And this defendant, further answering, says that thereupon, there being no suits pending in regard to said property, the sale to this defendant Ferdinand E. Canda was closed by the deed mentioned in the eleventh paragraph of said bill, and he says that he is an honest purchaser of said lands, and has paid therefor, and that he he holds the title not only under said agreement to purchase from said Heald, but by deed from said Gordon Chambers; holding the title of said Jardines, and he says that his statement of said former Henninger suits is derived from his present solicitor; that at the time of the agreement of said Hangian with said Heald said Hangian and this defendant had no notice of any claim by said Henninger and that up to the time he took said deed he had no notice whatever of any claim by said Henninger against said lands and the title thereto held by said Chambers, or at all, except that there had been some litigation which had been dismissed.

And this defendant was advised that the title offered him was clear on the record, and that no suits were pending against said property and that the defendant was bound to accept said title and to pay therefor, which this defendant did.

And this defendant denies all unlawful combination or conspiracy in said bill charged, and prays to be hence dismissed with his costs of suit by him in this behalf most wrongfully sustained.

CORTLANDT & WAYNE PARKER,
Solicitors of Ferdinand E. Canda, Defendant.

R. WAYNE PARKER,
Of Counsel.

New Jersey, Essex County, ss. :

R. Wayne Parker, solicitor of F. E. Canda, being duly sworn according to law upon his oath, saith that the above demurrer is not intended for the purpose of delay, but is filed in good faith for the reasons therein set forth.

R. WAYNE PARKER.

Sworn and subscribed before me this 22d day of October, 1892, before me

Edward Kenny,
Master in Chancery.

I hereby certify that I have perused the bill in this cause and am of opinion that the above demurrer is well founded in point of law.

R. Wayne Parker,
of Counsel.

May 27th, 1893, an order was entered overruling demurrer of Ferdinand E. Canda.

May 27th, 1893, an order was entered overruling demurrer of Charles E. Heald.

IN CHANCERY OF NEW JERSEY.

Between--

WILLIAM R. HENNINGER and STEPHEN H. LITTLE,
Complainants,

And

CHARLES E. HEALD and Others,
Defendants.

On Bill, &c. Answer of Defendants Thomas Jardine and others.

The joint and several answer of Thomas Jardine, Freeland Jardine and Margaret E. Jardine, to the Bill of Complaint of William R. Henninger and Stephen H. Little, complainants :

These defendants and each of them, reserving all proper exceptions, for answer to said bill or so much thereof as they are advised is necessary or material for them or either of them to answer, say ; that they admit that in the month of November, eighteen hundred and eighty-nine, the complainant Henninger was the owner in fee simple of the farm called in said bill The McCoy Farm, situate in Woodbridge Township, Middlesex county, subject to a mortgage held by these defendants, given to secure the sum of five thousand dollars with interest, and that the complainant, William R. Henninger, and Lizzie, his wife, by deed dated on or about December nineteenth, eighteen hundred and eighty-nine, conveyed the said McCoy farm to one Abraham B. Dupuy, subject to said mortgage; but these defendants say that they and each of them are strangers to all the matters set out in said bill in relation to the circumstances of the sale of the said property by the complainant Henninger to the said Abraham B. Dupuy and the conveyance aforesaid ; and they are also strangers to

all the dealings and transactions set out in the second, third, fourth, fifth and sixth paragraphs of said bill between the said complainants Henninger, J. W. Taylor, Josiah Taylor, Charles E. Heald and Abraham B. Dupuy, or between any of them, in reference to the sale or exchange of said property and have no personal knowledge or information as to any of said matters and cannot answer as to the same.

These defendants, further answering, admit and say that, as they are informed, on or about December nineteenth, eighteen hundred and eighty-nine, by deed dated on that day the said Abraham B. Dupuy conveyed to the said William R. Henninger the farm referred to in said bill as the Blanchard farm, and they say that the same was conveyed by deed bearing the same date by the said complainant Henninger and Lizzie, his wife, to one Josiah Henninger, and by the said Josiah Henninger was conveyed to the said Lizzie Henninger, wife of the complainant, by deed dated February twenty-eighth, eighteen hundred and ninety; and these defendants further say that by virtue of the above deeds, and by virtue of legal proceedings taken in the Courts of Pennsylvania for the foreclosure of the mortgage existing on said Blanchard farm at the time of the conveyance to said Henninger and subject to which it was purchased, the whole interest and estate of the complainant in the said Blanchard farm, as they have been informed, has been conveyed away from the complainant Henninger, and the said complainant Henninger by reason thereof has become, by his own acts, omissions and defaults, unable to restore the parties to the situation at the time of the said exchange, and this bill should be for that reason dismissed so far as these defendants are concerned.

These defendants further answering say that in the year eighteen hundred and eighty-nine on the twenty-third day of November and before the conveyance of the said McCoy farm to said Dupuy by the complainant Henninger and his wife they filed their bill in the Court of Chancery of New Jersey to foreclose their

said mortgage upon the said farm, and that the complainant William R. Henninger and Lizzie Henninger, his wife, were made parties defendant to said foreclosure bills as owners of the said farm subject to said mortgage; that the conveyance to said Dupuy was subject to the said mortgage and the foreclosure proceedings thereunder; that in said foreclosure proceedings final decree for the sale of the premises to pay the mortgage debt was made on the twenty-first day of May, eighteen hundred and ninety, and a *fieri facies* thereon to the Sheriff of the County of Middlesex was issued on June fourth, eighteen hundred and ninety, and delivered to him, and the same was duly advertised for sale and on July sixteenth, eighteen hundred and ninety, was sold to this defendant Thomas Jardine by said Sheriff under said sale for the sum of four thousand dollars, the sale being confirmed by order of the Court made in said cause on the twenty-eighth day of July, eighteen hundred and ninety, directing the said Sheriff to convey the same to this defendant Thomas Jardine; and that the said Sheriff pursuant to said decree, execution and order did by his deed bearing date July twenty-ninth, eighteen hundred and nieety, and duly acknowledged, convey the said premises and all the estate, right and title of the complainant therein to this defendant, Thomas Jardine, who purchased the same for the common benefit of himself and the other complainants.

These defendants, further answering, admit that said Abraham B. Dupuy conveyed said McCoy farm to the said Charles E. Heald, but these defendants have no knowledge or information as to the circumstances of such conveyance or as to the time thereof, but they deny that at the time of the said sheriff's sale they knew of the said conveyance or knew that said Heald had any interest in the premises, nor did they then know that the complainants or either of them claimed any interest in the premises; these defendants, further answering, deny that they entered into any agreement at said sale with said Heald or his counsel by which these defend-

ants were permitted to bid off said farm for a less sum than the amount due on said decree, or that said Heald was to have the right to redeem the same at any time within thirty days by payment to these defendants of the amount due on said decree, with interest and costs, or that this defendant, Thomas Jardine, bid off the farm under such agreement.

These defendants, further answering, say that they did not, nor did either of them, make any agreement whatever in writing with said Heald or any one on his behalf in reference to the purchase or conveyance of said land from this defendant, Thomas Jardine, and that, by virtue of the statute entitled "An Act for the prevention of frauds and perjuries," revision approved March 27, 1874, no action can be brought by said Heald or any person or persons claiming under him upon any such contract or agreement alleged in the bill or upon any other contract or agreement relating to the sale or purchase of lands unless the same is in writing and these defendants set up and claim the benefit of the said statute.

These defendants, further answering, deny that said Heald, within thirty day ofter said sale, or at any other time, tendered to these defendants or either of them the amount due on said decree with interest and costs or demanded a reconveyance of said McCoy farm to said Heald; they admit that Edward S. Savage, Esquire, to whom the defendants, Thomas and Freeland Jardine, at the time of the sale had verbally given an option to purchase the said premises within thirty days for the amount of the decree with interest and costs, did within said thirty days make a tender of said amount to these defendants, Thomas and Freeland Jardine, and that they refused to receive the same, but these defendants further say that the same was refused because the said Edward S. Savage before said tender, and on or about August 5th, 1890, gave up and released said option to purchase and discharged these defendants from the same; that these defendants relying upon the said discharge and release on or about

August 7th, 1890, and before said tender by agreement in writing agreed to sell said premises to one William Renfrew for the sum of seven thousand nine hundred and fifty dollars; and these defendants further say that the said option to purchase given said Savage was not in writing, that no writing or agreement in reference to the sale was ever signed by these defendants or either of them, and that by virtue of the statute above referred to the benefit of which these defendants claim no action or claim now exists or has never existed as against these defendants or either of them for a re conveyance of said land to said Heald or said Savage. These defendants admit that the said Heald filed his bill in this Honorable Court against them to redeem said premises, but these defendants say that on the twenty-second day of April, eighteen hundred and ninety-two and before the filing of complaintan's bill the said bill of complaint was dismissed and that no other decree was ever entered or made in said cause, and they deny that there was any adjudication in said cause establishing the right of redemption claimed in said bill and on the contrary say that the dismissal of said bill is a final decree and adjudication against the claim of said Heald or any person claiming under him.

These defendants have no knowledge or information as to the time said Henninger learned of the alleged fraudulent agreement between said Heald and Taylor or of the pendency of said suit of said Heald against these defendants or as to his preparation to assert his alleged claim; these defendants admit that said Henninger on or about October tenth, eighteen hundred and ninety-one, filed a bill against these defendants and others praying relief against these defendants upon the same ground stated in this present bill to which bill answers were put in by these defendants and the other defendants in the cause; these defendants say that said cause came on for hearing upon the merits upon said bill, answers replications and proofs before the Honorable John T. Bird, one of the

Vice-Chancellors of this Court to whom the same was referred, and that upon said hearing the said bill was dismissed ; that these defendants deny that the said bill was dismissed for the want of necessary parties or that said Henninger's claim was not heard or disposed of upon the merits, and on the contrary they set up and insist upon the said decree of dismissal as a final decree and adjudication upon the merits of the case and as a bar to this suit, and they claim the same benefits thereof as if they had set it up by plea, and they refer to the record of the said cause and offer to produce and prove the same.

These defendants have not nor have either of them any knowledge or information other than the said bill whether said Heald filed a notice of the pendency of his suit as alleged in said bill, or whether the complainant Henninger filed a notice of the pendency of his suit as alleged in the bill.

These defendants admit that this defendant Thomas Jardine, acting for himself and the other defendants, on or about April thirtieth, eighteen hundred and ninety-one, conveyed a portion of the said McCoy farm, being the tract of Salt Meadow, containing about eighteen acres, to the Port Reading Railroad Company for the sum of twelve thousand dollars, and about the same time conveyed the remainder of said farm to Gordon Chambers, of Philadelphia, an employee of said company, who took the same in trust for the company, and that the whole purchase money, twenty-two thousand dollars was paid to these defendants by the Port Reading Railroad at the time of the delivery of said deeds ; but these defendants further say that at the time of the delivery of said deeds and the payment of said money, and as a part of the transaction and consideration of the payment these defendants assigned to the said company the said mortgage upon said McCoy farm, dated August fourth, eighteen hundred and eighty-six, together with the bond which the same was given to secure, and the moneys due thereon, and also the decree

in the foreclosure suit thereon; and further say that previous to said sale and conveyance these defendants having, as above stated, entered into an agreement in writing with said William Renfrew to sell the said McCoy farm to him, the said the Port Reading Railroad Company declined to purchase the same of these defendants unless the said Renfrew would release and surrender his rights under said agreement; that said Renfrew declined to release or surrender his right to a conveyance of said premises unless these defendants would pay him a large sum of money therefor, and that these defendants, in order to obtain said release and to carry out said sale, were obliged to pay, and did pay, the said William Renfrew on the eleventh day of May, eighteen hundred and ninety-two, and before the payment for said lands by said company, a large sum of money for releasing his interest in said agreement, and his claims thereunder, and on the lands described therein.

And these defendants answering the special interrogatories of said bill so far as the same have not been above fully answered say the conveyances by this defendant Thomas Jardine to Gordon Chambers and The Port Reading Railroad Company were executed and acknowledged about April 30th, 1891, and were delivered to The Port Reading Railroad Company on May 12th, 1891, and the purchase money was then paid by a draft for twenty-two thousand dollars drawn by the The Port Reading Construction Company upon Drexel & Co., bankers of Philadelphia, to the order of these defendants; that before said conveyances were made these defendants had heard that an opinion had been delivered or filed by the Court in the suit brought by Heald against them to some such effect as stated in the bill; that they did not, nor did either of them communicate the decision or the pendency of said suit to the purchasers of said farm or their attorneys; that this defendant, Margaret E. Jardine never saw or communicated with either of the purchasers or any of their agents or attorneys and that these defendants Thomas

and Vreeland never had any communication about the suit with the purchasers or any of their agents or attorneys, because they supposed the officers of the Port Reading Railroad Company knew about the suit and the decision or opinion; that they did not know and had not heard before said conveyances were executed or before the purchase money was paid that the complainant, Henninger had made any claim to the McCoy farm or had filed his bill against said Heald in this Court alleging that the deed or title of said farm had been procured from him by fraud of said Heald and said Taylor; that they did not communicate such information to the grantees because they did not have it, nor if they had such information was there any reason why they should make such communication; that they did as part of the consideration require an indemnity and the said Port Reading Railroad Company did execute and deliver to these defendants an agreement to keep harmless and indemnify these defendants and each of them, their and each of their estate of and from the said suit of said Heald against these defendants, and against any and all other suit and suits in law or in equity then pending, or which might thereafter be brought against them or either of them by whomsoever instituted or by reason of or arising out of any alleged right of said Heald or the right of any one claiming under him in any way or claiming his alleged rights or any ground to redeem the said premises so conveyed or any part thereof, and of and from and against all decrees and judgments against these defendants or either of them in such suits or any of them and against all costs, damages and expenses incurred therein; and they demanded this indemnity because the said Heald suit had been decided against them, and decree thereon might be entered; the form of the indemnity was arranged between counsel and with this defendants had nothing to do nor were they consulted.

And these defendants deny that any other matter or thing in the said complainant's bill contained material or necessary for these defendant's or either of them to

make answer unto and not herein and hereby well and sufficiently answered, confessed or avoided, traversed or denied is true to the knowledge or belief of these defendants or either of them. All which matters and things these defendants are ready and willing to aver, maintain and prove as this Honorable Court shall direct, and humbly pray to be hence dismissed with their reasonable costs and charges in this behalf sustained.

JOHN R. EMERY,
Solicitor and Counsel for
Defts. THOMAS VREELAND
and MARGARET E. JARDINE.

IN CHANCERY OF NEW JERSEY.

Between—
WILLIAM R. HENNINGER and STEPHEN H. LITTLE,
Complts,
AND
CHARLES E. HEALD *et al.*,
Defts.

On bills, &c.

Answer of Defendants, the Port Reading Railroad Company and Gordon Chambers.

The joint and several answers of the Port Reading Railroad Company and Gordon Chambers, two of the defendants to the bill of complaint of William R. Henninger and Stephen H. Little, complainants.

These defendants and each of them reserving all proper exceptions, for answer to said bill or so much thereof as they are advised is necessary or material for them or either of them to answer, say: That they admit that in the month of November, eighteen hundred and eighty-nine, the complainant Henninger was the owner in fee simple of the farm called in said bill the McCoy farm, situate in Woodbridge Township, Mid-

dlesex County, subject to a mortgage held by Thomas Jardine, Freeland Jardine and Margaret E. Jardine, given to secure the sum of five thousand dollars, with interest, and that the complainant, William R. Henninger and Lizzie, his wife, by deed dated on or about December 19th, eighteen hundred and eighty-nine conveyed the said McCoy farm to one Abraham B. Dupuy subject to said mortgage, but these defendants say that they and each of them are strangers to all the matters set out in said bill in relation to the circumstances of the sale of the said property by the complainant Henninger to the said Abraham B. Dupuy and the conveyance aforesaid; and they are also strangers to all the dealings and transactions set out in the second, third, fourth, fifth and sixth paragraphs of said bill between the said complainant Henninger, J. W. Taylor, Josiah Taylor, Charles E. Heald and Abraham B. Dupuy, or between any of them in reference to the sale or exchange of said property, and have no personal knowledge or information as to any of said matters; on belief they deny that any of the said allegations of fraud or misrepresentation in reference to said sale are true, and they insist that the complainants be put to strict proof of the said allegations as against these defendants.

These defendants, further answering, admit and say that on or about December nineteenth, eighteen hundred and eighty-nine, by deed dated on that day, the said Abraham B. Dupuy conveyed to the said William R. Henninger the farm referred to in said bill as the Blanchard farm, and they say that the same was conveyed by deed bearing the same date by the said complainant, Henninger and Lizzie his wife, to one Josiah Henninger, and by the said Josiah Henninger was conveyed to the said Lizzie Henninger, wife of the complainant by deed dated February twenty-eighth, eighteen hundred and ninety; and these defendants further say that by virtue of the above deeds and by virtue of legal proceedings taken in the Courts of Pennsylvania

for the foreclosure of the mortgage existing on said Blanchard farm at the time of its conveyance to said Henninger and subject to which it was purchased, the whole interest and estate of the complainant Henninger in the said Blanchard farm had been conveyed away from the complainant Henninger before the filing of this bill, and the said complainant Henninger, by reason thereof, has become, by his own acts, omissions and defaults unable to restore the parties to the situation at the time of the said exchange, and this bill should be for that reason dismissed, so far as these defendants are concerned.

These defendants, further answering, say that in the year eighteen hundred and eighty-nine, and on or about the 23d day of November, and before the conveyance of the said McCoy farm to said Dupuy by the complainant Henninger and his wife, the said Thomas Freeland and Margaret E. Jardine filed their bill in the Court of Chancery of New Jersey to foreclose their said mortgage upon said farm, and that the complainant, William R. Henninger and Lizzie Henninger, his wife, were made parties defendant to the said foreclosure bill, as owners of said farm, subject to said mortgage; that the conveyance to said Dupuy was subject to the said mortgage and the foreclosure proceedings thereunder; that in said foreclosure proceedings final decree for sale of the premises to pay the mortgage debt was made on the twenty-first day of May, eighteen hundred and ninety, and a *fieri faci* as thereon to the Sheriff of the County of Middlesex was issued on June fourth, eighteen hundred and ninety, and delivered to him, and the same was duly advertised for sale, and on July sixteenth, eighteen hundred and ninety, was sold to the defendant, Thomas Jardine, by the said Sheriff under said sale for the sum of four thousand dollars, said sale being confirmed by order of the Court made in said cause on the twenty-eighth day of July, eighteen huudred and ninety, directing the said Sheriff to convey the same to the defendant,

Thomas Jardine; and that the said Sheriff, pursuant to said decree, execution and order, did by his deed bearing date July twenty-ninth, eighteen hundred and ninety, and duly acknowledged, convey the said premises and all the estate, right and title of the complainant Henninger therein to the defendant, Thomas Jardine, who as these defendants are informed purchased the same for the common benefit of himself and said Freeland and Margaret E. Jardine.

These defendants further answering admit that said Abraham B. Dupuy in the month of June, eighteen hundred and ninety, and prior to said Sheriff's sale, conveyed said McCoy farm to the said Charles E. Heald, but these defendants have no knowledge or information as to the circumstances of said conveyance or as to the actual consideration thereof other than the deed itself, which shows that the consideration was paid.

These defendants further answering deny that said Jardines entered into any agreement at said sale with said Heald or his counsel by which they, the said Jardines, were permitted to bid off said farm for a less sum than the amount due on said decree or that said Heald was to have the right to redeem the same at any time within thirty days by payment to the said Jardines of the amount due on said decree with interests and costs, or that the defendant Thomas Jardine bid off the farm under such agreement.

These defendants further answering say that the said Jardines did not nor did either of them make any agreement whatsoever in writing with said Heald or any one on his behalf in reference to the purchase or conveyance of said lands from the defendant Thomas Jardine, and that by virtue of the statute entitled "An Act for the prevention of fraud and perjuries," revision approved March 27, 1874, no action can be brought by said Heald or any person or persons claiming under him upon any such contract or agreement alleged in the bill or upon any other contract or agreement relating to the sale of foreclosure of said lands unless the

same is in writing, and these defendants set up and claim the benefit of the said statute.

These defendants further answering deny that said Heald within thirty days after said sale, or at any other time, tendered to the said Jardines or either of them the amount due on said decree, with interest and costs, or demanded a reconveyance of said McCoy farm to said Heald.

These defendants admit that the said Heald filed his bill in this Honorable Court against the said Jardines to redeem said premises, but these defendants say that on the twenty-second day of April, Eighteen hundred and ninety-two, and before the filing of complainants bill, the said bill of complaint was dismissed and that no other decree was ever entered or made in said cause, and they deny that there was any adjudication in said cause establishing the right of redemption claimed in said bill, and on the contrary set up and insist on the said decree of dismissal as a bar to said Heald, and any person or persons claiming under him including the complainant.

These defendants have no knowledge or information as to the time said Henninger learned of the alleged fraudulent agreement between said Heald and Taylor or of the pendency of said suit of said Heald against these defendants or as to his preparations to assert his alleged claim; these defendants admit that said Henninger, on or about October tenth, Eighteen hundred and ninety-one, filed a bill against these defendants and others praying relief against these defendants upon the same ground stated in this present bill, to which bill auswers were put in by these defendants and the other defendants in the cause; that said cause came to hearing upon the merits upon said bill, answers, replication and proofs before the Hon. John T. Bird, one of the Vice Chancellors of this Court to whom the same was referred, and that thereupon the said bill was dismissed; these defendants deny that the said bill was dismissed for the want of necessary parties, or that said Henninger's claim was uot heard or disposed

of upon the merits, and on the contrary, they set up and insist upon the said decree of dismissal, as a final decree and adjudication upon the merits of the case and as a bar to this suit, and they claim the same benefit thereof as if they had set it up by plea, and they refer to the said bill and proceedings and offer to produce the same.

And as to the said suit against said Heald on the said original bill, and the said suit against the said Heald and these defendants and others on the said supplemental bill, these defendants further say that long before the filing of said original bill, and on or about the eighth day of August eighteen hundred and ninety this defendant, the promoters of the Port Reading Railroad Company, had purchased for its use the interest of said Heald in that portion of the McCoy farm called the Salt Meadows, and containing about eighteen acres, for the sum of fifty-four hundred dollars and that the complainant Henninger had notice of such purchase before filing his said bill against said Heald; and these defendants say that at the time of said purchase these defendants had no knowledge or notice of any claim of the said complainant Henninger to said lands or of any claim against said Heald; and this defendant, the Port Reading Railroad Company, further says that its railroad route and terminal properties were located over the said salt meadow tract, and the ownership thereof was necessary for the construction and completion of their said road and the docks upon their terminal property, and that said Heald, being or claiming to be, the equitable owner or to have some interest or claim in said tract, they purchased the interest of said Heald in said salt meadow tract, and without any knowledge or information or notice that the said conveyance to said Heald by said Dupuy was subject to any infirmity or attack, or that the complainant had any claim whatever against said Heald; and they submit that if the said complainant has or shall be found to have any claim whatever to the interest of said

Heald in said lands, the same is subject to the sale of said Heald's interest in the said salt meadow tract, made to this defendant company; and they further say that by virtue of the decree and sale in the foreclosure proceedings under the said mortgage held by the Jardines, to which foreclosure suit the said complainant and his wife were made parties defendant, and by virtue of the deed pursuant to said decree and sale by Peter Fick, Sheriff of the County of Middlesex, to Thomas Jardine, dated July 29th, 1890, all interest of the complainant Henninger in said lands was conveyed to the said Thomas Jardine, and these defendants submit that after such decree and sale thereunder the complainants could have no interest or claim in said lands except as claiming under said Heald, and that any such interest was subject to the purchase by this defendant, The Port Reading Railroad Company, of the interest of said Heald in the said meadow lands.

And these defendants answering say that they have no knowledge or information except by said bill, whether the said Heald at the time of filing his bill to enforce his right to redeem said McCoy farm, filed a notice of the pendency of his said suit as alleged in complainant's bill, or whether the complainant filed a notice of the pendency of his said suit against Heald as alleged in said bill, and these defendants leave the complainant to make such proofs thereof as he may be advised, but these defendants say that the said notices, even if filed by complainant, as alleged, did not operate as notice to these defendants of said suit or of any interest or alleged interest of said complainant in said lands.

These defendants further answering admit that on or about April thirtieth, eighteen hundred and ninety-one, the said Thomas Jardine, by deed bearing that date, executed and delivered to this defendant, The Port Reading Railroad Company, a deed of conveyance for a portion of the said McCoy farm, being the salt meadow, and containing about eighteen acres, and that the consideration stated in said deed was twelve thousand

dollars, and that about the same time the said Thomas Jardine, by deed bearing the same date, conveyed the remainder of said McCoy farm to this defendant, Gordon Chambers, and that the consideration stated in said deed is ten thousand dollars, as by the said deeds more fully appears, and to which or to certified copies of which these defendants refer; and these defendants have no knowledge or information, other than the complainant's bill, as to when information of these conveyances was received by the complainant, but say that they were both recorded in the office of the County of Middlesex about the fifteenth day of May, eighteen hundred and ninety-one. These defendants admit that the conveyance to said Chambers was made to him and that the title to the premises conveyed to him, is held in trust for this defendant company.

And these defendants say that the said salt meadow tract was purchased of said Heald in the month of August, eighteen hundred and ninety for the purpose of laying out and building thereon the docks and wharves of this defendant company and that in order to acquire the right to build its necessary docks and wharves it was necessary for this defendant company under the act relating to the rights of riparian owners, approved March 10th, 1891, to have the legal title to said lands and to procure the license to build such docks and wharves from the Board of Freeholders of said County before the first day of July, eighteen hundred and ninety-one; that the defendant company having purchased the equitable right of said Heald in said lands was obliged in order to perfect the title in time to procure such license, to procure the legal title to the same from said Jardine and for that purpose applied to said Jardine for the purchase of said Jardine's interest in said meadow land; that the said Jardine refused to convey the said meadow land alone and required this defendant company to purchase the whole of said lands and that this defendant company did finally agree to purchase and did purchase of said Jardine the whole of said lands and paid therefore the sum of twenty-two

thousand dollars mentioned in said conveyances, and received also upon such payment an assignment from said Thomas Jardine, Freeland Jardine and Margaret E. Jardine of the said mortgage bearing date August fourth, eighteen hundred and eighty-six, made by Aaron D. Moore upon the said McCoy farm and of the decree of foreclosure obtained thereon in the Court of Chancery of New Jersey bearing date on or about June twenty-first, eighteen hundred and ninety, together with the bond or obligation in said mortgage mentioned, and the money due or to grow due thereon with the interest as by said assignment now in the possession of this defendant company and ready to be produced and proved together with the said bond and mortgage will more fully appear.

And this defendant company further says that in the course of said negotiations for the purchase of the title of said Thomas Jardine to said lands this defendant received information that the said land had, by agreement in writing dated August seventh, eighteen hundred and ninety, been sold by the said Jardines to one William Renfrew for the sum of seventy-nine hundred and fifty dollars, and that said agreement was outstanding and in force, and that said Renfrew insisted on his right to a conveyance of said lands from said Jardines under this agreement; that the said conveyance had not been made, and that this defendant company before carrying out the purchase from the Jardines required a release from said Renfrew of his interest in said agreement and lands, and that in pursuance of such requirement, the said Jardines at the time of making the said conveyances and completing said purchase also delivered to this defendant company a release and surrender under seal by said Renfrew of all his interest in said agreement of sale and in said lands as by said release now in the possession of this defendant company and ready to be produced will appear, and as defendants are informed the said Jardines were obliged to pay and did

pay to said Renfrew a large sum of money as the consideration for said release.

And these defendants further answering admit that at the time of the said conveyances this defendant company knew or had been informed that the said Heald had instituted proceedings in the Court of Chancery of the State of New Jersey against the said Thomas Jardine, Freeland Jardine and Margaret E. Jardine claiming an interest in said McCoy farm, to compel a conveyance to him, and that the opinion of the Court upon the hearing of said suit had been filed, but this defendant denies that at the time of the said conveyances and the payment of the said purchase money, these defendants or either of them knew or had been informed or had reason to believe that the complainant had filed the said original bill against Heald.

And these defendants admit that on the execution and delivery of these conveyances this defendant The Port Reading Railroad Company executed and delivered to the said Jardines an agreement to bear harmless and indemnify the said Thomas Jardine, Freeland Jardine and Margaret E. Jardine from and against the said suit of the said Charles E. Heald and all decrees therein, and from and against any and all other suit and suits in law or in equity then pending or which might thereafter be brought against them or either of them by whomsoever instituted for or by reason of or arising out of any alleged right of said Heald or the right of any one claiming under him in any way or claiming his alleged rights or any ground to redeem the said mortgaged premises or any part thereof and of and from and against all decrees and judgments against the said Thomas Jardine, Freeland Jardine and Margaret E. Jardine or either of them in such suits or any of them against all costs, damages and expenses incurred therein and defendants deny that they or either of them gave any other agreement of indemnity.

These defendants further answering as to paragraph

eleventh of said bill say they do not know what the complainants have found on the records of Middlesex County as to a deed from this defendant, Gordon Chambers, to Ferdinand E. Canda, but they admit that on or about April nineteenth, eighteen hundred and ninety-two, and before the filing of complainant's bill, this defendant, Gordon Chambers, conveyed to Ferdinand E. Canda the tract first described in said bill, and these defendants have no longer any interest in the said tract first above described.

These defendants have no knowledge or information as to the matters stated in the twelfth paragraph of said except that they admit that they believe the said Blanchard property was sold as therein stated, and they leave the complainants to prove the said allegations ; but they set up and insist, notwithstanding the said alleged assignment to the said complainant Little, if the same has been made, the said decree of dismissal of the said bill filed by the complainant Henninger is a bar to this suit as against both the said complainants, and these defendants pray the same benefit of this defense as if it had been set up by plea.

These defendants, further answering, say that on or about the 26th day of April, eighteen hundred and ninety-two, and before the filing of complainant's bill, the said Charles E. Heald, by deed bearing that date, conveyed, released and quit claimed to this defendant Gordon Chambers, who holds in trust for this defendant, the Port Reading Railroad Company, all his right, title and interest to the said tract of salt meadow lands conveyed by said Thomas Jardine to this defendant, the Port Reading Railroad Company, as above stated, which said deed was duly recorded on the seventeenth day of May, eighteen hundred and ninety-two, in the office of the Clerk of the County of Middlesex.

And these defendants submit and insist that by virtue of the proceedings in the foreclosure of said mortgage brought by said Jardine, to which the complainant Henninger and his wife were parties defendant, and by virtue of the final decree therein made on or

about the twenty first day of May, eighteen hundred and ninety, and the execution issued thereunder, and the sale and deed of the said sheriff made thereunder all right, title and interest and estate of the complainant in said lands as against said Jardines, and these defendants claiming under them, has been conveyed to and is now vested in this defendant, The Port Reading Railroad Company, and said Canda, and these defendants set up and insist on said bill to foreclosure and the decree, execution, sale and deed thereunder as a bar and estoppel to any claim or interest in said lands as against these defendants, and refer to said decree, execution and deed or copies thereof.

And these defendants further say, on information and belief, that at the time of said purchase at Sheriff's sale and the conveyance to said Thomas Jardine, neither of the said Thomas Freeland or Margaret E. Jardine had any notice or knowledge of any claim of the complainant Henninger against said Heald set out in said bill, and that said Thomas Jardine and these defendants, as claiming under him by virtue of said sheriff's deed, are *bona fide* purchasers of said lands without notice of complainant's claim.

These defendants further answering the special interrogatories of the said bill, so far as the same have not been fully answered above, says: That said conveyance to said Chambers by said Thomas Jardine was made to him at the request of and in trust for said company, which paid the purchase money on the twelfth day of May, eighteen hundred and ninety-one, by the delivery of a draft dated that day, drawn by the Port Reading Construction Company upon Drexel & Co., bankers, of Philadelphia to the order of Thomas Jardine, Freeland Jardine and Margaret E. Jardine, which draft had been duly paid by the drawees; that the conveyance hereinbefore mentioned has been made by said Chambers to said Canda, and was made by consent and request of said Port Reading Railroad Company; that no consideration was paid to either of these defend-

ants or to any one for their use by said Canda, but that upon the delivery of said deed the sum of three hundred and forty-nine dollars and eighty cents was paid to this defendant company by E. S. Savage, to whom the deed was delivered as the attorney of said Heald; that the said sum was the excess of the mortgage debt, interest and costs over the balance of the purchase money for the meadow tract due to said Heald on the purchase from him by these defendants; and that as a further consideration for the delivery of said deed the said Heald conveyed by the deed above mentioned his interest in the salt meadow tract to this defendant Chambers in trust for the defendant company, in accordance with the original agreement of purchase. Neither of these defendants ever communicated to said Canda the fact that either said Heald or said Henninger made any claim to said lands, because neither of these defendants, or its agents or attorneys ever saw or had any communication whatever with said Canda; the Port Reading Railroad Company has not now any interest in the said land conveyed to said Canda; nor did it give said Canda any assurance or agreement, either by parol or in writing, to indemnify him against any defect in the title or any claim against said lands.

And these defendants deny that any other matter or thing in the complainants' bill necessary or material to be answered and not herein well and sufficiently answered, confessed or avoided, traversed or denied, is true to the knowledge or belief of these defendants or either of them. All which matters and things they are ready and willing to aver, maintain and prove as this Honorable Court shall direct, and humbly pray to be hence dismissed with their reasonable costs and charges in this behalf most wrongfully sustained.

JOHN R. EMERY,
Solicitor for and and of counsel with The Post Reading Railroad Co. and Gordon Chambers, defendants.

Opinion.

HENNINGER

vs.

HEALD.

Mr. THEODORE LITTLE, for the Complainants.
MR. JOHN R. EMERY, for R. R. Co.
Mr. R. WAYNE PARKER, for Heald and others.

BIRD, V. C.: This bill was filed to rescind an exchange of title to lands, and to compel the defendant to reconvey the title which he received from the complainant, or in case the said Heald has conveyed the title of the land which he received in exchange, and it be thought more equitable to do so, that then the Court should direct Heald to pay the consideration money which he has received. The ground upon which this bill rests is fraud. Henninger employed an agent by the name of Taylor to negotiate the exchange, and it is alleged that Taylor and Heald in arranging the terms of the exchange entered into a corrupt agreement, by which Taylor was to share one-half of the profits resulting from the subsequent sale of the Henninger farm, over and above $150, and also the false representation to Henninger that the land conveyed to him was subject to a mortgage of only $3,000, with interest at 5 per cent., when in fact it was $3,600 and for 6 per cent. The Henninger tract was subject to a mortgage of $5,000. After the negotiations were completed, in which it was agreed that Henninger should pay to Heald $450 in addition to conveying the title to his land, Henninger and Heald met in the presence of Taylor, Henninger's agent, and expressed their agreement in writing, Henninger and Heald both signing. This instrument is dated November 16th, 1889. The deeds were exchanged on the

21st day of December following. On the second day after such exchange Henninger sold and conveyed the land which he took from Heald, to his father for $3,000, in cash, subject to the encumbrance which had been referred to in the conveyance from Heald to Henninger.

Before the conveyance of the Henninger tract to Heald, Jardines, who held the $5,000 mortgage on that tract, commenced foreclosure of their mortgage which was prosecuted to decree and sale. Heald as the owner of the title or equity of redemption by his attorney attended the sale and entered into an agreement with the Jardines, by which they were to purchase the title and to convey it to him within 30 days thereafter, upon his payment of the whole amount due upon the decree with interest. Jardines purchased the title. Within the 30 days Heald tendered the whole amount that was due to them. This they refused to accept for the alleged reason that Heald had entirely abandoned his contract, and that they had agreed to sell the land or a portion thereof to others.

Upon the Jardines refusing to convey to Heald, he immediately filed his bill asking for a specific performance of the agreement. The Jardines answered and replication was filed, and the cause went to a hearing before one of the Vice-Chancellors, who filed his conclusions sustaining the complainant.

Within three days after said conclusions were filed and before any decree had been entered, Henninger filed a bill asking for the rescission of said exchange, charging fraud as above stated, and among other things offering to reconvey the premises which had been conveyed to him, but made no mention of the fact that he had made conveyance thereof for the consideration of $3,000. Heald and the Jardines were made parties defendants to this suit. They answered, and it appeared by their answers that Heald had agreed to convey a portion of the land which he took in the exchange to one Elwood Byers, an agent of the Port Reading Railroad Company, and that Jardines had conveyed

their interest in a portion of the lands to the said Railroad Company. Suffice it to say that it also appeared that the title to the entire tract, both of Heald and the Jardines, was so conveyed as to pass to the Railroad Company. These facts appearing in the answers, a supplemental bill was filed by Henninger. When ripe for hea.ing the cause was referred to one of the Vice-Chancellors, and after the partial hearing and examination of witnesses, the complainant's bill was dismissed.

Within a few days thereafter and before the present bill was filed the title to the property which Henninger seeks to have reconveyed to him was perfected in the said Railroad Company, so far as it were possible in the face of a lis pendens and of actual notice. Besides this, the Jardines procured a decree dismissing the bill of complaint, which Heald had filed against them, as aforesaid, seeking a specific performance of their agreement to convey the said premises to him. This it will be perceived left the title of the premises absolutely in the Jardines upon the foreclosure and sale by virtue of their mortgage, under which they purchased, and after which they conveyed to the Railroad Company as aforesaid.

The present bill states all of the principal foregoing facts. By it Henninger does not tender a reconveyance of the land to Heald, which the latter conveyed; nor does he offer to pay the $3,000 which he received in cash for the said land; but states as a reason for not offering to convey that the land was conveyed beyond his control by virtue of a sheriff's sale, under a judgment obtained upon the said mortgage. The prayer of the bill is as follows: amongst other things, that it may be decreed that the said exchange was procured by fraud; and that the contract may be rescinded, and a reconveyance subject to the Jardine mortgage; and that Heald having the title became a trustee for Henninger; and because of the agreement between Heald and the Jardines, Henninger had a right to redeem the said mortgaged premises; and that thencefor-

ward Jardines held the title in trust for Henninger; that the Railroad Company and all other grantees took with full notice of the rights of Henninger; and that the Railroad Company may be required to reconvey the title to said lands to Henninger, or to account to him for the full value of the premises; or that the said Jardines may be directed to pay Henninger all the moneys received by them; and the prayer for general relief.

There is no prayer for relief against the decree dismissing the bill filed by Heald against the Jardines.

1. In the first place, I find that there was a corrupt agreement between Taylor, as the agent of Henninger and Heald, which rendered the exchange voidable and justifies Henninger in asking for a rescission.

2. In the second place, I find that in other respects the exchange was fair and the consideration of the one parcel of land for the other including the boot money was fair and reasonable. Because of this it is insisted that the complainant is not entitled to relief, it being claimed that equity will not interfere unless it is established that the complainant has sustained actual damage. The general rule is fully in accord with this insistment. Fraud without damage is no ground for relief either at law or in equity. Bispham's Equity, p. 273; Kerr Fr. & M., p. 94; Garrow *et al.*, *v.* Davis *et al.*, 15 How. U. S., 277; Clark *v.* White, 12 Peters, 177; Biglow on Fraud, p. 85; Taylor *v.* Guest, 58 N. Y., 266.

3. But in the third place, while the law seems to be so firmly settled that fraud without damage to the party complaining affords no ground of relief even in equity, yet both law and equity have a more tender regard for the rights of the complaining party growing out of peculiar relations existing between him and the defendant under some circumstances than others. Perhaps no business relations awaken greater vigilance on the part of courts than that between principal and agent, or what is the same, cestui que trust and trustee. So comprehensive

are the authorities, both as expressed by elementary text writers and by the cases considered and determined by judges and chancellors of the highest celebrity, that it may safely be stated that the cases are very few, if any, it which any abuse of such relations has been discovered that the complaining party has not been relieved, whether any actual damage has been established or not. The question has not been whether the breach of confidence resulted in profit to the agent or trustee or damage to the principal or cestui que trust, but whether there has been such breach. The great solicitude of courts has been rather wholly to avoid any recognition of a principle that might, in the hands of avaricious and cunning men, be turned to their own account, than to inquire whether the beneficiaries have suffered any actual disadvantage.

Story on Agency, Secs. 210, 211 ; 1 Story, Eq. Jur., Secs. 315, 316 ; Lord Hardwick *v.* Vernon, 4 Ves., 410 ; Lord Abingdon *v.* Butler, 1 Ves. Jr., 206 ; Watt *v.* Grove, 2 Sch. & Lef., 492 ; Campbell *v.* Walker, 5 Ves., 678 ; Devoue *v.* Fanning, 2 John. C., 252 ; Cram *v.* Mitchell et als., 1 Sandf. Ch., 251 ; Van Epps *v.* Van Epps, 9 Paige, 237 ; Farnam *v.* Brook, 9 Pick., 212 ; Torrey *v.* Bank of Orleans, 9 Paige, 650 ; Dobson *v.* Racy, 3 Sandf. Ch., 66 ; Taylor *v.* Salmon, 4 Mylne & Craig, 138 ; Wilson *v.* Hart, 1 J. B. Moore, 45 ; Lees *v.* Nutall, 1 Russ & Mylne, 53 ; McLean *v.* Dunn, 4 Bing., 722 ; Parkist *v.* Alexander et als., 1 John. Ch., 397 ; Coles *v.* Trecothick, 9 Ves., 244, 245 ; Lord Selsea *v.* Rhoades, 1 Sim & Stuart, 50 ; Purcell *v.* McNamara, 14 Ves., 91 ; Crowe *v.* Ballard, 3 Brown's Ch., 104, (star paging 120) ; Massey *v.* Davies, 2 Ves., 317.

But our own courts have had this very question under consideration. In Marsh *v.* Buchan, 1 Dick., 595 : "An agent who assumes to act for the vendee in the sale of land is bound to disclose to the vendee his existing agency for the vendor, and such failure to disclose is a fraudulent concealment of a material fact."

"A written contract of sale procured by the agent, without this disclosure, will not be specifically enforced

even though the price is shown to be a fair one and the vendor is ignorant of his agent's fraud."

This principle has the support of the Court of Errors and Appeals, *Ib.*, 604; Young *v.* Hughes, 5 Stew., 383.

"The effect of concealment and neglect of duty such as this, upon the transaction, so far as Warren is concerned, does not all depend on the question whether or not the result was injurious to the principal. The contract is affected by the misconduct of the agent from considerations of public policy rather than of injury to the principal. The rule which applies to trustees has been equally applied to the relations between the real estate broker and his principal. It matters not that there is no fraud meditated, and no injury done. The rule is not intended to be remedial of actual wrong, but preventive of the possibility of it. Everhardt *v.* Searl, 71 Pa. St., 256."

Again, supposing it to have been ascertained that the fraud perpetrated was of such a nature as to require the interposition of the Court, then the question is, whether or not the Court ought to lend its aid to the complainants in their efforts to rescind the entire contract. This depends upon the question whether or not Heald had knowledge of or participated in, the fraudulent conduct of Taylor.

In Hagenmeyer *v.* Marks, 37 Minn., 6 (5 Am. St. Rep., 808), a reconveyance was decreed. A like result was reached in case of Miller *v.* Louisville & Nashville R. R. Co., 83 Ala., 274 (3 Am. St. Rep., 722).

Notwithstanding the former considerations I find upon looking into the allegations of the first bill, that although there was a sale by the Sheriff of the land which was conveyed to Henninger by Heald, Henninger must have had the control of the title, or he would not have made the allegations in such first bill; and that having such control of the title after he discovered the fraud it was his duty to preserve such control, in order to reconvey the title to Heald; or, in case he found himself unable to preserve such title for

the purpose indicated, to make known his inability to Heald and thereby give him an opportunity to protect such title or to abide the consequences. Had he done this and then found the title swept away from him by the decree of the Court, nothing further would have been required of him. All the law demands under such circumstances is that a party asking rescission shall restore his adversary to his former estate or condition as far as he reasonably can.

"A party demanding a rescission of a contract must return or offer to return the consideration received by him. It is a settled principle in Courts of Equity that relief will never be extended to a party against his own conduct without exacting from him strict justice to his adversary."

The duties or obligations of the party asking relief on the one hand, and the rights of the person against whom relief is sought upon the other will be found fully expressed in the following cases: Cobb *v.* Hatfield, 46 N. Y., 537; Gould *v.* Cayuga County Nat. Bank, 86 N. Y., 75, 82; Mason *v.* Bovet, 1 Denio, 69 (43 Am. Dec., 651); Chesterfield *v.* Janssen, 1 Lead. Cas. Eq., 831, 832; McCrillis *v.* Carlton, 37 Vt., 139 (68 Am. Dec., 730); Gay *v.* Alter, 102 U. S., 79; Estabrook *v.* Swett, 116 Mass., 303; Burton *v.* Stewart, 3 Wend., 236; Schiffer *v.* Dietz, 83 N. Y., 300; Latham *v.* Rickey, 21 La. An., 425 (50 Am. Dec., 674); 1 Beach, Eq., Sec. 76; Barrett *v.* Drake, 100 Mass., 174; Voorhees *et al. v.* Earl & Kellogg, 2 Hill, 288; Coolidge *v.* Brigham, 1 Met., 547.

To the same effect are the cases in our own State of Doughton *v.* Camden Building & Loan Ass'n., 14 Stew., 556; Bayard *v.* Holmes, 4 Vroom, 119; Bayard *v.* Mayor, etc., 96 N. Y., 598, 599.

7. I find if he could not restore the property in specie, it was and is his duty to restore or offer to restore or to account for that which he received for it. This is in accordance with the spirit of all the cases. No excuse whatever is offered by Henninger for not offering to restore the money received by him for the

Blanchard farm. The question is not what the Court may compel him to do in case an account should be ordered between him and Heald, but what, in equity, it is his duty to tender himself ready and willing to do.

In his first bill he offered to reconvey. He had sworn to the truth of the statements in that bill. Did he speak the truth then? He cannot complain if the Court takes him at his word. If a strict application of equitable rules, as expressed in the foregoing cases, were to be applied this case would end here with a dismissal of the complainant's bill.

But since the Court feels itself under obligations to discountenance fraud whenever presented, and thinking that equality may be reached by an accounting, I will look further into the case.

8. I find that the land which Henninger conveyed to Heald and the equity of redemption therein which Heald thereby acquired, was effectually conveyed to the Jardines by the foreclosure and sale under their mortgage. I find also that the decree dismissing the bill of complaint which Heald filed against the Jardines for the specific performance of their agreement to convey to him the last named premises effectually secured to them the absolute fee thereof since it was the absolute fee that was mortgaged and foreclosed and purchased by them.

Mount *v.* Manhattan Co., 16 Stew. Eq., 25; S. C., 17 Ib., 297; Vroom *v.* Ditmars, 4 Paige 526, 531; McGee *v.* Smith, 1 C. E. G., 462. See also cases cited in Baldwin *v.* Howell, 18 Stew., 538.

While said decree of dismissal is unreversed it is an effectual bar to the complainant in that suit and to all who seek to stand in his stead, since that case was fully heard upon its merits.

9. The Jardines having a perfect title, it is proper that I should find that the defendants who took title under them have also a good title. A grantee from a bona fide purchaser stands in the same position as the grantor, and will be equally favored by a chancellor, although affected with notice at the time of the grant;

the grantor's conscience is clear, and he may transfer that which he might honestly retain. The rule is not less politic than just, because the jus disponendi would otherwise be clogged by a restraint of indefinite duration.

Bumpus *v* Platner, 1 John. Ch., 213 : Fletcher *v.* Beck, 6 Cranch, 36 ; Wood *v.* Chapin, 13 N. Y., 509 ; Boon *v.* Chiles, 10 Peters, 177, 206, 207, 209 ; Holmes *v.* Stout, 3 Gr. Ch., 492 ; Condit *v.* Wilson, 9 Stew., 372 ; Sharp *v.* Shea, 5 Stew. Eq., 66 ; Baldwin *v.* Howell, 18 Stew., 538 ; Mount *v.* Manhattan Co., 16 Stew., 25 ; 2 W. &. T. Lead. Ca. Eq., 33.

This being so the complainant's bill must be dismissed as to all of the defendants except Heald, with costs.

10. Since the proof shows that some of the consideration money passed to Heald, and since I find that he entered into a corrupt agreement with Taylor, the agent of Henninger, it is proper that I should also find that he is liable to account to Henninger for so much of the consideration money as he received. Although a party with notice of a fraud cannot take title directly but may take such title at the hand of an innocent third party, yet if he himself has participated in the fraud or was acting in the capacity of a trustee, then he will be held liable, notwithstanding the title be purged of the fraud as to strangers.

Oliver *v.* Piatt, 3 Howard, 401 ; Cramm *v.* Mitchell, 1 Sandf. Ch., 251 ; 2 W. & T. Lead. Ca. Eq., 34 ; 1 Perry on Trusts, Sec. 222 ; Slaughter *v.* Glenn, 98 U. S. 245 ; May *v.* Le Claire, 78 U. S., 217, 236.

If there be any uncertainty as to the amount of money which Heald actually received from the Jardines or the Railroad Company testimony may be submitted on that point.

The complainant is entitled to costs as against Heald.

Opinion.

HENNINGER

v.

HEALD.

MR. THEODORE LITTLE for the Complainant.
MR. R. WAYNE PARKER for Defendant.

BIRD, V. C.: It having been decreed in this case (see 29 Atl. R. 190) that Heald must account to Henninger for the moneys which he received upon the sale of the lands which were conveyed from Henninger in exchange, upon such accounting it is insisted in behalf of Heald that he is entitled to retain out of the money so received by him all reasonable expenses and disbursements, such as counsel fees, witness fees, traveling expenses and the like, incurred in any suit or suits which were instituted for the purpose of maintaining and protecting his interest in the property, and in perfecting a sale and conveyance thereof. In determining this question it must not be overlooked that Heald has been charged with entering into an arrangement with Taylor, who was the agent of Henninger, in and by which the exchange of properties was affected, and that that arrangement was fraudulent; and that becoming possessed of the premises in question in this manner he is held liable as agent or trustee for Henninger.

Is Heald entitled to anything by way of lien, set-off a re-coupment, on account of services rendered, or money expended in prosecuting his claim to the title to the lands in question against the Jardines? This question can only arise upon contracts express or implied, or where the defendant has a just demand, that he is entitled to enforce against the complainant. In such

case, in order to avoid a multiplicity of suits or circuity of action, the Court will take into consideration the rights of all the parties, and determine the balance actually due to the one or the other in a single suit.

Has Heald any just claim against Henninger, or lien on the fund in his possession for any costs or expenses of any character incurred by him, with respect to the premises in question? Heald did nothing for or on account of Henninger. He never was employed by Henninger in the remotest sense. It cannot be said that he was so much as a volunteer. Whatever he did in the premises was in hostility to Henninger's interests; as much so as the conduct of a trespasser, who should reap and carry off my grain, and upon demand being made therefor refuse to deliver it unless he was paid for the reaping and converting it into flour. I have adjudged his conduct in this respect to be fraudulent in every particular. If there be any such claim whatever, it must be of a nature which Heald could enforce by direct action or suit against Henninger. Therefore taking it for granted that Heald's conduct was fraudulent as I have concluded, upon what rule of law or principle of equity could the Court allow to him any compensation for services rendered or money expended by way of counsel fees or Court charges, or otherwise for his misfeasance or mala fides? Manifestly the establishment of a rule in favor of the claim of Heald would be nothing more nor less than the encouragement of wrong-doing and bad faith upon the part of all persons who by contrivance or fraud of any kind could secure the possession of the property of others. It would only be necessary for them to take into consideration such a rule in order to be prompted to commit any acts of violence or injustice, trusting to such rule to be protected against all costs incurred in their undertaking. Such questions must be determined upon principle rather than by the amount of profit which may ultimately accrue through the skill, ingenuity or good fortune of the trespasser or fraud-doer. The principal is entitled to the property if it be not beyond his

reach; if it be, then to whatever the wrong-doer has received therefor, since that represents the property. The lawbreaker takes the risk of losing everything, including his own labor and disbursements. If the law should indemnify him against risk or loss, he would be emboldened to the utmost daring. It would, therefore, seem to be impossible for the Court to find any basis upon which it could sustain any claim by Heald against Henninger. This is in accordance with the authorities. Story on Agency, Sec. 353, says: That a man who has the lawful possession of a thing, and has expended his money or labor upon it at the request of the owner, has the right to retain it until his demand is satisfied. In stating the manner and circumstances under which a lien may be acquired, the same author says that it is essential that a party by whom or through whom it is acquired should himself either have the true and just ownership of the property, or, at least, a right to vest it. If, therefore, he is not the true owner of the property; or if he has no rightful power to dispose of the same, or to create a lien; or if he exceeds his authority; or if he is mere wrongdoer; or if his possession is tortious; in these and like cases it is obvious that he cannot ordinarily create a lien, or confer it to others. He further says that there must be an actual or constructive possession of the thing by the party asserting it, with the express or implied assent of the party against whom it is asserted; for a lien is the right to retain a thing, which presupposes a lawful possession, which can arise only from a just possession under the owner or other party against whom the claim exists. Ib. Sec. 361.

M'Combie *v.* Davies, 7 East.,5; Lemprere *v.* Pasley, 2 Durnford & E., 485; Lanyon *v.* Blanchard, 2 Campbell, 597; Madden *v.* Kempster, 1 Campbell 12; Hiscox *v.* Greenwood, 4 Espinasse, 174.

It will be perceived that these cases were heard in courts of law. Surely if the law deals thus vigorously in such matters, it would create great surprise if

courts of equity should in any sense attempt to modify the rule so as to cast its shield about the wrongdoor.

Counsel for defendant calls attention to and relies upon the cases of Jacobus *v.* Munn, 10 Stew., 48, S. C. Court of Errors & Appeals, 11 Stew., 622, Johns *v.* Norris, 12 C. E. G., 485 ; and the same case again in this court, 1 Stew., 147, and Gilmore *v.* Tuttle, 13 Stew., 385. Of these cases the only one that appears to approach a likeness to the one under consideration is that of Johns *v.* Norris. In that case it will be seen (1 Stew.,147) that the Chancellor allowed a subsequent grantee who took with notice the cost of permanent improvements and also the cost of rebuilding a barn which was burned, there having been no insurance, but but the cases are easily distinguishable. The case of Johns *v.* Norris is in accordance with a very long line of decisions which give to trustees compensation for all actual expenses incurred by them in making valuable improvements to real estate, whether they purchase it to hold for the benefit of the estate or for the benefit of any person interested, or for themselves, whenever they are compelled at the instance of a *cestui que* trust to make conveyance to such *cestui que* trust. But it must always appear in such cases that the alleged improvements are of a permanent character. I apprehend no case can be found where such trustee, after having taken title to himself and having become involved in litigation respecting such title, was ever reimbursed for his expenses, of whatever character, in conducting such litigation.

And it is of the utmost importance to remember that in all these cases the property dealt with was originally held in trust, in the strictest sense of the word, and that the person making the sale was clothed with authority to sell and to pass title, although not for the purpose or with the intent which actually controlled. The title was not acquired originally by fraud. In the case before us the title was acquired by Heald tortuously, or in violation of every well settled principle of

law. It never was trust property. Strictly speaking he was not a trustee any more than a tresspasser or other wrongdoer. As Mr. Perry says (see his work on Trusts, sec. 166), the wrongdoer who becomes possessed of property under such circumstances has been styled a "trustee"; but this is for want of a better term and because he has no title to property and really holds it for the true owner. It might as well be said that where two persons conspire to possess themselves of the personal property of another when he brings trover for its recovery, that they should be styled trustees, instead of tort feasors, and should be permitted to claim the benefit of a lien for care or for provender.

The authorities all appear to be so unequivocally opposed to the claim of Heald to reimbursement, and to be founded upon such sound public policy, that I cannot besitate to pronounce against his claim. It only remains to ascertain the amount he received. In his testimony in the origiual case there was no intimation upon his part that he had not received the entire consideration which his interest in the property represented. The amount of that consideration was between $9,000 and $10,000. I have not the testimony before me, but as I recollect it there was no qualification whatever as to the statements made by him that he had received the whole amount. But now upon the accounting, under the order of the Court, he says that some time in June, 1890, which was soon after the title was perfected in himself and after the property was advertised for sale upon the foreclosure of the Jardine mortgage, he entered into an agreement with Edward S. Savage, in and by which the latter was to protect his interests in the property, secure the title thereto, and make sale thereof for one-half of the amount which Mr. Savage might realize upon a sale of the same; and that in carrying out that agreement Mr. Savage realized $9,060.20, the one-half of which, being $4,530.10, he paid to Heald by his checks dated April 28th, 1892. This statement of Heald is supported by

Mr. Savage. The latter was also the solicitor and and counsel of Heald, and if not present in court when Heald stated the amount which he had received he must have known of Heald's statement before the case closed

I can find no ground for hesitating to charge Heald with the $4,530.10. But it is insisted that he should be charged with the whole amount of $9,060.20. I think this claim could be maintained if the testimony satisfied the Court that Mr. Savage was only the counsel or agent of Heald If he were only the counsel or agent of Heald, then clearly he received this money for Heald, and Heald's responsibility would not be diminished by the fact that his agent still retained possession of any part of the consideration money. If they occupied the relation of principal and agent, the principle which has been laid down above would necessarily control, and Heald could not set off or recoup allowance to an agent any more than compensation to counsel, but if Mr. Savage's statement with respect to the agreement between him and Heald be accepted as true, then the relation between them with respect to this consideration money was not that of principal and agent in the sense contemplated. Mr. Savage must be regarded as acting entirely in his own behalf or on his own account in this arrangement with Heald.

But again, I understand the brief of counsel for the complainants to go so far as to charge Mr. Savage with being equally liable with Heald, because of his knowledge of the fraud with which Heald is charged. The sale of this property to the Railroad Company and to the Canda Company was not perfected until after the first bill which was filed by Henninger was dismissed, and whatever opportunities Mr. Savage may have had prior thereto to acquire a knowledge of the situation and relation of these parties is not for me to determine in this suit, since Mr. Savage is not a party thereto and had no opportunity of being heard. If he holds these moneys in the sense in which it is claimed

he does by the counsel of the complainants, his liability to answer therefor will not be diminished by these proceedings. I do not pretend to adjudge the questions raised any further than to hold that Mr. Savage was not the agent of Heald, leaving the question of the former's liability because of any knowledge which he may have acquired of the relations between Henninger and Heald to be settled when he shall have an opportunity of being heard.

Mr. Heald must therefore account for $4,530.10, with interest from the 28th day of April, 1892, up to the time of entering the decree hereafter to be made, and Mr. Henninger must account for the sum of $3,000, with interest from the 25th day of December, 1890, being about the time that he received that amount of money from his father for the Blanchard place.

I will advise a decree in accordance with these views.

IN CHANCERY OF NEW JERSEY.

Between—

WILLIAM R. HENNINGER and STEPHEN H. LITTLE,

Complainants,

AND

CHARLES E. HEALD, THOMAS JARDINE, VREELAND JARDINE, MARGARET E. JARNINE, THE PORT READING RAILROAD COMPANY, GORDON CHAMBERS, FERDINAND E. CANDA, ABRAHAM B. DUPUY, JOSIAH TAYLOR, JANE B. TAYLOR,

Defendants.

Decree.

This cause, coming on to be heard in the presence of Theodore Little, solicitor and of counsel for the complainants; R. Wayne Parker, solicitor and of counsel for the answering defendants; Charles E. Heald and Ferdinand E. Canda and John R. Emery, solicitor and of counsel for the answering defendants, The Port Reading Railroad Company, Gordon Chambers, Thomas Jardine, Vreeland Jardine and Margaret E. Jardine, upon the bill, answer, replication and proofs taken before the Court (the complainants' bill having been heretofore taken as confessed as against the defendants, Josiah Taylor, Jane B. Taylor and Abraham B. Dupuy and other defendants) and the Court having heard the proof and the argument of counsel thereon and being of opinion that the exchange of the lands of the Complainant William R. Henninger described in complainant's bill as mentioned and set forth in said bill with the said Abraham B. Dupuy, was induced and procured by the corrupt and fraudulent of said Charles

E. Heald (who professed to act as the agent of said Abraham B. Dupuy) and of said Josiah Taylor, the agent of said William R. Henninger—that said Dupuy took the conveyance of said Henninger's lands in his own name, but in trust for the said Heald, and afterwards, as alleged in complainant's bill, conveyed said lands to said Heald for a nominal consideration, and that said complainants are entitled, on account of said fraud, to relief against said defendants, Charles E. Heald, Abraham B. Dupuy, Josiah Taylor and Jane B. Taylor. And it further appearing that the said Heald has disposed of said land in part to the Port Reading Railroad Company, in part to said Gordon Chambers and in part to said Ferdinand E. Canda and has received therefor the sum of nine thousand six hundred and fifty dollars and twenty cents over and above the amount of the mortgage held on said lands by the defendants, Thomas Jardine, Vreeland Jardine and Margaret E. Jardine, and the Court being also of opinion that, notwithstanding the fraudulent conduct of said Heald and said Taylor, the conveyance by the Sheriff of the County of Middlesex to said Thomas Jardine of said lands under the decree of foreclosure mentioned in the pleadings and the decree of this Court dismissing the bill of complaint filed by said Heald against the said Thomas Jardine and others referred to in the bill in this cause vested in said Thomas Jardine a valid title to said lands in fee as a bona fide purchase, and that his conveyance to the Port Reading Railroad Company and to Gordon Chambers respectively also vested in said respective grantees a good title in fee as bona fide purchasers, and the conveyance by said Gordon Chambers to said Ferdinand E. Canda also conveyed to him a good title in fee as a bona fide purchase for the portion of said lands described in his said deed; and it further appearing that, before the filing of the complainants' bill, an interest in the claim of said William R. Henninger was duly assigned to his co-complainant, Stephen H. Little.

It is, therefore, on this thirtieth day of October, in

the year of our Lord one thousand eight hundred and ninety-four by his Honor Alexander T. McGill, Chancellor of the State of New Jersey, ordered, adjudged and decreed, and the Chancellor by virtue of the power and authority of his office, doth hereby order, adjudge and decree that the said Charles E. Heald do account to said complainants for all moneys received by him on the sale or disposition of the lands conveyed as alleged in the complainants' bill by said Henninger to said Abraham B. Dupuy, and by said Dupuy conveyed to said Heald, with interest less such amount as said Henninger received on the sale of the lands conveyed to him by said Abraham B. Dupuy at the time of said exchange of lands as mentioned in complainants' bill, with interest thereon, and that the account be taken before the Court at the State House in Trenton on the thirteenth day of November, at ten o'clock in the forenoon or as soon thereafter as counsel can be heard.

And it is further ordered, adjudged and decreed that as to the defendants, The Port Reading Railroad Company, Gordon Chambers, Thomas Jardine, Vreeland Jardine, Margaret E. Jardine and Ferdinand E. Canda, the complainants' bill be dismissed, with costs to be taxed

Respectfully advised,

JOHN T. BIRD,
V. C.

ALEX. T. McGILL,
C.

IN CHANCERY OF NEW JERSEY.

BETWEEN

WILLIAM R. HENNINGER *et al.*,

Complainants,

AND

CHARLES E. HEALD *et als.*,

Defendants.

On Bill, &c.

A decree having been heretofore made in this cause bearing date on the thirtieth day of October, A. D. 1894, whereby, among other things, it was ordered, adjudged and decreed that the defendant Charles E. Heald, should account to the complainants for all moneys received by him on the sale or disposition of the lands described in the complainants' bill which were as alleged in the said bill conveyed by said Henninger to Abraham B. Dupuy and by said Dupuy conveyed to the said Heald with interest, less the amount which said Henninger received on the sale of the lands conveyed to him by said Abraham B. Dupuy at the time of the exchange of lands mentioned in complainants' bill with interest thereon, and that the account thereof be taken before the Court at the State House in Trenton, on the thirteenth day of November, at two o'clock in the forenoon, or as soon thereafter as counsel could be heard—and said account having been taken before the Court in presence of counsel for complainants and said Heald respectively, at the time and place aforesaid, and it appearing that after making the said deduction from the amount received by said Heald there remains the sum of nineteen hundred and ten dollars and seventy-three cents, it is on this fifth day of March, A. D. 1895, ordered, adjudged and decreed that the said Charles E. Heald do pay to the said com-

plainants the said sum of nineteen hundred and ten dollars and seventy-three cents with their costs to be taxed, and that an execution do issue therefor according to the practice of this Court.

Respectfully advised,

ALEX. T. McGILL,
C.

JOHN T. BIRD,
V. C.

IN CHANCERY OF NEW JERSEY.

Between WILLIAM H. HENNINGER and STEPHEN H. LITTLE,
Complainants,

AND

CHARLES F. HEALD, ABRAHAM B. DUPUY, THOMAS JARDINE, *et als*,
Defendants.

Before His Honor VICE-CHANCELLOR BIRD.

Mr. THEODORE LITTLE for complainants.

MR. SAVAGE, MR. EMERY and MR. R. W. PARKER for defendants.

Transcript of shorthand report of the proceedings upon the trial of this cause at Newark, N. J., on Friday, July 6th, 1893.

COUNSEL READ THE PLEADINGS.

William R. Henninger, Sworn for the Complainants.

DIRECT EXAMINATION BY MR. LITTLE.

Q. Where do you live?

A. Allentown, Pennsylvania.

Q. How long have you lived there?

A. I am in my ninth year; about eight years and a half.

Q. State your age?

A. I am 44 to-morrow.

Q. Were you at any time the owner of a farm in the County of Middlesex in this State.

A. Yes, sir.

Q. Known as what?

A. The McCoy farm.

Q. How many acres?

A. About 86 acres.

Q. Do you own it now?

A. No, sir.

Q. When was it disposed of by you?

A. In December, 1889.

Q. To whom?

A. To Abraham B. Dupuy.

Q. Said to live where, do you know?

A. New York City.

Q. Was the transaction by which the farm was disposed of made by you personally with Dupuy?

A. No, sir; I never met Dupuy.

Q. Through what agency did you dispose of the farm?

A. Josiah Taylor acted as agent for me, and Charles E. Heald for Dupuy.

Q. What Josiah Taylor?

A. This gentleman here (indicating).

Q. This gentleman here (indicating)?

A. Yes.

Q. Josiah Taylor?

A. Yes, sir.

Q. In what capacity was he acting or professing to act, what was his business?

A. Mr. Taylor's?

Q. Yes.

A. Real estate agent.

Q. Did you ever see Mr. Heald during the negotiations for that exchange?

A. Yes, sir.

Q. At what time?

A. The latter part of November, 1889, I met him the first time.

Q. Did he make any representations to you as to whom he was acting for?

MR. EMERY: You had better let him state.

Q. I asked whether he made any representations as to whom he was acting for?

A. He was acting for Dupuy.

BY THE COURT:

Q. Do you say he told you he was acting for Dupuy-Taylor?

MR. LITTLE: No, sir, not Taylor—Heald. I asked him whether Heald made any representations in that regard.

Q. Was there a written agreement made in reference to the sale?

A. Yes, sir, at the second time I called upon Mr. Taylor a written agreement was made, or on Mr. Heald, I should say.

Q. (Handing witness a paper) Will you look at this paper and see if any agreement was made?

A. That is the agreement that was made at that time.

Q. Do you know in whose handwriting it is?

A. That is Mr. Heald's—no, sir, that is Mr. Taylor's handwriting.

MR. EMERY: What is the date of it, Mr. Little?

MR. LITTLE: The 16th day of November, 1889.

Q. Do you know in whose handwriting that endorsement is?

A. That is Mr. Heald's handwriting.

MR. LITTLE: Do you want to see the paper, gentlemen?

MR. EMERY: Yes.

(Same handed to defendants' counsel).

Q. Did Mr. Heald say at the time anything special about his business, what his business was?

A. Well, have you reference to the bargaining—to the making of the bargain?

Q. As to his business, what his profession was?

A. Oh, well, the first time I called on him he gave me a description of the property.

By Mr. Emery:

Q. A little louder, please; I cannot hear you?

A. The first time I called upon him he gave me a description of the Blanchard place; he told me that there was a mortgage on it of $3,000, with interest at 5% payable from November, but the year I forget. He represented himself to me as an attorney-at-law, stating that he had searched the records and that it was unnecessary for me to do so, and that I could have the benefit of his search. I then went and saw the property, but did not examine the records as I had all confidence in both Mr. Heald and Mr. Taylor, and Mr. Taylor represented the same thing to me. I came back then and we entered into this agreement. That was my second visit.

Q. Did you dispose of your property by sale or exchange?

A. It was an exchange.

Q. An exchange?

A. Yes, sir.

Q. For what?

A. I exchanged the McCoy farm for the Blanchard place.

Q. Where is the Blanchard place?

A. In Monroe County, Penn.

Q. And it was upon that place he said there was a mortgage of $3,000 at 5% interest?

A. Yes, sir.

Q. Did you at any time examine the records as to the amount of that mortgage—did you before the sale?

A. I did not.

Q. Why didn't you?

A. I didn't think it was necessary; I had all confidence in the two gentlemen.

Q. Did you examine them afterwards?

A. I examined about three—well, I examined it after those deeds were placed on record, and the deeds will show what date that was; it was about three months afterwards, I think, that I examined the records.

Q. How did you find it?

A. I found it to be a $3,600 mortgage with interest at 6%.

MR. EMERY: Do you want to prove the record now?

MR. LITTLE: You admitted in your answer; you distinctly admitted the mortgage was; $3,600.

MR. EMERY: No, sir; you are thinking of Mr. Heald's answer; that does not bind us; I object to the admissibility of this evidence here.

THE COURT: The evidence may be admissible as to one of the defendants and not as to the others. I think Mr. Emery is right as to his client; I don't see how he can be bound; the testimony is admissible as to Heald. It is quite clear to my mind that the evidence may be admitted as to one as relevant and efficacious, and not as to the others.

MR. EMERY: That is all I want.

MR. PARKER: Mr. Canda stands in just the same position, sir.

Q. Did you pay any money at the time the agreement was made?

A. I paid no money at the time the agreement was made.

Q. How was the $300 which was endorsed upon this arranged?

A. There was interest due the parties holding—to Jardine Brothers—(interrupted).

Q. Did you pay any money at any time before the deeds were passed?

A. Yes, sir; I paid $300.

Q. How did you pay it; in the first place what did you do?

A. I gave a note for $300 payable in 15 days.

Q. Was it paid?

A. It was paid; yes, sir.

MR. LITTLE: I will read this paper at this time with your Honor's consent with the endorsement by Mr. Heald so as to understand what the paper is and I offer this paper in evidence.

(Reading) "Agreement made and entered into this sixteenth day of November, eighteen hundred and eighty-nine," &c.

Q. Do you know the signature of Mr. Heald?

A. Yes, sir.

Q. Did he sign it at the same time as you did?

A. Yes, sir.

MR. LITTLE: The endorsement, is this in Heald's handwriting, "The $300 within mentioned is this (day being omitted) paid by a 15 day note, &c.," Marked Exhibit No. 1 for Complainants.

Q. Subsequent to that time was there any more money paid?

A. I paid $66.

Q. How much?

A. $66.

Q. On whose demand?

A. On Heald's demand.

Q. What was it for?

A. That was rent that had been paid me in advance.

Q. Rent of what?

A. Rent of the McCoy farm.

Q. Paid to you in advance?

A. Yes, sir.

Q. Did you know or have any reason to suspect that Mr. Taylor and Mr. Heald were in any way to be in-

terested in that exchange beyond the ordinary commissions?

A. Not at that time; no, sir.

Q. I say at that time?

A. No, sir.

Q. When was the fact that they were so interested first brought to your knowledge?

A. January, 1891.

MR. EMERY: He can't say to the fact; you asked the question in this shape: When was that fact brought to your knowledge?

Q. If it was a fact. If there was any such thing, when was it brought to your knowledge?

A. January, 1891.

Q. That is the first you heard of it?

A. Yes, sir.

Q. Did you own the Smithfield farm then?

A. No, sir.

Q. To whom was it conveyed?

A. By me do you mean?

Q. Yes.

A. To my father.

Q. For what consideration?

A. $3,000.

Q. Paid to you?

A. Yes, sir, in cash.

Q. Or to someone for you, either one.

A. Yes, sir.

THE COURT: Is that the Blanchard farm?

MR. LITTLE: Yes, sir.

Q. What was the value of the McCoy farm?

MR. EMERY: I object to that; they made a bargain for the exchange of this property and they conveyed after looking at both places.

THE COURT: How do you make that competent?

MR. LITTLE: I don't intend to press it, sir.

Q. Did you act upon your own judgment entirely

in this matter of exchange or did you or not rely upon Mr. Taylor as your agent and his representation?

A. I relied upon Mr. Taylor almost exclusively.

Q. I believe that is all.

CROSS-EXAMINED BY MR. EMERY:

Q. What is your father's name, Mr. Henninger?

A. Josiah.

Q. Josiah Henninger?

A. Yes, sir.

Q. You conveyed this farm to him by deed, didn't you?

A. Yes, sir.

Q. Do you recollect the date of it?

A. No, sir.

Q. I show you a certified copy of the deed?

A. 22d day of December, 1889.

Q. You conveyed that to your father on that day?

A. Yes, sir.

Q. You got $3,000 from your father for this farm?

A. My father endorsed me for $3,000, and I had to—(interrupted).

Q. That's all I want to know.

MR. LITTLE: Well that does not answer the question with justice to the witness.

Q. Proceed.

A. And then when I sold him this property he came to me at the Allentown National Bank, he had a deposit there and gave me $3,000 in cash, and I gave him the deed and then went across the street to the Lehigh Valley Trust & Deposit Company's bank and took up that note for $3,000, and gave him the deed.

Q. So that you received from him $3,000?

A. Yes, sir.

Q. Now, I want to call your attention to this clause in the deed. The deeds were drawn under your direction, I suppose?

A. Well, it is just merely copied from the other deed that I had from Mr. Heald.

Q. Well, I want to call your attention to a clause in this deed to your father, in which this is said about the mortgage, it is conveyed free and clear of all incumbrances except the taxes for the year 1889 and also a certain mortgage on which there is to pay a sum not to exceed $3,000, and interest at 5 per cent. from November 1st, 1889?

A. Yes, sir.

Q. You gave that information and that description of the mortgage, didn't yon?

A. I guess I did, because I hadn't examined the records then and didn't know anything about the records; I took it for granted Mr. Heald's deed was correct.

Q. Do you recollect making any statement about the mortgage in the deed?

A. I made a copy from the other deed, yes, sir.

Q. From Mr. Heald's deed?

A. Yes, sir.

Q. Have you got it here?

Mr. Little: I have it, sir (produces same).

Q. Now do you say that when you made that statement at that time that the amount that was to be paid on that mortgage was not to exceed $3,000, that you did not then know that the face of it was $3,600, and that it was to be reduced to $3,000 after the payment was made on the six months interest?

A. I took it for granted that the deed was correct.

Q. You have now your deed from Dupuy to you?

A. Yes, sir.

Q. Mr. Little produced it.

A. Yes, sir.

Q. That's the deed, is it?

A. Yes, sir; and that deed is a copy of this and the other deeds, two or three others.

Q. You were examined as a witness in a suit brought by you as sole complainant against these same parties or some of them in relation to your claim on the McCoy farm?

A. I was examined before, yes, sir.

Q. A suit that was heard and tried in Newark some time ago?

A. Yes, sir, about year ago.

Q. I have here a memorandum of it, it was tried about the 13th of April, 1892, is that about the time?

A. I don't remember the time.

Q. Last year?

A. Yes, sir.

Q. Now you stated on that examination, didn't you, that you assigned the half interest of your claim in this suit to Mr. J. W. Taylor?

A. Yes, sir; I stated so.

Q. Just answer my question?

A. Yes, sir; I said so.

Q. Where is that assignment?

A. (To Mr. Little): Is this the one? This is a copy of it, I guess.

Q Now this seems to be signed by Taylor, I want the other one?

Mr. Emery hands said paper to Mr. Little.

Mr. Little produces another paper and hands to Mr. Emery.

Q. This is the agreement between you and Mr. Josiah Taylor?

A. Yes, sir.

Q. Of the City of Brooklyn?

A. Yes, sir.

Q. This is the assignment of a half interest in this claim, is it not? I will read the paper: "This agreement, made the 29th day of January, 1891"—(interrupted).

Mr. Little: What is the purpose of reading this?

Mr. Emery: Just what he stated in the other suit, that he had assigned the half interest in this suit, and I want to show the interest of the complainants in this suit. It is set out that the whole interest in this suit of the complainants—

the whole recovery is upon a claim that he owes in which he has assigned to Mr. Little some indefinite interest, now it appears that he has assigned this claim to Josiah W. Taylor, and that the claim here upon which he founds his bill is not correctly stated at all, there is no reference whatever in the bill or proceedings to any interest of Josiah Taylor in this claim and no decree can be made with reference to the rights of parties in this suit upon the situation of the claim as to this assignment. It is exactly what he stated in the other suit, and the Court gave you leave to amend and you said you were willing to amend as to Mr. Taylor, but not the others, and now you have filed the present pleading.

Mr. Parker: Mr. Emery won't you read that paper through and let the stenographer take it down?

Mr. Emery: (Reading.) "This agreement made the 29th day of January, 1891, between William R. Henninger, of Allentown, Pennsylvania, party of the first part, and Josiah Taylor, of the City of Brooklyn, County of Kings and State of New York, party of the second part, witnesseth:

Mr. Little: Is there not some erasure there?

Mr. Emery: You cannot extinguish a man's deed by erasing signatures.

Q. Now, Mr. Henninger, that was the agreement you referred to in your examination of 1892 in this suit, wasn't it?

A. Yes, sir.

Q. Giving him a half interest in the claim?

A. Yes, sir.

Q. Now, in that examination you were asked in reference to what was then your interest in this claim and this question was put, "Then you own a quarter interest?"

A. Yes, sir.

Q. A half is Mr. Taylor's?

A. Yes, sir.

Q. And a quarter is Mr. Little, Jr's?

A. I was under the—yes, tnat's correct, I answered that way.

Q. That's all with reference to that?

A. Well, I was under that impression at that time.

Q. As to Mr. Little's interest you were under that impression at that time?

A. Yes, sir, until I found I was wrong.

Q. You found Mr. Tayor had $\frac{3}{4}$ instead of $\frac{1}{2}$?

A. Yes, sir, and had assigned a part.

Q. Assigned a part to Mr. Little. You said you afterwards found you were mistaken, in what respect were you mistaken?

A. In regard to Mr. Little's interest in it; he had no interest so far as myself was concerned; that was the transaction between Mr. Taylor and Mr. Little.

Q. How soon after that testimony given that you found out you were mistaken?

A. Why after the Court had adjourned.

Q. Then you found what that you had given Mr. Taylor 3/4 interest instead of 1/2 as you originally supposed?

A. Yes, sir.

Q. And Mr. Taylor had assigned 1/4 to Mr. Little, is that what you found?

MR. LITTLE: Stop there. I object to that. It can only be by hearsay.

MR. EMERY: I don't think it will be found to be by hearsay.

THE WITNESS: Well that part I don't know.

MR. LITTLE: It can only be ascertained by hearsay, testimony or by certain papers; if there were papers he don't know it of his own knowledge, he says he afterwards found out. How?

THE COURT: I think under cross-examination it is perfectly proper to probe the witness' con-

science to ascertain that he had heard something about a particular matter which will prompt him to activity and inquiry. You may go on.

Q. I understand after having stated on this examination that this Mr. Taylor's interest was a half you found out after you had given the testimony that you were mistaken and that, in fact, you had assigned to him three-fourths?

A. Yes; three-fourths and none to Mr. Little.

Q. Yes; and none to Mr. Little?

A. Yes, sir.

Q. That you have assigned none to Mr. Little?

A. Yes, sir.

Q. That is what you found out afterwards?

A. Yes, sir.

Q. Now, at that time and on that trial Mr. Taylor was present as a witness?

A. Yes, sir.

Q. How did you find out that your assignment to Mr. Taylor was of a three-fourths interest instead of one-half? Did they, after the examination, show you the paper?

A. I saw no papers at all.

Q. How then did you find out?

A. Walking up this street here—what do you call it?

Q. Well, go on.

A. Towards the depot Mr. Taylor told me himself.

Q. That the assignment to him was 3/4?

A. Yes, sir; and said that I had not assigned anything to Mr. Little, the attorney.

Q. That you had not assigned anything to Mr. Little?

A. No, sir.

Q. Did he tell you he had assigned any interest to Mr. Little?

Objected to.

The Court: I think that is competent.

A. No, sir, he didn't tell me; he didn't tell me that he had assigned anything.

Q. You said a little while ago that that interest of Mr. Little's was a matter between Mr. Taylor and himself; how did you get that information?

A. Why, by receiving a—what do you call that paper—that paper you fixed before the Chancellor?

Q. I don't know what paper you refer to. Do you mean this paper (indicating)?

A. I know it is something about reconveying the whole business back to me; what do you call that?

Q. I don't know what paper you refer to.

A. It was about re-conveying the whole agreement or deeding back to me—what do you call it—it was the agreement for transferring the agreement back to me.

Q. Where did you get that paper?

A. It was sent to me by mail.

Q. Did you expect to receive it?

A. I did not.

Q. Had you any information about it?

A. I had no information; it was sent to me by a lawyer.

Q. Sent to you by whom?

A. By Mr. Little.

Q. When was it sent to you by Mr. Little?

A. That I can't tell you.

Q. How soon after that other suit?

A. I could not tell you.

Q. Have you got the paper?

A. (After searching.) No, I have not.

Q. Where is it?

MR. LITTLE: See if this is the paper?

THE WITNESS: This is the paper.

Q. Is this paper dated April 14, 1892, the paper you refer to?

A. Yes, sir.

Q. What paper did you execute on receiving this; what reply did you make when you received this?

A. I made no reply at all.

Q. No reply to anybody?

A. He sent me this and those two copies.

Q. Who sent you this?

A. Mr. Taylor—or Mr. Little, I mean.

Q. Which one?

A. Senior.

Q. Have you the letter which he sent you?

A. No, sir; there is only a few lines; he said by rights those papers belong to me.

Q. What one did you look at first?

A. The agreement between myself aud Mr. Taylor for 3/4 interest.

MR. LITTLE: See if that is the paper sent to you (handing witness paper)?

THE WITNESS: Those two papers he said they belonged to me.

Q. This paper you first saw, the agreement between yourself and Mr. Taylor dated the 29th of January, 1891, and which I show you was sent to Mr. Theodore Little, your present solicitor along with this paper?

A. The two papers were sent together.

Q. And you have never had any communication or talk in reference to the execution of this paper?

A. None at all.

Q. And knew nothing about the proposed execution of any such papers?

Q. No, sir.

MR. EMERY: I will now read this paper produced by Mr. Little:

"Whereas one William R. Henninger heretofore having or claiming to have certain equitable rights or interests in a certain property located in Middlesex County, New Jersey, and known as the McCoy farm, by his certain agreement dated January 29th, 1891, assigned an interest in said claim or rights to one Josiah Taylor for the consideration therein mentioned.

Whereas said Josiah Taylor subsequently assigned his said interest in said claim to us.

Now in consideration of the sum of one dollar to us in hand paid by said William R. Henninger, we hereby grant, reassign and transfer to said William R. Henninger, his heirs and assigns, all right, title and interest which we now have or might have in said McCoy farm, or the proceeds thereof, so that he shall have and possess the same as fully as though the agreement hereinabove first mentioned had never been made by him.

In witness whereof, we have hereto subscribed our names and seals this 14th day of April, A. D. 1892.

STEPHEN H.LITTLE. [SEAL]
JOHN L. TAYLOR [SEAL]

Signed and sealed in presence of, as to
S. H. LITTLE.
J. TAYLOR.

As to
JOHN L. TAYLOR.
JOSIAH MEEKER."

NEW JERSEY, }
Morris County. }

Be it remembered that on this 20th day of April, A. D. 1892, before me personally appeared John L. Taylor, who I am satisfied is one of the grantors in the deed within named, and I having first made known to him the contents thereof he did thereupon acknowledge that he had signed, sealed and delivered the same as his voluntary act and deed.

JOSIAH MEEKER,
Master in Chancery
of New Jersey.

THE WITNESS: Well here is another part that belongs to it, I guess.

MR. EMERY: Well that is the acknowledgment.

RECESS.

Q. The mortgage on the McCoy farm, the interest has not been paid for some little time, has it?

A. Yes, sir; it is over a year, I guess; really I don't know how much.

Q. Something in the neighborhood of a year?

A. Yes, sir.

Q. About how long had you owned it?

A. About a year.

Q. You had the deed to yourself, not your wife?

A. Yes, sir; I had it myself.

Q. Do you recollect whether after you bought the McCoy farm you yourself paid any interest or taxes or was all of that which which had accumulated remaining at the time you made this exchange?

A. Yes, sir.

Q. It was remaining unpaid after the time you made the exchange?

A. Well, I don't remember that.

Q. You don't remember paying it?

A. I don't remember paying anything except what I paid to Mr. Heald.

Q. At the time of the exchange?

A. Yes, sir.

Q. I believe that is all.

Cross-Examined by Mr. Parker:

Q. When you were sworn here before, didn't you say plainly that you first saw Mr. Heald on the day the paper was signed?

A. Oh, no, I saw him previously. Mr. Taylor, my agent, wrote to me that he had a property in Pennsylvania which he (interrupted).

Q. Never mind what he wrote?

A. Well, he informed me.

Q. I don't care anthing about that.

Mr. Little: Just answer the questions he asks you.

A. Please repeat the question once more, then?

Q. Didn't you say plainly that you had no knowl-

edge or acquaintance with Mr. Heald and did not meet him during the negotiations except once?

A. I don't remember whether I said it or not.

Q. Did you mention meeting him but once?

A. I don't remember that because I met him twice.

Q. Were you asked and did you answer as follows:

Q. During the negotiations did you have any interview with Abraham B. Dupuy?

A. I never saw the man.

Q. Then or since.

A. Not since nor before.

Q. Had you any acquaintance with Charles E. Heald prior to that?

A. No, sir.

Q. Did you meet him at any time during the negotiations?

A. During the negotiations I did.

Q. Did he represent himself as an agent for any one; what did he say?

A. He said that he represented Mr. Dupuy.

Q. Did you sign a written agreement in reference to the conveyance?

A. Yes, sir.

Q. (Witness being shown a paper writing) Just look at that paper, see if that is the agreement?

A. That is the agreement that was signed at the time.

The agreement is offered and marked Exhibit 1 for the complainant.

Q. What date does it bear?

A. Sixteenth of November.

Q. Did you reply upon Mr. Taylor—(interrupted)

Objected to.

Mr. Little: If the question is at all relevant it is difficult to get at it in any other way.

Q. Did you see Mr. Taylor present during the negotiations?

A. Yes, sir.

Q. At any time until they were closed?

A. Yes, sir.

Q. How often?

A. It was two times if not three times.

Q. You never saw Mr. Heald until when?

A. Until that time the same day I saw Taylor; that is, I saw Mr. Heald and Taylor there close together.

Q. You subsequently made the conveyance to Depuy?

A. Yes, sir.

Q. Did you mention that you had seen Mr. Heald but once in that evidence?

A. I don't remember that. I met him twice.

Q. How long before the actual agreement did you meet him the first time?

A. Oh, that may have been about a week or so.

Q. A week or so?

A. Part of the week, or so, I don't remember that exactly.

Q. Was it as much as a week?

A. I don't remember that, it wasn't long.

Q. Was it three days before?

A. I can't answer that question.

Q. Was it two days before?

A. I can't answer that question, I don't know. It wasn't long before.

Q. Was it as much as three days before?

A. I don't remember.

Q. Was it much as two days before?

A. I don't remember.

Q. What?

A. I can't answer that, I don't know.

Q. Was it as much as one day before?

A. It was within inside of a week, I should judge not long before; it was only a short time before, I could not give you the number of days.

Q. You came down from Allentown to sign that agreement, didn't you?

A. I came down from Allentown to get a description of the property that they had.

Q. What?

A. I came from Allentown to get a description of the property they had, to see what they really had.

Q. I am not asking about that, I mean the day of the agreement?

A. Oh, I came down from Allentown; yes, sir.

Q. How many days before that had you been in Allentown before that day? How long before was your next previous visit to New York?

A. Previous to what? I can't answer that question.

MR. LITTLE: Which question do you want him to answer?

MR. PARKER: I will ask him both; I don't mean to confuse the witness.

A. I was in Allentown eight and a half years.

Q. That is not I wanted to know; what I wanted to know was how long you had been—how many days you had been in Allentown?

A. After going to New York?

Q. Before the day you came down to sign that agreement?

MR. LITTLE: I object to that question. What does counsel mean? He lives in Allentown. How many days between what period?

BY THE COURT: The object of the question is, as I understand it, to ascertain whether he had been out of Allentown during any different periods of time—whether he can tell.

MR. LITTLE: Well, that is not the question as put.

THE WITNESS: Every day I had to be there; I was Warden of the Prison at that time, and I wasn't allowed to be away more than twenty-four hours, unless by permission of the Court.

Q. How often would you go in a week?

A. How often could I go, what's that?

Q. How often did you go?

A. To New York?

Q. No, in a week. Did you leave Allentown?

A. Oh, very seldom I left Allentown.

Q. You were down to New York and away from Allentown on the 16th day of November, when you signed that agreement?

A. Yes, sir; I was away then.

Q. Now I want to know whether you had been down to New York on the 15th of November, the day before.

A. That I don't remember.

Q. Or the day before that?

A. I can't answer that.

Q. Is it possible you went two days in one week?

A. To New York?

Q. Yes, to New York.

A. It might have been, but I could not answer that, I can't answer the question.

MR. PARKER: Are the papers in the other case here?

MR. EMERY: I sent for them.

MR. PARKER: We want them very badly—the papers in the original case brought by Henninger against Heald.

MR. EMERY: I think they are here. I sent for those which were referred to in my answer.

Q. Were you to pay $200 in cash on the day after the agreement, was that the first understanding?

A. Oh, no, not $200.

Q. Was there talk of that?

A. He wanted $500 and I reduced him to $400, I offered him $300 and he wanted $500 for taxes and interest due on the mortgage. I offered him $300, and finally we agreed to $400, and then I gave him the note.

Q. Did he ask you for cash?

A. I don't remember, but if he did I could not have given him the cash then.

Q. Did he ask you for it?

A. That may be.

Q. Didn't he tell Mr. Taylor right there in your presence that as you could not give him cash that Taylor would have to wait for his commission?

A. That I don't remember.

Q. Don't remember whether he said it or not?

A. No, sir.

Q. Don't you remember that he told Taylor he would have to wait for his commission?

A. No, sir; I don't remember.

Q. Don't remember whether that was said or not?

A. No, sir.

Q. You produced some letters from Mr. Taylor the last time you were here that you got previous to his negotiations?

A. I presume I did.

Q. Dated November 13th, 14th and 15th; I mean previous to the contract?

A. Mr. Little may have them; I don't remember about that.

Q. I would like to see them.

A. All the letters that I have Mr. Little has charge of; I have none.

Q. They were produced last time—a letter that you got from Mr. Taylor of November 13, 1889, have you got that? Have you got letters of November 14th?

A. I don't remember.

Q. Have you got anything that will show when the negotiations for this property began? You haven't got those letters here, you say?

A. No, sir.

Q. Your counsel has them, though?

A. That is more than I know.

Q. Will you produce them?

A. I cannot. I have not got them.

Mr. Parker: I call for them, Mr. Little, letters that were written at the last hearing.

Mr. Little: I deny your right to ask me to

produce them until the Court says that I am compelled to. I say that this is not cross-examination. Whatever papers I have to be produced I will produce them at the proper time, and you can cross-examine about them to your heart's content, but I do not propose to have my case interjected into on cross-examination.

THE COURT: I think you will remember, Mr. Little, that the witness is a party in the case and it is proper cross-examination to interrogate him very fully as to the origin of this contract, I can scarcely conceive of any branch of the case in that direction since he has spoken about the contract himself that he might not be strictly interrogated upon as to dates, and as to letters written by him and letters received by him in respect to the contract, and everything in regard to its origin and progress and composition. I think that is the universal practice. Mr. Henninger says I entered into this contract, and he claims there are certain letters resulting from that contract. I think the mere fact that he entered into such a contract opens the way to the very fullest cross-examination.

MR. LITTLE: And calls for the production of these papers?

THE COURT: Yes, sir.

MR. LITTLE: Then I produce the letters of the 13th and 14th of November. (Handing same to Mr. Parker.)

Q. You received that letter dated November 13th.
A. Yes, sir.
Q. When did you receive it.
Q. Well, I don't remember.
Q. Shortly after this date?
A. No doubt, yes, sir.
Q. I propose to read you that letter, it is: "W. R. Henninger. Dear Sir: I wired you on Monday that I could make the trade if you would pay $400.00

" (instead of the $300.00 you offered) and asked you
" to answer, but have heard nothing further from you.
" Now, if you wish to make the deal, and I know it is
" a splendid deal for you to make, you will have to
" come on at once and close it up, for if a foreclosure
" suit is begun on your farm I don't think you can
" then make the trade at all. I sent a party to see
" Shafer & Durand, and they said they would hold off
" till Thursday morning, when if the whole amount
" was not paid *both principal* and *interest* they would
" be obliged to commence, so you see there is abso-
" lutely not a day to wait. The owner of the Blanch-
" ard place is very indifferent about the deal any way,
" and unless I hear from you to-morrow either by
" letter or telegraph, I think the whole thing will be
" 'off.' Wire immediately on receipt of this what
" you will do and what day you will be here.

" Yours truly,

" J. W. TAYLOR,

" 176 Broadway."

Q. I read you that letter and ask your memory. Had you seen Mr. Heald before you received that letter?

A. Well, I don't remember; I remember that I saw him, but the date I cannot tell.

Q. I am talking about whether you had seen him before you got that information?

A. No, sir.

Q. You can't tell whether you saw Mr. Heald or not?

A. No, sir.

Q. Or Mr. Taylor or not?

A. No, sir.

Q. Now the next letter is November 14th—" Dear
" Sir: Your last telegram received, and as you can-
" not come until Saturday I will have time to reply
" by letter. I have consulted the parties and after a
" long argument they will do this and say if it is not
" done by Saturday drop it. They will take $300.00

"cash and your note for $125.00 for 6 months at 6%
"provided you will take the taxes on the Blanchard
"place which are $28.00."

Q. Now, when you were written to that he had consulted the parties, did you know who the party was? had you seen the party? When Mr. Taylor wrote you in this letter that he had consulted the parties and told you what those parties would do, without mentioning their names, had you then seen Mr. Heald?

A. I don't remember that, but I knew who the parties were—Jardine Brothers; I had received a communication from Shafer and Durand in Rahway in reference to the mortgage.

Q. I will finish reading you the letter now: "I
"wrote you the taxes were paid, but I was mistaken,
"as I now have the bill. Now, this is the very best
"I can get them to do but it is possible they might
"do a few dollars better after you get here. But
"you better come right here Saturday morning
"and you may rest assured I will do all I can to
"make a satisfactory deal for you, but be sure and
"bring $300 cash at least, as they will not take any
"mortgage, with all its formalities, &c., and, no
"doubt, you rather it would be this way. When I
"showed your telegram to them to-day they at first
"refused to do anything more about it and said 'drop
"'it,'" but after a time I got them to make the above
"offer. You had better wire me as soon as you get
"this if you will be here Saturday as unless I knew you
"were coming I might be away.

"Yours, etc.,

"J. W. Taylor,

"176 Broadway,

"Room 42½."

Q. Did you send or communicate to anybody but Taylor about this purchase—I don't mean Shafer & Durand who represented the mortgagees—before that letter?

A. I guess Taylor was the only party.

Q. You hadn't seen Mr. Heald before that?

A. That I cannot answer; I don't remember; I know I saw him twice.

Q. But at the time of this letter you hadn't seen anybody but Mr. Taylor, you had not seen Mr. Heald at the time of that letter?

A. That I don't remember.

Q. That was written on the 14th, when did you receive it, on the 15th?

A. I don't know.

Q. Was the 16th on Saturday?

A. I don't remember.

Q. Had you written Mr. Taylor that you could not come down until Saturday, before the 13th?

A. That I don't remember, either.

Q. You cannot remember anything about it?

A. I don't remember, no, sir.

Q. That's all of that part of the case.

MR. LITTLE: Mr. Parker, are you going to offer those letters in evidence?

Mr. Parker replies that his reading the letters gives Mr. Little the right to offer them, but that he (on his part) is not obliged to offer them.

THE COURT: I think Mr. Parker's statement of the rule is correct.

MR. LITTLE: I would like to have them marked for identification.

Letter of November 13th, marked No. 2, for identification.

Letter of November 14th, marked No. 3, for identification.

Q. Mr. Henninger, you were here on the 13th day of April, 1892, to give your testimony?

A. Yes, sir.

Q. What did you do that afternoon, did you go home or stay here?

A. After the adjournment of the Court?

Q. Yes.

A. I went home.

Q. Did you come back on the 15th?

A. I did not; no, sir.

Q. Did you understand before you left here that you would receive that Taylor assignment back?

A. No, sir.

Q. Did you hear anything of that?

A. The assignment back? No, sir; nothing.

Q. Do you mean to say that you received that assignment back from John A. Taylor and Stephen H. Little, which was, I suppose, about the 15th—was it. It is dated the 14th, when did you get it?

A. I don't remember.

By Mr. Little:

Q. Look at your paper, won't that show you?

A. On the 3d of May I received that. It is forwarded on the 3d of May at Morristown, and maybe I received it on the same day and perhaps not until the next, I don't remember.

By the Court:

Q. You may have got it on the 3d of May?

A. It was forwarded at Morristown on the 3d of May.

Q. And you got it on the 3d or 4th you think?

A. Yes, sir; I don't remember exactly.

Q. At your home at Allentown.

A. Yes, sir; some days I received letters from Mr. Little the same day and other days I received them the next.

Q. You swore to the original bill in the other suit in January, 1891?

A. Yes, sir.

Q. Who was present?

A. Why, the notary public, Mr. Houstman.

Q. Who brought you the paper to sign?

A. Stephen H. Little.

Q. Not Theodore Little but Stephen H. Little?

A. Yes, sir, Little Junior.

Q. I see from the paper that you assigned to Mr. Taylor that he told you at that time that Taylor had a suit against Heald, did he?

A. I don't remember.

Q. Did you read that paper that you assigned to Mr. Taylor?

A. The agreement.

Q. Yes.

A. Oh, yes.

Q. Did you notice that it mentioned a suit by Taylor?

A. Well, those are points that a common man don't notice.

Q. Was there anything said at that time between you and Mr. Little as to what share Mr. Little expected to get in that matter?

A. At the time of Taylor's agreement?

Q. Yes.

A. Oh, no, sir.

Q. Didn't you say so in your last testimony here?

A. That is the first agreement. Oh, no, sir.

Q. When did you learn that Mr. Little had a quarter interest in that matter?

A. After the adjournment of court last year.

Q. That was the first time?

A. Yes, sir; that was the first time that I learnt he had an interest.

Q. How did you learn he had a quarter interest—didn't you swear he had a quarter interest at the last trial?

A. I made a mistake which I corrected a short while ago; Mr. Taylor told me while we were waiting in the depot, that I had made a mistake.

Q. How did you get that impression at that time?

A. He told me I was wrong.

Q. When you swore, before Mr. Taylor told you that?

A. I was under that impression.

Q. Where did you get it?

A. It just struck me it was that way.

Q. Who had you learned it from?

A. I was under that impression all the way along; I don't know where I got it.

Q. Had you talked to Taylor before?

A. No, sir.

Q. Or to Mr. Little?

A. No, sir.

Q. Who did you learn it from?

A. Well, I was under the impression that that agreement that I signed was signed both to Mr. Little and to Mr. Taylor, and the agreement I had from that was lost, I didn't find it, in fact, I had not it here and one of the Mr. Littles asked for that agreement, I hadn't it here and could not find it; but I found it since.

Q. You don't know where you got that impression?

A. No, sir; I was under the impression that the agreement was signed by Mr. Little, Jr., and Mr. Taylor.

Q. Where did you get the impression that Mr. Little had a quarter interest?

A. I was under the impression it was signed by both parties; that it was the agreement between myself, Mr. Taylor and Mr. Little, and the agreement I had was lost.

Q. What do yon mean by having found it since?

A. Since the last trial.

Q. Found what?

A. The original agreement between myself and Mr. Taylor.

Q. The paper you produced here?

A. Yes, sir.

Q. Where did you find that paper?

A. In my bookcase in the back drawer; in the rubbish in the drawer that I didn't use.

Q. Didn't you say that this was returned you by Mr. Little?

A. The one was returned and the other one was mine.

Q. There are two produced?

A. Yes, sir; the one I had and Mr. Little had the other one.

Q. This is the one you said was returned—I believe that was all.

RE-DIRECT:

Q. In order to have no mistake about it, see whether that is the one which I returned to you?

A. That is the one which you returned to me. This is the one that was returned, and the other one I have.

MR. EMERY: Which was returned to him, I haven't seen this one before.

THE COURT: They are both cancelled as I understand it.

MR. EMERY: You produced another agreement of the same date.

MR. LITTLE: This is the one that he speaks of that was returned to him. Now I asked him if that was the paper that was returned to him in May.

Q. The paper returned to you in May was not the agreement signed by Mr. Taylor alone?

A. No, sir, that is the one I had—the one signed by Mr. Taylor alone I had and this (indicating) is the one returned by Mr. Little.

BY MR. PARKER:

Q. The one about which I asked you on cross-examination was one signed by Mr. Taylor alone. There is another of the same date signed by yourself and Mr. Taylor both?

A. Yes, sir.

Q. And that is the one which Mr. Theodore Little now hands you?

A. Yes, sir; that is the one that was signed by Mr. Taylor.

Q. It was sent to you by whom?

A. By Mr. Little.

MR. EMERY: We won't take the time to read it over; I take it for granted they are copies.

FURTHER DIRECT:

Q. You were here on the first day of the hearing of the previous cause, were you not?

A. Yes, sir.

Q. On the second day you were not here?

A. I was not, no, sir.

Q. Didn't you come down on the 14th?

A. Yes, sir.

Q. After the case had been adjourned?

A. Yes, sir.

Q. Did you or not go from here to Morristown?

A. I did, sir.

Q. Now, at that time was any arrangement made with you as to the future?

A. We talked the matter over.

Q. Subsequent to that time you got this letter from me?

A. Yes, sir.

Q. Enclosing the paper cancelled?

A. Yes, sir.

Q. And the new agreement?

A. Yes, sir.

Q. Which you asked me to draw?

A. Yes, sir.

Q. Look at that paper and see if it is one of the papers that was enclosed to you?

A. That is one of the papers.

MR. EMERY: What is that?

MR. LITTLE: Paper signed by John L. Taylor and Stephen H. Little on the 14th day of April.

A. A letter has been shown to you dated the 14th of November purporting to be signed by J. W. Taylor, which was shown to you by Mr. Parker, speaking of your coming down on Saturday, the 14th; did you reply to that letter by telegram or otherwise?

A. I presume I did ; yes, sir.

By the Court :

Q. You presume you did ?

A. I did ; yes, sir.

Further Direct.

Q. How did you reply ?

A. By wire.

Q. (Showing witness a paper) Look at that paper?

A. Yes, sir, that is the telegram.

Mr. Emery : What is that ?

Mr. Little : Simply a telegram that he would be down there on the 15th, the day after the 14th.

Mr. Emery : What is the date of it ?

Mr. Little : The 15th, "Will be at your office 10 o'clock to-morrow, relative to trade."

Mr. Little offers in evidence the paper of April 14th, marked Exhibit No. 4.

Also telegram marked Exhibit No. 5.

Q. Mr Henninger, do you know whether or not you read the description in this deed of Dupuy's at the time it was delivered to you ?

A. I read it over, yes, sir.

Q. Was anything said to you at that time about the mortgage being $3,600, or any other sum about $3,000 ?

A. Not a word was said about it.

Mr. Little : This paper was used and produced by me at their request, and have it marked.

Deed from Dupuy to Henninger marked Exhibit No. 6.

Q. I will ask you if you know in whose handwriting these two letters of November 13th and 14th, which were shown to you, are ?

A. Mr. Heald's handwriting.

Q. They are signed J. W. Taylor, 172 Broadway. That is all for the present, sir.

Josiah Taylor, sworn for the complainants.

DIRECT-EXAMINATION BY MR. LITTLE:

Q. Where do you live?
A. Brooklyn.
Q. How long have you lived there?
A. About a little over five years.
Q. Where did you live prior to that?
A. I lived in Succassunna, Morris County.
Q. Then you moved from there over to Brooklyn?
A. Yes, sir.
Q. Who is J. W. Taylor?
A. My son.
Q. What business is he in?
A. Real estate business.
Q. When did he give up that business in New York?
A. In the summer of 1889.
Q. Who took the business after that?
A. I did.
Q. Who is J. D. Taylor?
A. My wife.
Q. Jane B. Taylor.
A. My wife.
Q. Where was your office?
A. 176 Broadway.
Q. What business did you carry on there?
A. The real estate business.
Q. How long?
Q. I was there three or four years, I couldn't tell you exactly how long.
Q. Do you know Charles C. Heald during that time?
A. Yes, sir.
Q. What business did he carry on?
A. Real estate business.
Q. Where was his business?
A. The same floor with mine, 176 Broadway.
Q. Was he or not frequently in your office?

A. Yes, sir.

Q. Were you on intimate terms with him?

A. Very intimate terms.

Q. Did you have any charge of the selling or exchange for Mr. Henninger of the property known as the McCoy place?

A. I did.

Q. How did it come into your hands?

A. Well, my son went west in the summer of 1889 and left his business in my hands, and a short time after he had gone there came a letter from Mr. Henninger saying that he had a letter and enclosing a letter from Shafer and Durand, saying that they wanted the money on a certain farm known as the McCoy farm that my son had had of his to sell. The letter came to my son, and I opened it and found that letter.

Q. Did you take charge of it?

A. I think I wrote to Mr. Henninger that my son had gone west and I had taken charge of the business and would do what I could for him.

Q. And did you from that time take charge of it?

A. I did, in a measure.

Q. Was the matter introduced in any way to Mr. Heald?

A. Well, Mr. Heald had this property he was offering for anything that came along.

Q. The Blanchard property?

A. Blanchard property, yes, sir; and I told him about this letter and he immediately wanted me to offer him the Blanchard property.

Q. Did you do so?

A. I wrote to Messrs. Shafer & Durand about what terms they wanted—how much money they wanted; in his letter to Mr. Henninger it didn't say he wanted all the money, but they wanted a part of the money paid on the mortgage—they wanted something paid on the mortgage. I wrote to Messrs. Shafer & Durand and in reply received a letter from them saying that they wanted it all paid them, and I enclosed that letter to Mr. Henninger, saying I had received it, and

Mr. Henninger wrote to me and wanted me to try and settle with them or sell the farm ; I wrote to him that there was no show to sell it, but I had a party who owned the Blanchard place at Stroudsburgh, which being so much nearer him, I thought he might possibly get something out of—he could do better with it than he could with a place in Woodbridge or Amboy.

Q. At whose suggestion did you write him ?

A. At Mr. Heald's suggestion.

Q. Who did Mr. Heald represent ?

A. Mr. Dupuy.

Q. Did he say anything about the title being held by Dupuy or for whom it was held or what ?

A. I don't know as he said it at that time but he had told me before that—at the time he made the trade with Mr. Blanchard, that the title was put into Mr. Dupuy's name for the sake of giving Mr. Blanchard a bond which was not good for anything.

By the Court :

Q. Title was put into Mr. Dupuy for the sake of giving Blanchard the bond ?

A. Mr. Blanchard allowed Mr. Dupuy $3,600 on the farm; Mr. Heald gave this mortgage on this farm for $3,600, and in order to give him Dupuy's mortgage Mr. Dupuy had to take title to the farm and give him a mortgage for it.

Further Direct :

Q. Why did he put it into Mr. Dupuy's hands ?

Mr. Emery : What is that ?

Q. What reason did he say it was put in Dupuy's name for ?

A. I answered that.

The Court : He said it was put in Dupuy's name for the purpose of giving Blanchard a bond that was good for nothing.

The Witness : What they call a straw bond.

Q. Was it so termed then ?

A. That is what it is termed in business in New York and means an irresponsible bondsman.

By the Court :

Q. Do you mean to say you then understood that the bond was a straw bond ?

A. I understood that Dupuy was irresponsible, and made this bond to Blanchard so that he could not hold Heald on the property.

Q. Do you mean to say you so understood it then ?

A. Yes, sir.

Mr. Little : That is a matter Mr. Taylor had nothing to do with.

The Court: That is what Mr. Taylor understood at the time.

By the Court :

Q. You were at that time acting for Mr. Henninger ?

A. At the time this trade was made with Blanchard I was not.

Q. But afterwards you were ?

A. Yes, sir ; afterwards I was acting for Henninger.

Q. Then you had this information when you afterwards began to act for Henninger—you have this information from Heald about the straw bond ?

A. Yes, sir ; I knew it before that.

Q. Well go on.

Further Direct :

Q- Was the agreement between Henninger and Dupuy reduced to writing ?

A. Yes, sir.

Q. (Handing witness a paper) See if that is it ?

A . Yes, sir.

Q. This agreement says the Blanchard property is to be free of all encumbrances except the mortgage of $3,000 and interest to November, 1889. Was there anything said as to the mortgage upon the property

being for a higher or larger amount than $3,000? A. I knew before——(Interrupted).

Q. I asked you whether there was anything said about that?

A. No, sir.

Q. My question is whether anything was said in Henninger's presence? A. No, sir.

Q. Or to him?

A. No, sir.

Q. That the mortgage was any larger than $3,000, or that there was any agreement for its reduction to $3,000?

A. Not with Mr. Henninger, if I ever understood.

By the Court:

Q. Well, am I to understand that you knew that the mortgage was really larger than $3,000?

A. Yes, sir.

Q. Why did not you tell Mr. Henninger that?

A. Mr. Heald told me not to tell him.

Q. And you obeyed Mr. Heald rather than your principal?

A. Yes, sir.

Further Direct:

Q. Look at these two letters which I now show you of November 13th and 14th, and tell me in whose handwriting they are?

A. Those are in Mr. Heald's handwriting.

Q. Look at this telegram and see whether you received it?

A. Yes, sir.

Q. In whose handwriting are the pencil marks there?

A. Mr. Heald's.

Offered in evidence and marked Exhibit 7.

Q. See if you recognize this telegram as having been received; it is dated the 11th of November, 1889?

A. Yes, sir.

Offered in evidence and marked Exhibit 8.

Q. Now tell me in whose handwriting this letter is?
A. Mr. Heald's.

MR. EMERY: What is the date of it?

MR. LITTLE: 11th of November, 1889. I will read it. First I will read the telegram, if you please: "Allentown, Penna., November 11th, J. W. Taylor, 176 B'way. I am agreed to pay $300. Make trade on that basis. Wire result. W. R. H."

"November 11th, 1889. J. Taylor. Dear Sir: I find there is due on the mortgage $283.33 for interest and $78.45 taxes, making a total of $361.78, as you see. Now you better wire Henninger like this: '$300 will not do, but think I can make trade for $400, if you come Wednesday. Answer.' We will get him to take the taxes on the Blanchard place and trade this way. Jardine will not wait."

Offered in evidence and marked Exhibit 9.

Q. Please look at this paper shown you now and tell me in whose handwriting the indorsement is?
A. Heald's.
Q. Whose handwriting is the letter in?
A. Henninger's.

MR. EMERY: What is the date of it?

MR. LITTLE: It is Henninger's letter to J. W. Taylor, November 23d, 1889. "Enclosed find check, $300." I don't care about reading it all. The indorsement is what I want to refer to in Mr. Heald's handwriting:

"Better write to Henninger that check is received, but as it is on the Allentown Bank will have to wait till money is received before passing deeds, note, &c. Also say I have notified Shafer & Durand to hold up so far as Henninger is concerned, as title is about to change hands.

&c. I have put the check in bank for collection.

"HEALD."

Offered in evidence and marked Exhibit 10.

Q. Please look at this paper and tell me in whose handwriting that is?

A. J. W. Taylor's.

Q. What is the date of that?

A. November 8th.

Q. In whose handwriting is the pen memoranda at the top?

A. Heald's.

MR. LITTLE: It is a letter dated Allentown, November 8, 1889—Henninger's letter, on the top of it is in Heald's handwriting, "I opened this letter as I have to go away; you better write him it is impossible to do any better than you wrote him, &c., C. C. Heald."

Offered in evidence and marked Exhibit 11.

Q. Now, look at this paper and tell me in whose handwriting that is?

A. Mr. Heald's handwriting.

Q. That is dated December 2d, 1889; it is addressed to W. R. Henninger. What was done with it? Where did it come from?

A. That was wrote by Mr. Heald for me to copy and send to Mr. Henninger.

Q. Did you do so?

A. I did.

Q. Did you sign your own name to it?

A. Yes, sir.

"NEW YORK, December 2nd, 1889.

W. B. HENNINGER,

DEAR SIR: Your telegram of to-day received. Mr. Heald is now here in my office ready with the deed of the Blanchard place to pass the papers according to the contract; he has also been to the bank to-day

where he deposited the check, but finds that the money has not yet been received, the cashier telling him it may not come for three or four days as yet, and some of the country banks do not clear but once a week. You can call at your bank and find out for yourself when the money is likely to reach New York; I showed Mr. Heald your deed and he objects to taking it because it is not drawn in accordance with the contract. If you will look at your copy of the contract you will find that you agreed to convey the farm free of all encumbrances except a mortgage of $5,000 now on said premises and interest and taxes due thereon. Nothing is said about Mr. Dupuy's agreeing to assume and pay the mortgage, which Mr. Heald in his behalf absolutely declines to do, so that there is no other way for you to do except to make out a new deed precisely in accordance with the contract. Mr. Heald also finds that the farm is under lease running to April 1st, 1896, and that the rent of $200 a year has been paid up to that time. I think I can get him to waive the matter of possession, although under the contract, which says nothing about the farm being subject to a lease, you could be compelled to give possession, but he demands that you pay me over the rent for the unexpired term of the lease, which you have received and which amounts, as he figures it, to $66.67, and this amount you will have to send in cash with your new deed. As soon as received we can close the whole matter at once. I am sorry there has been such delay, but, as you can plainly — it has not been the fault of any one here. I enclose the check you sent."

Q. I show you the contract which was made between them in writing. What was the agreement between you and Heald at the time?

A. The agreement was that if Mr. Heald received the $150, which he said the Blanchard people that then owned the place and offered the place and offered him for the title—whatever was received from Henninger in money and in the farm was to be equally divided between us.

Q. How much money was received ?

A. $300 was received.

A. And subsequently how much ?

A. $66.

Q. What became of the $300 ?

A. Mr. Heald took the check and collected it, and took out $225, and gave me $75.

Q. That is, as I understand you, he took out $150, and half of the remainder ?

A. Yes, sir.

Q. And gave you $75 ?

A. Yes, sir.

Q. What was done with the $66 ?

A. I received that by express and gave Mr. Heald the half of it, $33.

Q. (Handing witness paper) Is that the envelope that enclosed the $66 ?

A. Yes, sir, that is the envelope.

Offered in evidence and marked Exhibit 13.

Q. Was there any agreement between you as to what should be done with the McCoy place after the exchange was made ?

A. Yes, sir ; we were to advertise it and try to sell it, and whatever we received for it after Mr.—— the mortgagees.

Q. Heald ?

A. No, sir, the parties who held the mortgage.

Q. Jardines ?

A. Yes, sir ; after the Jardines were paid we were to divide the balance equally.

Q. Was that agreement reduced to writing at that time ?

A. No, sir.

Q. At whose direction was the title to the McCoy place made to Dupuy ?

A. By Mr. Heald's direction.

Q. Was there any reason given for that by Heald ?

A. That he was to hold the title until we done

something with it; until I sold it, or the mortgage was foreclosed; until it was sold.

Q. Subject to your order?

A. Yes, sir.

Q. Subsequent to the completion of the trade was the agreement reduced to writing in any way?

A. Yes, sir.

Q. Will you look at this paper dated "New York, December 21st, 1889?"

A. Yes, sir.

Q. Whose handwriting is it in?

A. Mr. Heald's.

Q. Signed by whom?

A. Signed by Heald.

Q. How did you get it?

A. He delivered it to me.

Q. Who is the J. B. Taylor mentioned in that paper?

A. My wife.

Mr. Little: I will read the paper.

"New York, December 21st, 1889. Whereas, on or about the 11th day of November of the present year one William R. Henninger conveyed to one Abraham D. Dupuy the equity of redemption in a certain piece of real estate known as the McCoy farm situate in Woodbridge Township, Middlesex County, New Jersey. Whereas, one J B. Taylor agrees to use every effort and advance one-half of all expenses deemed necessary to effect a sale of said farm, now, therefore, I, Charles E. Heald, agent for said Abraham B. Dupuy, do hereby agree with said Taylor that in consideration of said efforts and expenses, as aforesaid, that upon any sale of said farm said Taylor may have and receive half of the profits of said sale of said equity of redemption. Charles E. Heald."

Offered in evidence and marked Exhibit 14.

Q. Was there any agreement or understanding that

you were to have any part of the money which Henninger paid for your commission ?

A. No, sir.

Q. How were your commissions to be paid ?

A. Henninger sent me a note.

Q. Who was to pay them ?

A. Henninger was to pay my commissions.

Q. Look at this paper and see if that is the note he gave for your commissions ?

A. That is it.

Offered in evidence and marked Exhibit 15.

Q. How came this last agreement which I now show you signed by Heald to be made in December ?

A. Well, I had spent some money advertising it, and Mr. Heald had not paid me back his share of it, and I began to get suspicious of him, and I thought it was best to have our agreement in writing, so I asked him to make a writing, and then I had another party at the time who was going out to look at the place, and before I do any more I wanted to have this in writing so that I could enforce it if neccessary.

By the Court :

Q. Did all this business between you and he take place in the City of New York.

A. Yes, sir.

Q. No part of it in New Jersey ?

A. No, sir.

Q. Did your wife know nothing about it ?

A. Yes, sir.

Q. Do you mean to say she knew about this whole transaction ?

A. I don't believe she knew about the details of it.

Q. Did she know that this was an agreement between you and Heald for the transfer of this property and to make what you could out of it ?

A. Yes, sir.

Q. Her knowledge of it came from you or Heald, or both in the City of New York ?

A. Yes, sir; she acquired it from me in Brooklyn.
Q. In the State of New York?
A. Yes, sir.

MR. LITTLE: The paper which was offered in evidence signed by John H. Taylor and Stephen H. Little surrendering the agreement which you had made with Henninger.

Q. How did John L. Taylor become interested? What relation is he to you?
A. Well, there were two suits commenced—(Interrupted).
Q. What relation is he to you?
A. Son of mine.
Q. And you transferred your interest to him?
A. Yes, sir.
Q. Have you any interest in this suit whatever?
A. No, sir.

CROSS-EXAMINED (by Mr. Parker):

Q. Was that note of Mr. Henninger's for $100 to you paid?
A. No, sir.
Q. Where was that note delivered to you?
A. I think it was mailed to me; I know it was mailed to me.
Q. Why wasn't it paid to you?
A. Why wasn't it paid?
Q. Yes?
A. Mr. Henninger didn't have the money; or that is what he claimed.
Q. Is that the only reason?
A. I don't know of any other reason.
Q. Didn't he refuse to pay it to you?
A. No, sir.
Q. Didn't you tell Mr. Blanchard that he refused to pay it to you?
A. No, sir.
Q. Before this sale, didn't you tell Mr. Dupuy that Mr. Henninger would not pay you any commissions,

and the commissions would have to come out of the money—

A. No, sir.

Q. Are you sure of that?

A. Yes, sir.

Q. On the day that that contract was signed did not Mr. Heald tell you in Henninger's presence that as Henninger would pay no cash you would have to wait for your commissions on Mr. Heald's side until Mr. Henninger paid that note?

A. No, sir.

Q. You say when the note was paid he did give you $75?

A. That was out of the $300.

Q. $75 out of the $300?

A. Yes, sir; that $300 was paid.

Q. By check?

A. Yes, sir.

Q. It was a note first, wasn't it?

A. Yes, sir, a note first, and I think the note was not paid and a check was sent for it.

Q. And he gave you $75 out of the $300?

A. Yes, sir.

Q. And when the $66 came you retained $25 more?

A. I retained $33.

Q. Wasn't it $25?

A. No, sir; when money is in my hands I get my share of it every time.

Q. Didn't you complain to Mr. Blanchard that Mr. Heald had told Henninger that there were commissions coming to him from Mr. Heald's side and therefore Mr. Henninger would not pay your note?

A. No, sir.

Q. That is the six months note of Mr. Henninger's?

A. Yes, sir.

Q. That was not paid either?

A. No, sir.

Q. That is held by Mr. Heald still?

A. Yes, sir.

Q. I don't understand how you make out that $75 and $33 is half of $366.

MR. LITTLE: He didn't say that.

THE COURT: He made it plain; he said there was $150 deducted first.

THE WITNESS: That note there is for the balance of $400, and Mr. Heald took my note for four months and the understanding was if my note was paid we were to divide that; and then when his note was paid we would divide that; that was Mr. Heald's own specification.

Q. And you and J. B. Taylor were complainants against Mr. Heald and others in a suit brought on the 23rd day of September, '90?

A. Yes, sir.

Q. That was a suit brought on the so-called agreement that you spoke of?

A. Yes, sir.

Q. Who was your counsel?

A. Stephen H. Little.

Q. Was it by your request that he went to Allentown to see Mr. Henninger and obtained from him an assignment to you of a part interest in Henninger's claim?

A. I don't know whether it was at my request or by mutual agreement.

Q. You don't mean by mutual agreement between you and Henninger?

A. Between Mr. Little and me.

Q. Did you see Mr. Henninger at that time?

A. If I went with Mr. Little I saw him.

Q. Did you go?

A. I don't know whether I went or not? I think Mr. Little went alone once and I think I went with him once. I don't remember whether I went with him or not; I could not say. But Mr. Little went and I went; I don't think we went together.

Q. You swore to an affidavit in the case of William R. Henninger against Charles E. Heald in the first case

prior to March, 1891, on the 3rd day of February. Is that your signatnre ?

A. Yes, sir.

Q. I see you swear that you heard the foregoing bill read. Did you in that bill or in that affidavit disclose to the Court that you had any interest in that litigation ?

A. I don't understand you.

MR. EMERY : What is the date of that affidavit ?

MR. PARKER : February 3rd, 1891. It begins by saying, that he has heard the foregoing bill read and that he is the Josiah Taylor therein referred to.

THE WITNESS : I heard it read and then swore to it.

Q. Did you in the bill and affidavit tell the Court you were interested in that litigation and had an assignment of an interest in it ?

A. I could not say whether I did or not, but what ever is in that bill I signed and swore to it. I don't remember whether I told that in relation to it.

CROSS-EXAMINED BY MR. EMERY.

Q. Will you let me see that agreement of December, 1891 ?

A. (Produced).

Q. Mr. Taylor this is the agreement of December 21st, 1891, the one produced, signed by Charles E. Heald, that is an agreement with J. D. Taylor ; who do you say she was ?

A. My wife.

Q. Well was your wife going to sell this farm ?

A. No, sir ; I was for her.

Q. Why was this agreement put in your wife's name ?

A. Because I was financially embarrassed and didn't have enough to pay my debts—in case I made any off of it.

Q. What difference does that make, suppose you were financially embarrassed?

A. I had judgments against me and if I made anything off of it, then my judgment creditors would come in and get it.

Q. This was a scheme by which you should keep it away from your judgment creditors?

A. No, sir.

Q. What was it then?

A. If I got enough to pay my other creditors and judgment creditors I would pay my debts.

Q. But in the meantime you put in your wife's name so that the judgment creditors could not trouble you?

A. Yes, sir; exactly.

Q. How long were you financially embarrassed?

A. Seven, eight or nine years.

Q. When you got this agreement from Mr. Henninger how long did you keep it—the agreement that he was to give you three-quarters interest in anything he would get. What did you do with that?

A. Well then I assigned part of that over to my attorney.

Q. What about the other part?

A. The rest I let be just as it was.

Q. Didn't you assign it to anybody?

A. No, sir.

Q. You kept that all the time?

A. Yes, sir.

Q. Always kept it?

A. Yes, sir.

Q. You were here at the last trial?

A. Yes, sir.

Q. Your son was here?

A. No, sir.

Q. That is all.

RE-DIRECT:

Q. I don't know whether I asked whether anything

was said at the time of the negotiation or during the negotiations of this exchange as to the property of Pennsylvania being mortgaged for more than $3,000?

A. You asked me that.

Q. If anything was said during that time in Henninger's presence?

A. No, sir.

Q. Or hearing?

A. No, sir.

Q. That is all?

A. Now let me understand one thing here; there are two suits, in one suit I assigned a part interest to my attorney, and in the other suit I assigned the balance of it to my son.

By Mr. Emery:

Q. I was asking you about the agreement. Just read my question again?

The stenographer read as follows: "Mr. Taylor this agreement of December 21st, 1891, the one produced signed by Charles E. Heald, that is the agreement with J. B. Taylor, who do you say she was."

Q. Now that question of mine referred to the agreement assigning three-quarters interest. Did Mr. Henninger ever make you any other assignment than that assignment of three-quarters interest?

A. I don't know whether he did or not.

Q. Why don't you remember?

A. Because I don't remember.

Q. Very well; what other transaction was there in which you could have had any assignment of any interest?

A. There was another suit of Henninger's commenced against Heald in which I was interested.

Q. Another suit of Henninger against Heald?

A. A suit Henninger commenced against Heald.

Q. What other suit was there commenced by Henninger against Heald except this suit on which you took an assignment of three-quarters interest?

A. You don't understand me—not commenced suit—(interrupted).

Q. Then Henninger did not commence suit, did he?

A. Hold on now, until I can remember.

Q. Very well; fix it just as you please; think it over?

A. There has been so many suits.

Q. Have you had so many assignments from Henninger?

A. I can't say whether I have had more than one assignment from Henninger or not.

Q. What other matter was there on which you would have an assignment from Mr. Henninger; what other would you have from him?

A. No other business.

Q. What other assignment could you have had but this?

A. There was another suit.

Q. By whom?

A. By whom? I don't know whether—(interrupted).

Q. Tell me by whom that other suit was by?

MR. LITTLE: I insist that the witness should be allowed to answer without interruption by counsel.

A. I can't tell whether suit was commenced by Henninger or me; I can't say from memory.

Q. In any suit commenced by you you didn't have the assignment from Henninger, did you?

A. No, sir, that is right.

Q. Then in the suit commenced by Henninger you had the assignment of the three-quarter interest?

A. Yes, sir.

Q. And that is the one you referred to in your answer to my question?

A. Yes, sir, that is the one I referred to, and I assigned my interest in that suit to my son.

Q. You said you didn't?

A. I didn't nnderstand you, that is the reason I said I didn't.

Q. When did you assign your interest to your son?

A. I could not tell you; it was some time after I got the assignment.

Q. How long after?

A. I could not tell you.

Q. For what purpose was that assigned?

A. Same purpose as I assigned the other to my wife.

Q. What purpose was that?

A. I have answered that once.

Q. Answer it again?

A. Well, I had creditors who were pressing me, and Mr. Heald even went to get some of the judgments against me, and harassed me in that way about that time to get half the judgments in New York.

Q. That is the reason that was made to your son?

A. Yes, sir.

Q. Have you got that assignment of your son?

A. No, sir.

Q. Where is it?

A. Surrendered.

Q. To whom?

A. To my attorney.

Q. Before it was surrendered who surrendered it to your attorney.

A. I think I wrote to my son, who sent it to Mr. Little.

Q. Where does your son live?

A. Succassunna, Morris County.

Q. And he sent it pursuant to your directions?

A. Yes, sir.

Q. When was that?

A. I could not tell you; somewhere around—well, I couldn't tell you the date.

Q. That's all

RE-DIRECT:

Q. Was there any assignment ever made by you to Mrs. Taylor other than the agreement in December which was taken in her name?

A. In this matter?

Q. Yes ; did you make a separate assignment, or do you refer to that agreement of December?

A. I refer to that, I never made any other.

Q. No other assignments made by you to her?

A. No, sir.

Q. The agreement was taken in her name?

A. Yes, sir.

Q. That's all.

By the Court:

Q. When did you first communicate the facts about this matter to Mr. Henninger?

A. Well, I commenced suit against Mr. Heald, and my attorney informed me that he didn't think I could recover.

Q. When was that?

A. That was a short time before the Henninger suit was commenced.

Q. A short time before the first Henninger suit?

A. Before my other suit, not the first Henninger suit, but before my other suit against Heald.

Q. Can you give me the date?

A. I could not tell you.

Q. Where was that suit instituted?

A. Here.

Q. New Jersey?

A. Yes, sir.

Further Cross:

Q. Well, do you remember the affidavit that you took to the former bill which I called your attention to?

A. Nothing more than—(interrupted).

By the Court:

Q. Do you remember taking an affidavit some time in February, '91?

A. I don't remember taking it; I remember making an affidavit, but I don't remember the date.

Q. Had you told Mr. Henninger about this transaction between you and Mr. Heald before that?

A. Well, now, I had two suits against Heald ; which is it? Put that again, if you please.

Q. You took an affidavit to the bill filed by Mr. Henninger in January or February, 1891, my question is whether you had spoken to Mr. Henninger about this transaction between you and he before you took an affidavit, can you recall it?

A. I cannot recall ; no, sir. Let me see that bill, will you?

Q. What I want from this witness is the fact when he first spoke to Mr. Henninger about this matter?

A. It was not until after Mr. Little told me that I should not succeed with my suit.

Q. How long was that after you commenced your first suit?

A. I could not tell you.

Q. You have no definite idea?

A. No, sir.

Mr. Emery: I shall want to cross-examine this witness on that, but I shall not be able to finish with him this afternoon.

Adjourned.

IN CHANCERY OF N. J.

HENNINGER,
Compl.,
AND
HEALD,
Deft.

Before His Honor V. C. BIRD.
Mr. THEODORE LITTLE, for Complainant.
R. WAYNE PARKER, for Defendant Heald.
Mr. JOHN R. EMERY, for Defendants Port Reading R. R. Co. and others.

Transcript of shorthand report of the proceedings upon the continuation of the trial of this cause at Newark, N. J., on Thursday, September 28th, 1893.

Josiah Taylor, sworn for complainant, recalled for further cross-examination by Mr. Emery.

Q. You commenced suit against Mr. Heald in the Court of Chancery, in the State of New Jersey, some time in the fall of 1890, didn't you?

A. I did.

Q. Was that a suit by you alone?

A. Yes, sir.

Q. As you recollect?

A. Yes, sir; that was a suit by me alone.

Q. Was there any suit by your wife?

A. Well, that was a suit by my wife and me.

Q. Well, you don't count your wife anything in that suit?

A. Well?

Q. When I asked whether it was by you alone, I meant to inquire whether it was a suit by you alone?

A. I believe I commenced the suit in my wife's name; I am not certain about that.

Q. That's the suit you refer to.

A. Yes, sir; where my wife had a contract with Heald.

Q. Whether it was brought in your name alone or in your and your wife's name together, or in her name alone?

A. Yes, sir.

Q. Did you have any other suit than that one against Mr. Heald?

A. Yes, sir.

Q. Where and what?

A. I had a suit brought by Henninger; where I had a contract with Henninger to bring suit against Mr. Heald.

Q. No, no; in 1890 did you have any other suit in your name, or in the name of any other party, against Mr. Heald?

A. I had a suit for Mr. Henninger; in 1890? I don't know, I think it was later than that; I don't think that was brought in 1890; I think it was later.

Q. Were there any other suits than the suit brought on the contract which you say was made with your wife with Mr. Heald and the Henninger suit? Were there any others?

A. No, sir.

Q. You brought a suit in 1890 for the purpose of recovering on the contract for sharing in the proceeds of the sale of the farm, didn't you?

A. I did.

Q. An answer was put in that suit?

A. I believe there was.

Q. Did you see the answer or a copy of it?

A. Yes, sir.

Q. In that answer Mr. Heald contested your right to recover the proceeds?

A. Yes, sir.

Q. Then after that answer or defense was put in that suit, you say in the evidence that you gave when we were last in session, that Mr. Little told you you could not succeed with that suit?

A. He told me he was afraid I could not succeed in that suit; yes, sir.

Q. Did he tell you why?

A. No. sir; I don't remember that he did.

Q. He did not give you any reason why you could not recover that suit?

A. No, sir.

Q. At that time had you disclosed to him the account which you gave here upon your direct examination in reference to the alleged agreement between yourself and Heald?

A. When I first went to Mr. Little I told him about my agreement with Mr. Heald, all the particulars, and gave him all the papers.

Q. Did he tell you then he thought you could not succeed in it?

A. No, sir.

Q. When was it he told you he thought you could not succeed?

A. Some time afterwards.

Q. How long afterwards?

A. Probably two or three months.

Q. When he told you that did he give you any reason at all?

A. I don't know whether he did or not; I don't think he did.

Q. How came you to go to see Mr. Henninger at Allentown, then?

A. I went on the advice of Mr. Little after we had talked the thing over.

Q. When was that advice given?

A. Well, that was before the Henninger suit was commenced.

Q. Before the Henninger suit was commenced?

A. Yes, sir.

Q. What did you go to see Mr. Henninger for?

A. To make a contract with him—to commence a suit with him so as to get part of the proceeds.

Q. Well, did you go in order to communicate to him

facts which you supposed might entitle him to set aside the sale?

A. Yes, sir.

Q. On account of your fraud?

A. Yes, sir.

Q. And then when you went to him you supposed you had been committing a fraud on him?

A. No, sir; I never supposed I had committed a fraud?

Q. You never supposed you had?

A. No, sir.

Q. Well, did you suppose you had done anything improper?

A. No, sir.

Q. Not at the time you went to see him?

A. No, sir.

Q. You had no such idea?

A. No, sir.

Q. You didn't suppose you had done anything improper. Hadn't you been told before you went to see him that if your statements were correct, it was improper and a fraud on Mr. Henninger?

A. Yes, sir.

Q. And when you went to see him didn't you suppose it was?

A. Yes, sir.

Q. Well, didn't I ask you whether when you went to see him you didn't suppose you had been committing a fraud on him?

A. I didn't understand it that way.

Q. How did you understand it?

A. That I don't know. I did not understand that I had committed a fraud on him until Mr. Little told me so.

Q. You didn't go to see him until after Mr. Little talked to you about it, did you?

A. No, sir.

Q. When you went up to see him and from the information you got from Mr. Little you supposed that

you had been committing a fraud on Mr. Henninger?

A. Yes, sir.

Q. Well, what was your idea when you thought you had been committing a fraud on Mr. Henninger, was it to restore him?

A. Yes, sir, in a measure.

Q. In a measure?

A. Yes, sir.

Q. What do you mean by in a measure?

A. I proposed to give him part of what I could recover?

A. For what?

A. By this suit?

Q. If you helped to establish the fraud by your evidence?

(A pause).

Q. If you helped to establish the fraud by your evidence?

(A pause).

Q. Is that what you mean? That you then proposed to give him part of what you would recover?

A. (After a pause). Well, I didn't think much about it at that time.

Q. You did not?

A. No, sir.

Q. Let me see, Mr. Taylor; you took an agreement that you were to have three-quarters of the proceeds?

A. Yes, sir.

Q. Didn't you think about that?

A. Yes, sir.

Q. Was that your idea of restoring Mr. Henninger by reason of a fraud you supposed you had committed on him, that you should make an agreement with him to give you three-quarters of the proceeds?

A. Yes, sir.

Q. Of what?

A. Of the suit; whatever was recovered.

Q. If you established the fraud by your evidence? Come right down to it, now.

A. If anything was recovered, then Mr. Henninger was to have his share of it.

Q. One-quarter?

A. Yes, sir.

Q. And yourself three-quarters?

A. Yes, sir.

Q. And was it your evidence to establish the fraud?

A. No, not wholly.

Q. Was it your evidence to tend to establish the fraud?

A. You might say so.

Q. And wasn't that the object for which you commenced that suit?

A. Yes, sir.

Q. Now, you supposed from what Mr. Little had said to you that you had acted improperly towards Mr. Henninger and that you had committed a fraud on him?

A. Yes, sir.

Q. Why didn't you restore him to all that you had deprived him of?

A. Because I wanted to keep a part of it myself.

Q. Well, do you think that's right?

A. Well, in a measure it is right.

Q. Is it right in any way?

A. I don't know as it is, if you come right down to the facts.

Q. You were not willing to restore him unless he gave you three-quarters of all he got; were you?

A. I wanted to make the best bargain I could.

Q. Why?

A. Because I wanted to get all I could out of it.

Q. That's the way you felt about the suit, is it?

A. Yes, sir.

Q. When did you change your mind about giving all you could out of this suit?

A. When I found on the last trial—on the trial when that first Henninger suit was brought—that I could not recover.

Q. That did not decide your right to recover?

A. Yes, sir.

Q. You were not a party to that suit?

A. That's the suit I'm interested in.

Q. Did you appear as a party in interest in that suit?

A. I appeared as a witness in it.

Q. Did you appear and set up your interest in that suit?

A. No, I was called upon as a witness.

Q. And you did not disclose it, did you?

A. No, sir, not then.

Q. I show you here an agreement; it is one, I believe, that was produced before, dated January 29, 1891, and appearing to be signed by you?

A. Yes, sir.

Q. This is an agreement made between you and Mr. Henninger? (To the Court.) This one, may please the Court, is signed by Mr. Taylor; the other one, I think, is signed by Mr. Henninger; there were two.

A. That's an agreement I made with Mr. Henninger.

Q. And that was dated the 29th day of January, 1891?

A. Yes, sir.

Q. Do you recollect where you signed that agreement. You may, perhaps, tell by the handwriting of the agreement who drew it.

A. This is not the agreement I made with Henninger; it is an agreement I made with Mr. Little, is it not?

Q. No, sir, look at it again; you are mistaken about that; it is with William R. Henninger.

Witness looked over said agreement.

By the Court:

Well, do you know who the other party was?

A. Well, this is not signed by Mr Henninger; it is only signed by me.

Further Cross:

Q. Wasn't there another signed by Mr. Henninger.

You got one and he got the other. That is the way I understand it. It appeared by Mr. Henninger's examination in this case that there were two just exactly alike. One signed by you and one signed by him. Well, who signed that one?

A. Yes, sir, I signed it. I made an agreement with Mr. Little by which he was to have a certain part—— (Interrupted.)

By the Court:

Is this agreement made by Mr. Little or with Mr. Henninger? You ought to be satisfied with that.

A. Well, I don't know; I can't tell.

Q. Well, just read the first few lines of it and see if that does not satisfy you?

Q. I will read it to you, "This agreement made this 29th day of January, A. D. 1891, between William R. Henninger, of Allentown, Penn., party of the first part, and Josiah Taylor, of the City of Brooklyn, County of Kings and State of New York, party of the second part." Are you satisfied now?

A. That is an agreement I made with Henninger.

Q. Now I want to ask you where and when did you sign that agreement?

A. That I crnnot tell where I signed it.

By the Court:

The other branch of the question was—When was it signed when it bears date?

A. Mr. Little made out this agreement and I signed it. I cannot tell when or whether it was signed at the time of the face of it or not; I cannot tell.

Q. Did you take it to Allentown, or did you take to Allentown an agreement like it for Mr. Henninger to sign?

A. Yes, sir; I took an agreement for Mr. Henninger to sign.

Q. One like this?

A. I can't say whether it was like this or not.

Q. Well, it was produced here and it is the same thing.

(To Mr. Little. Will you please hand it, sir; it

was referred to before and we had both copies.) I show you now another paper which I understand to be a copy of the one previously shown you, it is signed by yourself and Mr. Henninger, is it not?

A. Yes, sir.

Q. Now did you take that to Allentown?

A. I cannot say whether I did or not.

Q. Did you take an agreement to Allentown for Mr. Henninger to sign before the Henninger suit against Heald was commenced?

A. Yes, sir.

By the Court:

Q. Did you take more than one paper for him to sign.

A. I don't remember. I left the thing with Mr Little; what he told me to do I done.

Q. Was the paper signed there by Henninger before the suit was commenced?

A. Yes, sir.

Q. And was this brought back and the Henninger suit commenced under your direction?

A. Yes, sir, under the direction of Mr. Little, my attorney.

Q. But you directed him to do it.

A. Yes, sir.

Q. Now, when did you make the assignment to Mr. Little?

A. Soon as I got the assignment from Mr. Henninger.

By Mr. Emery: Gentlemen, will you produce that assignment to Mr. Little by Mr. Taylor?

Same produced.

By the Court:

When did he first communicate with Henninger?

By Mr. Emery: Your Honor asked him that question and he could not answer exactly. On page 83 of the previous book of the testimony your Honor said, "What I want by this witness is the fact when he first spoke to Mr. Henninger about this matter," and he answered, "It was not until after Mr. Little told me I

should not succeed with my suit," and then your Honor asked him "How long was that after you commenced your first suit," and he replied, "I could not tell you."

Q. Now, this paper throws some light upon it; it must have been before this paper, because this paper sets out an alleged agreement between Taylor and Heald that they would divide between themselves all that might be realized over and above, &c, (the counsel read from said paper), so that it must have been disclosed before the signing of this agreement, on the 29th day of January, 1891.

By the Court:

Have you asked Mr. Taylor if his mind is now refreshed as to that fact, that is when he first communicated any knowledge of this agreement to Mr. Henninger?

A. I did not communicate any knowledge of it until Mr. Little told me I could not recover on my first suit.

Q. Do you remember when that was communicated to you by Mr. Little?

A. I suppose a month, or two months, or three months after my suit was commenced.

Q. How long before this agreement?

A. Well, very shortly before the agreement, as soon as I explained the whole thing to Mr. Little and when he told me I could not recover; he then said I had best make some arrangement with Henninger, and I done it through the advice of Mr. Little.

Q. After you got this agreement this suit was commenced by Henninger against Heald, and you made an affidavit on the third day of February, 1891, did you not. I show you the original bill in the case of Henninger against Heald?

A. Yes, sir; that is my signature.

Q. I show you a signature purporting to be yours?

A. Yes, sir.

Q. That is your signature?

A. Yes, sir.

Q. Now, in that bill or that affidavit you made no disclosure, did you, to the Court of any interest of

yours in this suit of Henninger's. Just look at it if you wish to.

A. Whatever that bill says is what I got. That is Mr. Little's writing.

Q. Yes.

A. I trusted it entirely to him; I paid very little attention to it.

Q This is a transaction where you were as competent a judge as your lawyer, and you can't throw it off on your lawyer. This suit was under your control by virtue of the agreement?

A. No, sir.

Q. By virtue of the agreement of Henninger?

A. Yes, sir; but I then had made an agreement with Mr. Little, and it was under his control.

Q. Will you let me see that agreement you made with Mr. Little?

By Mr. Little: I havn't any agreement of that kind.

Q. Have you the agreement you made with Mr. Little?

A. No, sir.

Q. Where was it left?

A. I surrendered it to him when I gave up the suit.

By Mr. Emery: Well, we asked for that.

By Mr. Little: I haven't it among these papers and I supposed the papers were all here.

By Mr. Emery: I shall have to ask you to produce it.

Q. Now, in this affidavit you say, after making your statement as to the arrangement between Heald and yourself, that this deponent never supposed he was doing anything wrong or had done anything evil or unjust towards Henninger until he recently claimed to have an interest in the proceeds of sale of the said farm or said part thereof. Having learned that said Heald had contracted to sell it or some part of it, when to his

surprise said Heald for the first time denied that this deponent had any interest therein.

By Mr. Little: What are you reading from?

By Mr. Emery: His affidavit for the original bill. (Continuing reading). And repudiated his agreement made as hereabove stated. That this deponent was advised that said agreement was of doubtful validity because when it was made this deponent was acting as agent of said Henninger.

A. Is that the complaint in the suit of me and my wife against Henninger?

Q. No, sir, in your other suit.

A. What we call the Henninger suit?

Q. What you call your other suit.

A. Well.

Q. Well, was it your other suit?

A. Well, I don't know about that. The agreement made with Mr. Little—(Interrupted).

(By the Court:) The question is just as stated, that being your affidavit the question pertains to that.

A. Well, that was read to me and I swore to it, and what is in that I will back up.

Q. Why was it then you did not disclose that that suit was three-quarters for your benefit?

A. Because Mr. Little did not put it in, I suppose. I acted on what he told me; when I employ a lawyer for me I let him attend to it as far as I can.

Q. If you supposed as a man that you had not done anything wrong to Mr. Henninger, would not you as a man, and independent of your lawyer, offered to have set it right?

A. Mr. Henninger hadn't the means to commence a suit, and Mr. Little offered to take the suit.

Q. I asked you about doing right by Mr. Henninger, if you supposed you were doing him a wrong, or had been doing him a wrong?

A. Well, I wanted to do right by him and do right by myself at the same time.

Q. Well, would it be doing right to take yourself three-quarters of the proceeds of the sale?

A. I wasn't to take three-quarters.

Q. By your agreement with Mr. Henninger you were?

A. But Mr. Little had to have a part of that.

Q. But as to Henninger I mean?

A. The proceeds were to be divided between Little, Henninger and myself.

Q. How was it right for you to take a half, even, if, as you say, you really thought you had been doing him a wrong?

A. I didn't think I had been doing him a wrong.

Q. You did not think so, by anything you had been doing?

A. No, sir.

By Mr. Emery: There was an agreement referred to an agreement or reassignment or something of that kind, referred to on page 26. I would like to see the paper you call a surrender, dated the 14th day of April.

Mr. Little looks for same, but cannot find it.

Q. The question I wante d to ask in reference to that agreement, which is on page 26 of Book 1 of the testimony, and purports to be signed by Stephen H. Little and John L. Taylor, signed and sealed as to S. H. Little in the presence of J. Taylor. I want to inquire whether he was subscribing witness to Mr. Little's signature. Do you recollect?

A. I do not.

By Mr. Emery: When you get that I shall have to ask the question about that again.

Cross-Examined by Mr. Parker:

Q. Do you know Asa Hall?

A. I am not sure whether I do or not.

Q. Why are you not certain?

A. There is a man in Mr. Heald's office by the name of Hall that I had seen occasionally.

Q. You knew him by sight?

A. Yes, sir, by sight.

Q. An elderly man with grav hair?

A. Yes, sir.

Q. Do you remember an occasion, about the month of August, 1890, in Mr. Heald's office, when he told you that he had sold a part of this property to the railroad company?

A. No, sir.

Q. Do you remember his telling you of the sale to the railroad company of a part of his property for about $2,700?

A. No, sir.

Q. You don't remember of his telling you of the sale at all?

A. He told me he was about making a sale.

Q. Who to?

A. To the railroad company.

Q. That was about August, 1890?

A. It was just before I commenced the suit.

Q. Just before you commenced the Taylor suit?

A. Yes, sir.

Q. Do you remember regretting to him that you had not kept up your agency of that property or done anything more about it?

A. No, sir.

Q. And this in the presence of Mr. Hall?

A. No, sir.

Q. Do you remember, in that conversation, telling him, Mr. Heald, that he ought to pay the note that Henninger had given you?

A. No, sir.

Q. Are you sure you did not say that?

A. Yes, sir.

Q. Didn't he ask you why—don't you remember his asking you why he ought to pay that note?

A. No, sir.

Q. Didn't you tell him that Henninger had refused

to pay the note because Heald, at the time of the sale, had let Henninger know that he was paying you commissions and that therefore Henninger had refused to pay the note?

A. No, sir.

Q. Did anything of that kind take place?

A. Never.

Q. No conversation in reference to Henninger's paying that note?

A. No, sir.

Q. None at all with Mr. Heald?

A. No, sir.

By Mr. Little: I offer next a deed of Dupuy to Henninger. It has already been used and has been marked. It is dated the 19th of December, '89, and is for the property spoken of as the Blanchard farm.

Next, a certified copy of a deed from Dupuy to Charles E. Heald, 14th day of June, 1890, the consideration being valuable considerations and $1. Marked E 7.

The next, a deed from Blanchard to Dupuy, dated 22d day of December, 1888. Marked E 8.

The next is from Thomas Jardine to The Port Reading R. R., dated 30th day of April, 1891, for $12,000, conveying the salt meadow, acknowledged the 20th day of April, 1891, recorded May 13, 1891. Marked E 9.

The next is deed from Thomas Jardine to Gordon Chambers, dared the 30th day of April, 1891. Marked Exhibit E 10.

Next is a notice of *lis pendens* filed by Mr. Heald against Jardine on the 15th day of August, 1890. Marked Exhibit E 11.

Next is notice of *lis pendens* filed August 16, 1890. Marked E 11½.

Next, *lis pendens* in Henninger against Heald, 1st of April, 1891. Marked E 12.

By Mr. Emery: I object to the relevancy of those. The question of their disability can be reserved until the argument.

By Mr. Little: Next is a certified copy of a mortgage made by Abraham D. Dupuy to Leon Blanchard, dated December 22d, 1888. Marked E. 13.

By Mr. Emery: I wish also to make objection to the admission of the *lis pendens* in the Heald suit, based upon the ground that *lis pendens* is not noticed unless it is also offered to show that a subpœna was issued in a suit, and where the defendant is a non-resident it does not become a *lis pendens* until the return of the order of publication, which was not until the 15th of June. That a *lis pendens* cannot be offered as an independent paper, but he must offer the proceedings in the suit, the bill itself and the proceedings in the suit.

By Mr. Little: I am going to do so. Now, I offer the proceedings in the case of Charles E. Heald *v.* Thomas Jardine and others. I offer the bill filed by Edward S. Savage, the solicitor of the complainant, on the 14th of August, 1890. My impression is there was no other proceeding upon that bill; but immediately afterwards, the next day, a bill was filed by Charles E. Heald *v.* Thomas Jardine and others, which I suppose was intended to be a substitute for the other proceedings. I offer the bill and answer of the Jardines and all the proceedings of that case.

By Mr. Emery: That bill, as I understand it, was dismissed.

By Mr. Little: If the evidence is on file that was taken in that case, I shall offer the evidence. I don't know but what it will be well to have a copy of it made by the stenographer and put on file.

I also offer a certified copy of an order made

by consent, in that case, on the 22d day of April, 1892.

By Mr. Emery: I object to all these pleadings on the part of the defendant, the Port Reading Railroad Company and Gordon Chambers, because they were not parties to that suit, and they cannot be admissible as evidence or anything else against them, in either of those cases. On behalf of the Port Reading Railroad Company and Mr. Chambers I object to the admissibility of the record proceedings in this suit, because they are proceedings to which they are not parties.

By Mr. Parker: The same objection is taken throughout by Ferdinand E. Canda.

By Mr. Little: I offer next the proceedings in the case of Henninger *v.* Heald, bill filed March 18, 1891, including the opinion of your Honor, filed April 24, 1893. I offer the proceedings of the supplemental bill of William R. Henninger, complainant, *v.* Charles E. Heald, Thomas Jardine and others, bill filed October 7, 1891. And I offer the bond of indemnity from Jardine to the Port Reading Railroad Company. Marked E 14.

Next I offer the agreement between William R. Henninger and Stephen H. Little, dated the 27th day of April, 1892, by which an interest in this matter is transferred to him, and under which he agreed to prosecute the suit and bear the expenses of the prosecution, &c.

Marked E 15.

William R. Henninger, sworn for complainant.

RECALLED FOR FURTHER DIRECT EXAMINATION BY MR. LITTLE:

Q. You stated you had conveyed an interest in this controversy to Stephen H. Little. Look at this paper and see if that is your handwriting?

A. Yes, sir; that is my handwriting.

Q. Who is J. M. Burn?

A. A neighbor of mine.

Q. Where does he live?

A. Allentown, Pennsylvania. He is a next-door neighbor of mine.

Q. That is your signature to this, is it?

A. Yes, sir.

CROSS-EXAMINATION BY MR. EMERY:

Q. Where did you sign this agreement, Mr. Henninger?

A. In my residence.

Q. That is, in Pennsylvania?

A. Yes, sir.

Q. When?

A. I don't remember the date.

Q. Well, with reference to the date of it, was it about that time?

A. I don't remember whether it was the same date or not.

Q. Had you had any conversation with Mr. Stephen H. Little before signing it—before signing the agreement?

A. I and Mr. Little, Sr., and Mr. Little, Jr., were talking the matter over in his office in Morristown.

Q. In your presence?

A. We three were together.

Q. When?

A. I don't remember.

Q. With reference to the other suit?

A. No, sir; in reference to that agreement.

Q. No; I meant when was it with reference to the time that you were here on the other suit, on the 13th of April, 1892, when the trial of this suit took place. Now, when was the conversation between you and Mr. Little, Sr., and Mr. Little, Jr., in reference to that time?

A. In reference to that trial?

Q. Yes.

A. On the 13th you say I was here.

Q. On the 13th of April, 1892, you were here.

A. On the 14th I wasn't here, and on the 15th I came back again, and from here I went to Morristown.

Q. And there you had the talk?

A. Yes, sir; in Mr. Little's office in the bank; in his office I guess it was.

Q. Well, Morristown?

A. Yes, sir.

Q. In reference to what matter relating to an assignment of your interest did you have a talk about them; what was then the condition of your interest in this suit?

A. Why, I left the whole matter to Mr. Little.

Q. For what purpose?

By Mr. Little, Senior: To me?

A. Senior; yes, sir.

Q. The whole matter of what?

A. To draw up an agreement of what he considered just between myself and Mr. Little, Jr.

Q. Well, at that time Mr. Taylor had a three-quarter interest in the suit, didn't he, or half interest?

A. Well, I don't remember whether the agreement was cancelled or not already then; I don't remember.

Q. Was Mr. Taylor there?

A. Mr. Taylor was not there.

Q. Did you ever say anything to Mr. Taylor about cancelling his agreement?

A. I didn't see him after I left court here; I didn't see him since until I saw him again on this trial.

Q. You never had any talk with him or communication about cancelling his agreement?

A. No, sir; never.

Q. And you left it with them to fix up such agreement as they thought just about it?

A. As to this present trial? Oh, no.

Q. As to your claim?

A. Oh, no. The understanding was this: That Mr. Little should draw up an agreement of what he considered just and an agreement that the Court would accept, and to forward that agreement to me, which he did, requesting me to show it to an attorney, or rather, he wrote in this way, to show it to my friends in order to ascertain whether they considered it a just agreement or not; and I should do as I pleased about signing it. I went and showed it to my father, and I also showed it to an attorney-at-law of Allentown.

Q. When was this?

A. This was—the date I could not tell you. If I had anything to refer to I could tell you.

Q. I asked you if you could remember.

A. No, sir; I don't remember the date.

Re-Direct Examination by Mr. Little.

Q. You came here on the 15th and there was nobody here?

A. On the 15th the Court had adjourned and there was nobody here.

Q. Do you remember what time you went to Morristown, what day of the week it was?

A. I do not remember the day of the week.

Q. Did you see Stephen H. Little on that day, do you know?

A. I saw him in the evening.

Q. How?

A. I guess you sent for him, didn't you? Yes, you sent for him, and we talked about the matter in the bank.

Q. No agreement was signed?

A. No, sir.

Q. That matter was left with me to draw the agreement?

A. Yes, sir; altogether.

Q. Have you the letter spoken of by them?

A. I had the letter here, but I left it here and I don't know what became of it.

By Mr. Little: Do you gentlemen want the letter? I have a copy of it here. It is the letter that accompanied the surrender. I have no objection to your seeing it. It is the letter which accompanied the surrender and the agreement.

By Mr. Emery: Is this the original letter?

By Mr. Little: No, sir; it is a copy I made from the original. I have a press copy of the original here, if you wish it, in my letter-book.

By Mr. Emery: Your statement that you sent this will be sufficient.

By Mr Little: It is dated the 3d day of May. I will read it. (Did so.) I offer it in evidence.

Marked E. 16.

Stephen H. Little, sworn for complainant:

Direct Examiation by Mr. Little:

Q. Is that your signature? (Handing witness a paper.)

A. It is.

Q. Made at the time it bears date?

A. That I cannot state; but about that time.

Q. 22d day of April?

A. About that time.

Cross-Examination by Mr. Emery:

Q. This is an agreement for a half interest, that is, with certain qualifications?

A. I don't recollect the terms of the agreement. You have it there.

Q. You don't recollect?

A. No, sir.

Q. What were the terms of the other; about the proportion you were to take from Mr. Taylor?

A. I have no definite recollection of that; but he said I was to have five-twelfths of the part he was to receive.

Q. Was there any agreement in writing?

A. There was an agreement in writing which I supposed my father had.

Q. Five-twelfths of three-quarters?

A. I don't state that as my recollection; but Mr. Taylor so informed me. I have no recollection about it definitely.

Q. This increased the amount to one-half?

A. I don't know, sir; you have the letter.

Q. Well, after this arrangement was made, what about Mr. Taylor? Was this agreement made after the talk with Mr. Taylor?

A. Yes, sir.

Q. What about Mr. Taylor's rights as to which you were only to have five-twelfths?

A. Five twelfths did not relate to this present agreement.

Q. I know that; but you were only to have five-twelfths of what he was to get before, and now you and Mr. Henninger arranged for a division upon the basis of one-half each; and I asked what was said about Mr. Taylor?

A. If you will state your question more definitely I'll answer it.

Q. I want to know what conversation was had with Taylor about his interest in the suit?

A. I cannot recollect the conversation that took place; but it was plainly understood between me and Mr. Taylor that he had no further interest in the matter whatever.

Q. What about getting Mr. Taylor's assistance in this suit; was there anything said about that?

A. Mr. Taylor agreed to render his assistance in the suit.

Q. For what consideration?

A. No definite consideration whatever. I think he has been paid his fees the same as any witness.

Q. What indefinite consideration, then?

A. None whatever, except his fees.

Q. What was said about that?

A. Mr. Taylor said he would very much rather Mr. Henninger or anybody else should get what was in this property than that Mr. Heald should have any portion of it.

Re-Direct Examination by Mr. Little:

Q. You said he would render any assistance; were any papers or exhibits in his possession or under his control?

A. I think the letters, exhibits, etc., were in my possession, as his attorney.

Q. Were they his or not?

A. Yes, sir.

Q. And in his control. And in reference to his assistance, did it relate to anything more than his coming here as a witness?

A. None whatever.

Edward S. Savage, sworn for complainant.

Direct Examination by Mr. Little:

Q. You are a practising lawyer?

A. Yes, sir.

Q. In this State and New York?

A. Yes, sir; both.

Q. You live where?

A. I live in the township of Woodbridge.

Q. Were you ever the attorney for Mr. Heald?

A. Yes, sir.

Q. In what matter particularly?

A. I was employed to procure an adjournment of a foreclosure sale. I had had some other business with him.

Q. At the Sheriff's sale of this McCoy place?

A. Yes, sir.

Q. You appeared there as Mr. Heald's attorney; he wasn't there, was he?

A. No, sir.

Q. Did you succeed in obtaining an adjournment?

A. Not in obtaining an adjournment, no, sir.

Q. Why did you consent to the sale going on without having it adjourned?

A. I consented to the sale going on under an agreement with the attorney of Mr. Jardine.

Q. Will you tell what that agreement was?

Mr. Emery: One moment; I will just enter an objection here on the part of the Port Reading Railroad Company to any evidence as to this transaction, as affecting them, and their purchases under the Sheriff's deed.

Mr. Parker: And I make the same objection for my clients.

Q. I don't want to take up time unnecessarily. You filed a bill at that time?

A. Yes, sir.

Q. In favor of Charles E. Heald, against Jardine?

A. Yes, sir.

Q. To enforce some agreement made at the Sheriff's sale with them?

A. Yes, sir.

Q. You drew that bill, didn't you?

A. I drew one bill, yes, I think I did.

Q. Did you set out the agreement in that bill?

Mr. Emery: I object to that.

Q. State the agreement?

A. Well, I cannot tell whether I set out the agreement in the bill or not after three or four years have elapsed.

Q. Well, state the agreement?

A. The agreement, substantially, as I recollect it is this——

Objected to.

Q. Proceed.

A. That Mr. Schaefer represented that he had been ill and was in feeble health, and that that was the first day that he had been away from home, was anxious to have this matter disposed of, and not be brought up to New Brunswick again, that his clients were willing to accept the amount due upon their mortgage, that they did not want the property, and that if I would not insist upon my right of adjournment, but allow the property to be struck off, and be bought by Thomas Jardine, one of the complainants, he would agree that Mr. Heald might at any time within thirty days redeem the property for the amount due upon the decree, including Sheriff's costs. That agreement was not in writing, but I started to write it, and discussed it, and we understood it, and it was left without being signed.

Q. Was the property sold?

A. The property was sold.

Q. For what price?

A. $4,000.

Q. Was there any understanding between you as to its being sold for any less sum?

A. The understanding was that it should be bid in for $4,000. That that was a reasonable sum for the property, and would save Sheriff's execution fees, and to redeem it we were to pay the amount due on the mortgage, which was some fifty odd hundred dollars.

Q. Was there any reason given as to the direction to make the deed?

A. Yes, sir.

Q. To whom?

A. It was to be made to Thomas Jardine, because his sister was equally interested with him, and she was in Europe at the time of the sale.

Q. Was that the only reason:

A. Yes, sir.

Q. Wasn't it more convenient?

A. Yes, sir; that was the reason, Mr. Jardine was there in Rahway, his sister was absent, and they were all three parties complainant to the bill. The mortgage belonged to all three of them, and it was suggested I think, either by Mr. Schaefer or myself that Thomas Jardine should buy the property in and take the title, the agreement was substantially made with him; his brother was present at the time.

Q. Did you or Mr. Heald make a tender of the money?

A. Yes, sir.

Q. Within the thirty days?

A. Yes, sir.

Q. And demanded the deed?

A. Yes, sir.

Q. And did not receive it?

A. No, sir.

Cross-Examination by Mr. Emery:

Q. Do you recollect what was the day of the sale?

A. I could not recollect the date, Mr. Emery, it was in August, and my recollection of it is that it was a very warm day.

Q. I will ask you to be allowed to look at the Sheriff's deed?

A. It was July or August, it was an excessively hot day, I know.

Q. I have here a copy of the deed. The Sheriff's deed recites that it was on Wednesday, the 16th day of July.

A. That is probably correct.

Q. Then thirty days would have expired about the of 13th August or 15th of August?

A. Yes, sir.

Q. Now, before that time had you made an agreement to sell the property?

A. Yes, sir.

Q. In writing?

Q. Yes, sir.

Q. To whom?

A. Elwood Byers.

Q. For what price?

A. $300 an acre, I think, or $5,600, it was about $5,600, I am not sure about the exact sum.

Objected to.

Mr. Emery: It shows the circumstances of tender within thirty days and the circumstances at that time.

Mr. Little: This is a matter of defense, it is so set up.

Objection overruled.

Q. I show you here an agreement bearing date the 8th day of August purporting to be signed by yourself and Mr. Elwood Byers?

A. I will say in explanation of that that Mr. Heald was away and had left instructions with me in regard to redeem this property, and I had expected to redeem it, and take title to Mr. Heald. Mr. Byers came to me at the bank at Rahway, and asked me if I owned the salt meadow and described it. I said I controlled it; he said will you sell it; I told him yes, and we agreed upon the price, $5,400, and he paid $50.

Q. That was for the sale of the salt meadow portion?

A. Yes, sir, he paid $50, and I gave him an agreement, executed it in writing, and this is a copy; and that day I informed Mr. Jardine that I had sold it and that we would redeem.

Q. Was it on the face of having made this bargain that you gave Mr. Jardine notice that you would redeem?

A. Yes, sir.

Q. At the time of the making this bargain with Beyers for the sale of the property, did you know, or had you heard that Mr. Henninger claimed any interest in this property as against Mr. Heald?

A. I never had heard of Henninger.

Q. Did you know, or did you have any information that Mr. Heald was not the owner of the property subject to the foreclosure sale?

A. I supposed Mr. Heald was the owner of the property, free and clear of encumbrances, except the amount due upon that mortgage; he so represented it to me.

Q. That contract you gave, or option to Mr. Byers was within a certain time to purchase it?

A. Yes, sir.

Q. On or before the 15th?

A. Yes, sir. Mr. Byers within that time called upon me to carry out that agreement, and I told Mr. Byers all the facts and circumstances that were in my possession, and that I was not able to give him the deed, and that Mr. Heald would be back in a short time, and that as soon as Mr. Heald came back it would be straightened out. I had done all I could to perfect title in Heald's absence.

Q. He offered to pay the balance of the purchase money and asked for a deed?

A. Yes, sir, he tendered it.

Q. That portion related only to what is called the salt meadow tract?

A. Yes, sir.

Q. And that was only a portion of what was called the McCoy farm?

A. Yes, sir.

Q. How many acres did the salt meadow and lowlands include?

A. About 18 acres.

Q. How much was there in the upland?

A. Fifty or 60.

Q. Now, before the expiration of the option, did you arrange te sell the balance?

A. I arranged to sell the balance, but as to the exact date I cannot say; it was before the commencement of the Henninger suit, but I am under the impression that the Jardine suit had been commenced—I had com-

menced a suit for Heald against Jardine before the contract was made to sell the upland.

Q. Mr. Heald afterwards ratified that agreement.

A. Yes, sir.

Q. I mean the agreement to sell the salt meadow land to Mr. Byers?

A. Yes, sir.

Re-Direct by Mr. Little:

Q. You say he made a tender to you?

A. No, sir, he tendered himself willing to, but I said a tender was not necessary. I said I would do all I could do that was in my power. I waived a formal tender.

Cross-Examination by Mr. Parker:

Q. While Mr. Savage is upon the stand I would like to prove the contract of sale, unless it is objected to.

Objected to.

Thomas R. Schaefer, sworn for the complainant.

Direct-Examination by Mr. Little:

Q. You are a counsellor-at-law?

A. Yes, sir.

Q. Were you the counsel for the Jardines in the suit brought by Heald?

A. Yes, sir.

Q. You filed the answer, didn't you?

A. In the suit brought by Heald?

Q. Yes, brought by Heald against Jardine?

A. Yes, sir.

Q. You filed their answer didn't you?

A. Yes, sir.

Q. And appeared for them on the trial before the Vice Chancellor?

A. Yes, sir.

Q. Are you still their attorney and counsel?

A. Yes, sir.

Q. Did you draw that bond of indemnity that has been offered here?

A. I drew it, sir; subject to such alterations as were made by the company.

Q. Did you draw the deeds to Byers or to the Railroad Company?

A. They were all prepared in my office.

Q. Do you remember when those deeds were delivered?

A. No, sir.

Q. Or when the agreement of sale was consummated?

A. I cannot give the date, sir; they were all delivered, and the agreement and the papers were all delivered in my office.

Q. Before those deeds were delivered, had you any knowledge of a suit brought by Henninger against Heald?

A. I had a knowledge——

MR. EMERY and MR. PARKER, each on behalf of their clients objected to this testimony.

Objection overruled.

A. I had knowledge sir, of such a suit; either having commenced, or was about to be commenced, I think about the time, or just before the time that the bill in the case was filed. I can't say that it was about that time. I think it was just before the bill was filed, but I had knowledge that such suit was in contemplation.

Q. Do you remember meeting me in New York in the latter part of April, of that year?

A. I remember, sir, meeting you in New York, at the office I think, of your son, in Broadway. Probably in April, you may be right about that.

Q. Didn't I at that time show you a copy of the bill in Henninger against Heald, and read to you from it?

A. You did, sir, whenever it was.

MR. PARKER: You refer to the first bill?
MR. LITTLE: Yes, sir.

Q. Can you fix the time when that was?

A. I cannot fix the time, but I feel very sure it was before the bill was filed; it was prepared and a portion of it was read to me.

Q. The bill was filed on the 30th of March?

A. Well, sir; I don't think the bill had been filed at the time I met you in Mr. Little's office.

Q. Have you a letter of mine to you which I asked you to produce here?

A. I have, sir. (Producing it).

Q. That letter is dated on the 7th day of May?

A. Yes, sir.

Q. Does it not refer to the Henninger suit?

MR. EMERY: May 7th, 1891?
MR. LITTLE: Yes, sir; May 7th, 1891.

Q. Does it not refer directly to the Henninger suit, just look at the closing portion of it?

A. Yes, sir; it does. His name at least is mentioned in the letter.

Q. Now look at that letter of yours to me, dated April 29th, and tell me what suit is referred to there, does not that refer to the Henninger suit. Had I any other suit than the Henninger suit which you knew of?

A. Yes, sir; there was the Taylor suit.

Q. I didn't have that?

A. You asked if there was any other suit?

Q. You referred to my side?

A. I referred to here in the postscript to suits, either by Mr. Stephen Little or by yourself.

Q. Had you known me in connection with any other suit?

A. No, sir; you had no connection with the Taylor suit, certainly not. I don't question at all that I knew about the Henninger claim, about the time mentioned in these letters, and about the time of filing the bill,

either immediately before or about the time of its filing.

MR. LITTLE: I offer these letters upon the question of notice.

Objected to.

Q. The bond of indemnity that you drew is a very broad one; it indemnifies Jardine not only against the Heald suit, but any and all suits at law or equity now pending or which may be brought against them or either of them?

A. Yes, sir.

Q. Didn't you draw that with reference to the Henninger claim?

Objected to.

Q. That is all.

THE COURT: Any questions, gentlemen?

MR. LITTLE: In regard to the surrender which cannot be found, there is something very mysterious about it; I had it in my hand this morning, but now I cannot find it. I sent the surrender just as the letter stated.

COMPLAINANT RESTS.

MR. EMERY: Perhaps at this time I would like to put in the formal offers so as to show the chain of title. Now the deed from Henninger to McCoy, dated December 19, 1889, for the Blanchard farm, I understand has been put in. I have a deed from Henninger and wife to McCoy.

MR. LITTLE: To Dupuy, you mean?

MR. EMERY: Yes, sir. Then a deed from Dupuy to Henninger for the Blanchard farm in 1889, you have put in, but I offer them in evidence. Then I offer a certified copy of a deed of December 22nd, 1889, from William R.

Henninger and wife to Josiah Henninger for the Blanchard property, marked Exhibit 3 Pr. I now offer the foreclosure bill and proceedings in the suit of Thomas Jardine and others against Anson B. Moore and wife and William R. Henninger and wife, filed November 23rd, 1889, and also the proceedings in that suit, including the final decree, filed May 21st, 1890. The execution tested June 4th, 1890, returnable October term with the Sheriff's report of sale, filed July 17, 1890, confirmed on July 28th, 1890. And I also offer a deed from the Sheriff of Middlesex County to Thomas Jardine for the premises described in the bill to foreclose, dated July 29, 1890, and recorded August 1st, 1890, marked Exhibit 4 Pr. Also the deed of Thomas Jardine to the Port Reading Railroad Company, dated April 30, 1891, for a portion of the tract, the salt meadow, dated April 30th, 1891, recorded May 14th, 1891, in Middlesex County, marked Exhibit 5 Pr. Also a deed of the same date from Thomas Jardine to Gordon Chambers for the uplands, that is also recorded May 14, 1891. Marked Exhibit 6 Pr. I also offered the original mortgage of Anson B. Moore to Thomas Jardine and others, upon which the foreclosure proceedings were founded, dated August 4th, 1886. Recorded August 23, 1886, in Middlesex County, and the bond accompanying the same, together with the assignment of this mortgage, bearing date May 9th, 1891, and recorded on the 14th of May, 1891.

Said papers were marked as follows:

The mortgage, Exhibit 7 Pr.
The Bond, Exhibit 8 Pr.
The Assignment Exhibit 9 Pr.

Also the conveyance from Charles E. Heald and wife to Gordon Chambers for the salt meadow tract for the use of the railroad com-

pany, dated April 26, 1892, recorded May 17, 1892, marked Exhibit 10 Pr.

Also I offer the license from the Board of Freeholders of Middlesex County to the Port Reading Railroad Company for the construction of a dock upon the premises. Marked Exhibit 11 Pr.

Mr. Parker: Mr. Little asked me for some letters; I find one which I now hand over to him dated June 11th, 1891.

Mr. Little: I also want the one of June 27th.

Mr. Parker: I don't remember the other one, but Mr. Little says he sent it.

Mr. Little then read said letters.

Mr. Emery: I offer also in order to show the location of the line of the railroad company over this particular point the articles of association of the Port Reading Railroad Company, a copy of them filed November 5th, 1890. Marked Exhibit 12 Pr.

Also a certified copy of a survey of their route and location, filed November 8th, 1890. Marked Exhibit 13 Pr.

Also a certified copy of the location of their terminal properties and tracks over this meadow property, filed December 10th, 1890. Marked Exhibit 14 Pr.

Leon L. Blanchard sworn for the defendant.

Direct Examination by Mr. Parker.

Q. You live in Newark?

A. Yes, sir.

Q. What was your business in 1888?

A. I think I was president of the International Oyster Company of New York.

Q. Did you own a place in Pennsylvania known as the Blanchard place?

A. I did.

Q. Do you know Charles E. Heald ?

A. Yes, sir.

Q. What was his business ?

A. I think he was in the real estate business.

Q. As agent ?

A. As agent.

Q. Did you negotiate with him as such agent for the sale through him of the Blanchard place in Pennsylvania ?

A. I cannot recollect whether it was through Mr. Heald or not.

Q. To refresh your recollection I produce a letter dated December 2, 1888 ; is that your signature ?

A. Yes, sir.

By Mr. Parker : This is addressed to Charles E. Heald, Esq. I will read it. (Did so.)

Q. Did you write that letter ?

A. I did.

Q. Are those statements true in that letter ?

A. Yes, sir ; in every respect.

By Mr. Little : I object to that letter.

Q. These statements were true as contained in that letter ?

A. Yes, sir.

By Mr. Parker : I offer that letter in evidence as part of the negotiations for sale.

Marked Exhibit H1.

By Mr. Little : I object to it.

Q. Was this a part of the negotiations of the sale of that place ?

A. Yes, sir.

Q. (Handing witness a paper.) Is this the agreement for the sale of the Blanchard place ?

A. Yes, sir.

By the Court : The competency of the letter offered and marked as Exhibit H1 will be de-

termined by me hereafter. For the present it may be admitted and marked, subject to Mr. Little's objection.

Q. It is placed at the sum of $8,500. Was that the result of the negotiations between you and Mr. Heald?
A. To the best of my recollection, yes.
Q. Did you ask more?
A. No, sir.
Q. In the beginning of the negotiations?
A. No, sir.

By Mr. Parker: I ask that this paper, which is dated December 17th, 1888, be marked as an exhibit.

Q. Do you remember whether you and Mr. Heald went up to see the place before the execution of that paper?
A. I don't remember taking him there.

By Mr. Parker: I will read this paper and offer it in evidence. (Counsel read same.)
Marked Exhibit H2.

By Mr. Little: Of course, my objection stands with this as well as the other, as incompetent and irrelevant.

By the Court: Certainly.

Q. Do you remember whether you executed any deed or don't you remember the particulars of the deed?
A. I don't remember the particulars of it.
Q. I call your attention, however, to a bill of sale executed by you to Mary Pratt, of the goods and chattels mentioned in this paper, which reads as follows: "All that certain lot of goods and chattels" (Counsel read same). Is that the deed that you made, dated the 21st day of December, 1888, to Mary Pratt, of the goods and chattels that you conveyed; and you conveyed the land to Abram B. Dupuy, at her request?
A. Yes, sir.

By Mr. Parker: I will offer that in evidence and ask that it be marked Exhibit H3.

By Mr. Little: The same objection.

Cross-Examined by Mr. Little:

Q. Did you convey this property under the agreement to Mary Pratt?

A. The goods and chattels I did.

Q. Did you convey the real estate to Mary Pratt?

A. No, sir.

Q. Whom did you convey it to?

A. I think it was Dupuy.

Q. Who was Dupuy?

A. I don't know, sir.

Q. Have you ever seen him?

A. I never saw him.

Q. Whose handwriting is this agreement in?

A. I could not say.

Q. I will read a portion of this to you: "Party of the first part further agrees to loan to the party of the second part * * * $3,000 for three years." Did you make a loan of that kind?

A. I think so.

Q. How, was it in cash?

A. Yes, sir; if it was made.

Q. Taking as security therefor a bond and mortgage for $3,500; is that so?

A. Yes, sir.

Q. You took a mortgage for $3,500 for a loan of $3,000?

A. Yes, sir.

By Mr. Parker: It is expressed in the agreement that it was taken as collateral security for the $3,000; the agreement speaks for itself.

Q. Who executed the mortgage to you?

A. I cannot recollect.

Q. Don't you know who executed the mortgage to you?

A. I have no recollection.

Q. Did you ever have a mortgage made by Mary Pratt?

A. I cannot recollect.

Q. Did you ever have a mortgage made by Henninger?

A. I cannot recollect who made the mortgage.

Q. To whom did you advance the $3,000 in money?

A. That transaction was made through the agent, Mr. Heald.

Q. But you furnished the money?

A. I furnished the money, if it was made.

Q. Did you furnish it in money?

A. I am quite positive that I did.

Q. Why did you furnish it in money if you were going to convey the property and take back a mortgage on it. Why did you furnish $3,000 in money for a mortgage?

A. I don't understand exactly what you ask.

Q. You took a mortgage back on the same property, didn't you?

A. Yes, sir.

Q. And from the party to whom you conveyed?

A. Yes, sir.

Q. Why did you furnish $3,000 in money.

A. Because there was a difference requiring it.

Q. Which required you to furnish $3,000 to them?

A. Yes, sir.

Q. How much were they to pay you for the property?

A. $8,500.

Q. Then they owed you, didn't they?

A. $8,500.

Q. How did they pay it?

A. I cannot recollect the transaction now; but I am under the impression that I took a dwelling in Brooklyn.

Q. Valued at how much?

A. I could not remember the exact value.

By the Court:

Q. Do you want it understood that any money passed from you to them at all?

A. No, sir.

Q. The entire consideration was paid in something else than money?

A. Yes, sir.

Q. And your agreement was that you should advance to them money?

A. Yes, sir.

Q. Which you did?

A. Yes, sir.

FURTHER CROSS-EXAMINATION:

Q. How was the consideration (interrupted)——

BY MR. PARKER: It is all in that agreement.

RE-DIRECT EXAMINATION:

Q. How many transactions in real estate have you had since that time; are you a large dealer in real estate?

A. Oh, dozens and dozens in regard to real estate, so that I am confused in regard to this case.

Q. You do not remember anything else except what is in the papers?

A. That is all.

RECESS.

MR. LITTLE: I mentioned this morning two letters to Mr. Parker, and I meant to offer them in evidence. If I did not I offer them now.

BY MR. PARKER: I object to that.

William Hunter, sworn for Mr. Emery's clients:

DIRECT-EXAMINATION BY MR. EMERY:

Q. You are connected with the Port Reading R. R. Co.?

A. Yes, sir.

Q. In what capacity?

A. Assistant chief engineer.

Q. And you have been such since its organization, haven't you?

A. Yes, sir.

Q. In the summer of 1890 what position did you occupy in any railroad. You were connected with the Philadelphia and Reading, were you not?

A. Yes, sir.

Q. In what capacity?

A. Assistant chief engineer.

Q. The Philadelphia and Reading R. R. Co. operated the Del. & Bound Brook R. R. under a lease at that time, didn't it?

A. Yes, sir.

Q. In the summer of 1890 did you become acquainted with the lands that have been called the Jardine lands on the Arthur Kills, just below Tufts Point?

A. Yes, sir.

Q. Under what circumstances?

A. I was directed by the management of the Phil. and Reading R. R. Co. to pick out some proper terminal on the Arthur Kill.

Q. For what road and for what purpose?

Objected to.

A. For the purpose of establishing a coal property.

Q. From what road?

A. From the Del. & Bound Brook Road to the Phil. & Reading Company.

Q. From the junction of the Central R. R. near Bound Brook, direct to the Arthur Kill?

A. Yes, sir.

Q. You mean a terminal point of the railroad, that would run from near Bound Brook to the Arthur Kill?

A. Yes, sir.

Q. In order that the coal might be taken to that terminal?

A. Yes, sir.

Q. Did you go to look at property for a terminal?

A. The latter part of July, about the 25th of July,

I think, I was on the ground at what I found out afterwards to be the Jardine property.

Q. Near Tufts Point?

A. Yes, sir.

Q. What did you then direct to be done for the purpose of securing a terminal property for this proposed road?

A. I made a report first, and was then directed to take Mr. Loomis on the ground, who was the real estate agent of the company, and to show him the property which it was necessary to acquire for the terminal, and I did so on the 29th of July, 1890.

Q. Mr. Byers is one of the gentlemen in Mr. Loomis's office—the real estate department?

A. Yes, sir.

Q. You showed him that property in July, 1890?

A. Yes, sir.

Q. Did you then subsequently proceed with the location or survey of the location of the railroad from Bound Brook to that terminal?

A. I did so.

Q. When was that completed?

A. October 30, 1890.

Q. Was the railroad subsequently located according to your surveys? The railroad was located, was it?

A. Yes, sir.

Q. And the survey filed in the office of the secretary of state?

A. Yes, sir.

Q. I showed you a certified copy of that. Do you recognize that as the original location of the road, made under your direction?

A. Yes, sir.

Q. Now, that shows the terminal near Tufts Point. Whereabouts, pointing to this map, which is Exhibit D, is the Jardine property?

A. The Jardine property lies between the Creek where you find the centre red line, across to the Arthur Kill.

Q. The red line on this map shows the location of the centre line?

A. Yes, sir.

Q. And the Jardine property borders on the Arthur Kill on that location?

A. Yes, sir.

Q. This was filed on the 8th of November. Now, did you afterwards have it surveyed and located the terminal property of the company at that point?

A. I did; yes, sir.

Q. I show you a certified copy of the location of the terminal property. Do you recognize this as the location of the terminal laid out under your direction?

A. This is correct; yes, sir.

Q. That appears to have been filed on December 10, 1890. Does that show the location of the Jardine lands?

A. It does; yes, sir, as far as the distance along the centre line is concerned. There is no outside line shown. The centre red line is supposed to be the centre line of the main tracks, and shows the Jardine property in here (indicating).

By the Court:

Q. How do you distinguish it?

A. It is marked Jardine property here. You see it is right across the centre line.

Q. It is so that whoever looks at the map can tell?

A. Yes, sir.

Q. And the white line surrounding the whole represents what?

A. Well, I think at the time—the land east of the location—I have forgotten almost. Well, I will tell you what that is. The surveys that were made originally covered all the property showed by the white line; but that which is shown by the return is, I think, the property that we purchased.

Further Direct Examination:

Q. Now, subsequently, a license was obtained from the freeholders to the Port Reading R. R. Co. to build a dock on the Jardine property?

A. I suppose so. That's something I don't know anything about.

Q. I have offered that. When work was commenced by the Port Reading Company, they constructed a dock, didn't they?

A. Yes, sir.

Q. Have you a map prepared showing the actual location of the dock upon the property?

A. Yes, sir.

Q. I produce a map called "Plan of Jardine property at Port Reading;" does that show the boundaries of the low land of the Jardine property, and also the location of the dock?

A. Yes, sir.

Q. This line projecting into the Arthur Kill; is that the dock?

A. Yes, sir; it is marked "High gravity coal wharf."

Q. When was the construction of that commenced?

A. About July, 1891.

Q. Now, what is the amount which has been expended on the improvements made by the company on the property here designated by the name of the Jardine property? Have you had an examination of the books of account made for the purpose of ascertaining that fact as near as possible?

A. Yes, sir.

By Mr. Little: This evidence, if taken, sir, is all taken subject to my objection.

By Mr. Emery: It is a matter which we set up in the answer, and are obliged to prove it.

Q. Well?

A. I find that the estimated cost of the improvements, that is of the "High gravity coal wharf," on the Jardine property, running from the creek along to low water mark, is about $122,000

Q. Low water mark is designated on this map, is it not?

A. Yes, sir.

Q. And that is some little distance beyond the bulkhead?

A. Yes, sir.

Q. Is that also designated on this last map?

A. Yes, sir.

Q. That's the amount of expenditures on the structures as far as low water mark?

A. Yes, sir.

Q. What is the total amount expended, including the wharf out to the pier?

A. About $270,000.

Q. The work proceeded continuously from July, 1891, when it was commenced, to the conclusion, didn't it?

A. Yes, sir; in the latter part of the year 1892.

Q. That $270,000 included as far as the pier head. How far does the pier head extend out into the Arthur Kill beyond low water mark?

A. About 800 feet.

Q. There was expended about $122,000 on the Jardine property to low water mark. Can you tell us, Mr. Hunter, what is the difference between high and low water mark at that point?

A. In length?

Q. Yes, the distance.

A. No, sir, I cannot. The distance in height is about 6 feet, but how far that extends in length horizontally I could not say.

By Mr. Emery: I offer that last map in evidence.

Cross-Examination by Mr. Parker:

Q. I take it that by the structures the whole character of the place is changed at this meadow?

A. Yes, sir; it has been filled in in that portion that we changed.

Q. When you first saw it what was it?

A. Marsh—low marshy land.

Q. Good for hay, or nothing but sedge?

A. No, sir; hay was cut off it.

Q. What did you see growing there when you went there in July, 1890?

A. Why, it was overgrown with the ordinary growth that you find in marshes of that kind. I could not say that I saw anything cut from it at that time.

Q. Did you walk from that ground to the high ground, or go there by boat?

A. The day I took Mr. Loomis there we went by boat and walked across to the high ground.

Q. How far is it from that point to the high ground?

A. If you went along the railroad?

Q. There was no railroad then.

A. If you went over the present line of the railroad it would be about 4,800 or 4,900 feet.

Q. Could you do that?

A. No, sir, not very well.

Q. You would have to cross the creek?

A. Yes, sir.

Q. How far was it by any road; much further or not?

A. No, sir, less.

Q. How far?

A. Probably 1,000 feet is a rough guess.

Q. About 3,800 feet from the high ground to this place?

A. No, sir; I mean it was about 1,000 feet from the Jardine property over to the high ground at the closest point.

Q. Did you see the rest of the Jardine farm in those days?

A. No, sir.

Q. Did you notice the character of the high ground in that general neighborhood as to whether there were any villages there near that property?

A. I didn't see any; no, sir. I saw but few houses there.

Q. In what condition, good or out of repair?

A. Well, I didn't examine them closely enough to tell.

Q. When you were going around on the ground did the country look flourishing, or were the fences down over the whole farm?

A. I would not have considered it a very flourishing place from the way it looked when we were there.

Q. Just describe what you mean by that?

A. I mean the majority of the property that you saw there was marshy land; yes, sir.

Q. What use was it put to before the railroad came there?

A. I saw no use it was made of, except to raise whatever character of sale hay they cut off it.

Q. Do you know anything about the value of property in that neighborhood?

A. No, sir.

Cross-Examination by Mr. Little:

Q. Were you over the high ground at all?

A. No more than was necessary to take me away from the place; that was all.

Q. Was the high ground dry?

A. Oh, the high ground was comparatively dry.

Q. Did I understand you to say that you located these terminals?

A. I say I picked out these points; but the location of the line was made by my subordinates.

Q. The map shows there is a very considerable extent of ground adjoining the Arthur Kill above and below this Jardine property?

A. Yes, sir.

Q. Why did you select the Jardine property particularly?

A. I selected it because I thought it was the best point to locate the wharf; I had no idea at the time that it was the Jardine property.

Q. You selected it because you thought it was most suited to the purpose for which you wanted it?

A. Yes, sir.

Q. That's all.

By Mr. Little: I desire to put in all of this letter that applies to this case. It is under date of June 27: "I trust you will at once file the

decree in Heald *v.* Jardine and save the necessity of an application for an order to do so. Also, the order made by the Chancellor on the hearing of the motion, to dissolve the injunction in Henninger and Heald" Ex. "June 27, '91," per Mr. Little.

Also, letter of June 11, 1891, to Mr. Parker: "Have you filed the order of the Chancellor, referring Henninger *v.* Heald to Vice-Chancellor Bird? Of course, the case cannot properly be heard until you file your decree in the Jardine case." Ex. "June 11, '91," per Mr. Little.

Also, letter of Mr. Shafer to Mr. S. H. Little, April 29, 1891 (counsel read same). Exhibit 18.

Charles E. Heald, sworn.

DIRECT-EXAMINATION BY MR. PARKER:

Q. You are a real estate agent in the City of New York?

A. Yes, sir.

Q. Where?

A. 261 Broadway.

Q. Were you such a real estate agent in 1889?

A. Yes, sir.

Q. And in 1890 and up to this time?

A. Yes, sir.

Q. In December, 1888, did you make a purchase or negotiate a purchase for Mary Pratt of certain property in Pennsylvania known as the Blanchard place?

A. Yes, sir.

Q. I just call your attention to this letter of December 2d, 1888, did you receive that letter?

A. Yes, sir.

Q. Was that the first time your attention was called to that place?

A. No, sir; it was not the first.

Q. Just state what you knew about that place, and

its character, at that time and at the time you made efforts to negotiate the exchange of it to Mr. Henninger?

A. My attention was called to this place by Mr. Blanchard perhaps some two weeks before the date of this letter, he said that he wanted to dispose of it, and at that interview which was very short he did not give me much of an idea of what the place was. Later on, I will say two weeks afterwards, I wrote to him to send me a full description of that property, as I thought I might be able to dispose of it for him. In answer to that he wrote me this letter, giving quite a full description of the property, and what it had cost him, &c., and on the strength of that I offered the property to a party for property that I had in my possession or in my charge and out of that negotiation this Contract of Sale was made.

Q. The contract which has already been offered and marked Exhibit H 2, I think. The contract you mean with Mary Pratt?

A. Yes, sir.

Q. Before making that contract, had you been up to see her property?

A. Yes, sir; Mr. Blanchard and I met at Hoboken and went up to see it, and spent all of one day up there, nearly.

Q. Just give us the general character of this property, what was it?

A. It would be characterized as a gentleman's country residence; it consisted of a dwelling-house of ten or twelve rooms, two stories high, a very good one, and a broad covered piazza all around it, the out buildings were ice house, wood house, laundry and quite a large stable and carriage house connected. The improvements on the property were an artificial lake and a very fancy rustic bridge crossing it between the house and the barn; the property was very nicely fenced with wire fence, I believe, with a good solid bank wall

in front of it—a cut stone bank wall, with nice entrance gates, stone steps, flag, walk, &c.

Q. What state of repair was it in?

A. In first-class order in every way.

Q. You bought it, did you?

A. I negotiated the sale.

Q. For Mary Pratt?

A. Yes, sir.

Q. Is she any relation of yours?

A. Yes, sir.

Q. What?

A. Mother-in-law.

Q. You took the deed in the name of whom?

A. Abraham B. Depuy.

Q. You afterwards became possessed of that property to your own use or the McCoy farm?

A. No, sir; the McCoy farm.

Q. And the Blanchard property remained the property of Mary Pratt?

A. Yes, sir.

Q. What was the difficulty with the Pennsylvania property of Blanchard's for the purpose of sale?

A. It was a property that there would only be one class of people that would buy it, or possibly two classes; one would be a man of means that had a desire to live in the country during the summer, and perhaps all year, and the other was that it would be very well adapted for boarding house purposes, and that was the real reason why this exchange was made for it at the time, because I thought it was well adapted for summer boarders, and she wanted a property at that time for that purpose.

Q. It was only then, as I understand you, marketable to a certain class of persons?

A. Yes, sir.

Q. And you had to look for your purchasers?

A. Yes, sir.

Q. As to its value to such a purchaser, what about that?

A. As to its value for a purchaser who could use it

for that purpose, it was certainly worth anywhere from $8,000 to $9,000. Mr. Blanchard told me that he had expended $12,000.

Objected to.

Q. Now, did you borrow $3,000 on that property from Mr. Blanchard?

A. Yes, sir.

Q. By mortgage?

A. Yes, sir.

Q. Made by whom?

A. Made by Abram B. Depuy to Mr. Blanchard himself.

Q. Did that remain in Mr. Blanchard's possession?

A. What, the mortgage?

Q. Yes.

A. No, sir, he sold it to another party.

Q. This mortgage was made for $3,500?

A. Yes, sir.

Q. According to the agreement to secure how much?

A. $3,000.

Mr. Little: The agreement speaks for itself.

Q. Well, $3,000 only was advanced?

A. Yes, sir.

Q. And a mortgage was given for $3,500 under that agreement?

A. It was given for $3,600. There was a little mistake, it should have been $3,500. It was by mistake that it was made for $3,600, which was not discovered until some time afterwards.

Mr. Parker: We might as well read it while we are about it. (Counsel reads same.)

Q. Now, after the purchase of this property for Mary Pratt, or Abram B. Depuy, did you remain in charge of the property?

A. Of the McCoy property?

Q. Of the Blanchard property. Did you remain in charge of the Blanchard property for Mrs. Pratt?

A. Yes, sir, she owned it, yes sir.

Q. Did you negotiate an exchange of that property for the McCoy property?

A. Yes sir, on one side.

Q. Now just state with whom you negotiated, and how your attention was called to the McCoy property, and describe that property?

A. My attention was first called to the McCoy property some three or four years before this exchange was made. I knew of the property being offered in the market. But in this exchange my attention was called to the property specially by Mr. Josiah Taylor. I have since learned what his name is. He knew at the time, and had known for some time before that I represented the owner of this property in Pennsylvania, and whether he proposed to me the exchange of the McCoy farm for that, or whether I proposed it to him, I don't remember. Our offices were both in the same building, and on the same floor, and we met quite frequently; in any case, an exchange was proposed, and Mr. Taylor said that he would write to Henninger and give him a little idea of the Blanchard place, and see how he felt about it. This was in the latter part of September, 1889, as I remember it. Shortly after this Mr. Taylor showed me a letter which he said he had just received from Henninger, saying that he would like to make such an exchange, because the property in Pennsylvania was near his home, and that he could not handle this McCoy farm at all, that he was threatened with a foreclosure suit at the time, and he asked Mr. Taylor to send him a full description of this Blanchard property, on receipt of which he would go and look at it, and then he would tell him just what he would do. I made up that description. I wrote it out on a sheet of foolscap paper myself, giving a full description of the Blanchard place, its exact location, how it could be reached most conveniently from Stroudsburg, and the ques-

tion of the mortgage; I wrote out that he would find the face of the mortgage when he came to examine the records was $3,600, with 6% interest, but that for certain reasons which could be explained, the holder of that mortgage, who at that time was C. W. Meyer, 816 Walnut Street, Philadelphia, had agreed that if any one took the property who would be likely to take care of it at all, or if I made a sale of the property to any one I was satisfied would take care of it, he, on receipt of six months interest at the rate of 5%, dating from the month in which the sale was made, would endorse a stipulation on the bond that the mortgage was for $3,000, and could remain for the full term for which it was first given, which was three years, at 5% interest. That statement as written out was added to by Mr. Taylor in his own handwriting "That the above"

MR. LITTLE: I object to that statement if it was in writing.

THE WITNESS: I cannot produce it.

MR. PARKER: I haven't got that paper.

Q. Well, you described the Blanchard place and gave it to Mr. Taylor, that is the sense of it?

A. Yes, sir.

Q. And it was forwarded to Mr. Henninger?

Objected to.

Q. What was done?

A. That was forwarded to Mr. Henninger over Mr. Taylor's signature, saying that was a description of the place as written out by the broker of the owner.

Q. Did you forward that paper yourself to Mr. Henninger?

A. I mailed it myself. Mr. Taylor enclosed it in the envelope, and I directed it and mailed it. In about a week after that a letter came from Mr. Henninger, which Mr. Taylor gave me to read, saying that he had seen the Blanchard place—

Objected to.

MR. PARKER: Have you got that letter, Mr. Little?

MR. LITTLE: I don't know, sir, we had no notice to produce it.

Q. We will go ahead without that letter then; now, what was next. You got a letter from Mr. Henninger which was sent to Mr. Taylor. I don't think it is at all material. Now, what was next?

A. Saying that he would be very glad—

Q. No, no, not what was in the letter, you can't tell that.

A. Well, Mr. Taylor told me that Mr. Henninger was willing to make the exchange, and upon that I told Mr. Taylor to write him and ask him to send the full details as to the encumbrances upon the McCoy farm. I knew a property. About two days afterwards Mr. Taylor said that he had received that information and that the mortgage was $5,000, and that there was about $220 of accrued interest and back taxes which had not been paid. Upon that I went to Rahway and saw Mr. Thomas Jardine and Mr. Durand, who was counsel for the holder of the mortgage, and I got information there which went to show that the accrued interest and back taxes on the McCoy farm were about $525, instead of $220. Upon that I told Mr. Taylor he should write Mr. Henninger that we would make the exchange of the Blanchard place for the McCoy farm if Mr. Henninger would pay $500 cash difference. A couple of days afterwards Mr. Taylor reported to me—I don't know how to tell this without referring to the letters, I saw all those letters.

Q. Just tell me what Mr. Taylor told you.

A. Well, he reported that Mr. Henninger wrote him that his letter was received and so and so in regard to the offer which was made, but that he was very short of money and didn't expect to pay any boot money in this transaction, and if he did he could not pay him anything for his services, but that he would have to get his commission out of the other side, and

that he would pay $300 cash difference. Upon that Mr. Taylor said that if the trade went through I would have to pay him a commission, that I could see he could not get anything out of Henninger. I asked him how much commission he wanted and he said he wanted $100, and I, after thinking the matter over somewhat, told him that on certain conditions I would pay him $100 if he could induce Henninger to pay more boot money than that, and I told him he could write to Henninger if he pleased, that I would refuse the offer of $300, I could not take it. I didn't see how I could make the exchange unless he paid $500 difference. In a few days afterwards Taylor reported to me that he had heard from Henninger again, and that he raised his offer to $400 cash difference, and that was the very best he could do. Then I asked him to write Mr. Henninger that if he would pay half of the $400 down on the day the contract was signed for the exchange and the balance on the passing of the deeds that I would take it provided he, Taylor, would take his commission in the same way; that is, he should have $50 on the day of the contract and $50 on the passing of the deeds He agreed to that; he said that was all right. There was some other correspondence, and I suppose—I know there was, in fact, I saw the letters. Mr. Henninger at last telegraphed that he would be in New York on the 16th or on the following Saturday of that week, which was on the 16th of November, ready to close the sale, and on the morning of the 16th, about 10 or 11 o'clock in the forenoon, Mr. Taylor came into my office and said Mr. Henninger was there ready to close the contract. I went into Mr. Taylor's office with him and he introduced me to Mr. Henninger and that was the first time I ever saw him. I asked, or I remarked to him, rather, that I supposed he had come to close up the sale that we had been corresponding about back and forth—that Taylor and he had. He said yes, he had come to close it up, but he could not pay any money that day. He said he ex-

pected to get some money the day before, which he would have brought with him, but he found he could not, and he wanted to know if there wasn't some other way in which we could carry the thing through. I told him I would receive any proposition from him he desired to make, and he made several different propositions—to give notes for this $400, which I rejected. Finally he said he would give a note for $300, to run two weeks, and he would give me a note for $100, which he wanted to run a year, in the first place; finally he said he would make that six months, and upon his making that proposition I turned to Mr. Taylor, who was present, and said to him: Now, if you are willing to wait for your commission until these notes are paid I will accept Mr. Henninger's offer; and he wanted to know whether I meant until the six months note was paid before he got it. I told him no, that I would pay him as the notes were paid; that I would pay him in the same proportion that I had before talked of; that is, I expected Mr. Henninger to pay down $200 that day.

Q. Speak a little louder.

A. I told him I would pay him in the same proportion that we had before talked of; that is, when the $300 note was paid I would pay him $75, and when the $100 note was paid he should have the other $25. He said that was perfectly satisfactory to him, and then we sat down, and Mr. Henninger, I think it was, wrote out this contract, of course under my directions.

Mr. Parker: I call for that contract.

(Mr. Little searches for same and says he cannot find it.)

Q. Well, the agreement was written out and signed?

A. Yes, sir; I wanted to explain a little about certain of the clauses in that agreement.

Q. Well, you will have to leave that explanation then, if you can, until we have the agreement.

A. Well, it makes a break.

Q. Yes, proceed.

A. I think perhaps I can remember the clauses well enough to tell.

Q. Go ahead, then.

A. Mr. Henninger, as I said, wrote this contract, and when he came to put in the clause about the mortgage on this Blanchard's property, he wanted to know how to put that, as the mortgage as recorded was one amount and the real amount was another. I asked him if he hadn't looked that matter up; he had had Mr. Meyer's address, the person who held the mortgage. He told me he had.

Q. Mr. Henninger told you so?

A. Yes, sir; he said he had either written to Mr. Meyer or had seen him. He also said he had obtained an attorney to examine the records, but he didn't quite understand why they should be willing to reduce the mortgage from the face of it to $3,000, and I entered into quite a long explanation with him, and in doing that I got this contract between Mr. Blanchard and Mary Pratt and showed it to him at that time. That seemed to be satisfactory, and then he wanted to know how to put this clause in; I said just to put in $3,000 at 5 per cent.; we all understand it, and he understood it. That is all there was to it. That contract then was signed, and he gave his two notes, one for $300 at 15 days, and one for $100 at six months, both payable to my order. The $300 note was paid at the time it was due by a check upon Jeremiah Rothe, of Allentown, Pa., as I remember it, and as I didn't know anything about who Rothe was I refused to deliver the deeds until—by the way, it was understood at the time the contract was made and the notes given that the deeds were not to be passed until the $300 note was actually paid, so that when I received this check to pay the note I told Mr. Taylor that I should refuse to pass the deeds until I had sent that check through for collection, and found it was all right. I did so, and the check was paid, and then we passed the deeds; but, just prior to that time Mr. Henninger had sent his deed for the McCoy place, and because of a certain

clause in it which I didn't like I had it sent back and a new deed made; but the deeds were passed.

Q. Between whom?

A. Between Mr. Taylor and myself.

Q. Henninger wasn't there?

A. No, sir.

By the Court:

Q. Was there anything said about Mr. Taylor's commission?

A. Taylor's commission as soon as I received the money on the $300 note, which was not for, as I remember it, about ten days after I first received the check; it took about ten days for the check to go through and get back. As soon as I got that $300 I paid Mr. Taylor's $75, and a few days after the deeds were passed, I saw Mr. Caldwell, an iron manufacturer, down near this property, and from the information I got from him—no, that was before the deeds were finally passed, it was after this first deed had gone back to Allentown to be corrected for a new deed. I found that Mr. Henninger had leased this place up to the first of the following April, and that he had received the rent for it in full up to that time, which he never told me anything about, until Mr. Caldwell told me, and upon that I made a demand upon Henninger, through Mr. Taylor, that he should turn over the rents from that date forward to the first of April which he had received; that I would not stand upon the question of possession, but that he must turn over the rent, or I should refuse to pass the deed. Shortly after that he sent $66 by the Adams Express Company to Mr. J. W. Taylor. Mr. Josiah Taylor, his father, received the money and receipted for it, and at the time he said he was pretty short of money and he asked me if I would not pay him the balance of the commission. I reminded him that the agreement was that he should wait until the six months' note was due. He said he knew that very well, but it would be quite a favor to him if I paid him then, and I paid him $25 out of that $66, making his commission in full; the balance of the $66 I received.

FURTHER DIRECT:

Q. As to the six months' note, was that paid?

A. No, sir, it was never paid.

Q. (Handing witness a paper.) Is that the note?

A. That is the note. I sent it for collection to the bank.

MR. PARKER: (Reading.) This note is dated Allentown, is a six months' note for $100, is due May 19th, drawn to the order of C. Heald, signed by W. R. Henninger, and is marked for collection on the back. I offer it in evidence. Marked Exhibit H 4.

Q. Was there any other note given by Mr. Henninger at the time of this contract than those given to you?

A. Not to my knowledge, not at that time, no, sir.

Q. Now, Mr. Heald, before we go to the other branch of the case, let me ask you about the condition of the McCoy place at that time as to size, improvements, and the general character of the tract?

A. Size of the property, as near as I ever knew the number of the acres, was about 68. The buildings consisted of a story and a half dwelling, antiquated and very much out of repair. The roof leaked and the property did not look as it had had any care for a number of years. The barns were in even worse condition. The fences were entirely gone from the property and the property was what we would call very much run down. It hadn't been cultivated for several years at all. All that had been there was to get off of it what there was, and the consequence of it was that the property was in very bad condition.

Q. It was occupied by whom?

A. I don't know just who occupied it. Mr. Caldwell had a lease of it as I found, more for the use of the barns, as I understood it, than anything else. He kept some of his horses and wagons there.

Q. At what rent?

A. $200 a year.

Q. You have spoken of the arrears on the mortgage. When did Messrs. Schaefer & Durand first get hold of it?

A. I don't know. When I first came into contact with the property they had the matter in charge then, and had been threatening foreclosure, and before these deeds were passed they had instituted suit to foreclose that mortgage.

Q. Before the deeds of either party?

A. Yes, sir.

Q. And with reference to the salt meadow, did you notice that at all?

A. I went as near as I could get to it. I could not get on to it withour wading through mud and water, and I did not go fairly on through that property.

Q. Was there any agreement between you and Mr. Taylor at that time that you should share the profits of this property?

A. At what time do you refer to?

Q. At the time of the exchange?

A. No, sir, none whatever. The only agreement between us was, that he should receive $100 commission from my side in the way I have mentioned.

Q. Was there any agreement previous to the exchange or suggestion previous to the exchange that you should divide?

A. None whatever.

Q. Was there ever an agreement or suggestion at or before the execution of this exchange, that he should have any interest in the property whatever, except that you should pay him a commission?

A. That was the only interest.

Q. And that commission was to be $100?

A. Yes, sir.

Q. Did Mr. Henninger understand about the matter of this commission?

A. Well, I don't know whether he understood any more than I explained.

Q. What did you say about that?

A. At the intervew on the 16th, the interview when he finally made the proposition to give the $300 note and the $100 note, as I have stated, I said to Mr. Taylor that if he would take his $100 commission when those notes were paid, or rather, if he would wait until those notes were paid for his commission, I would accept Mr. Henninger's offer.

By Mr. Emery:

Q. And that was said in Henninger's hearing?

A. Yes, sir.

Q. Previous to that Taylor had told you, hadn't he, that Mr. Henninger had said the commissions must come from your side?

Objected to.

Further Direct:

Q. Who was present at the time you made that remark to Mr. Taylor?

A. Mr. Taylor, Mr. Henninger, and myself, nobody else.

Q. How close was Mr. Henninger to you or Mr. Taylor?

A. Mr. Henninger was sitting at a short table as you are, and I was sitting beside him, and Mr. Taylor was sitting at the end.

Q. In what tone of voice was this remark made?

A. Well, in ordinary conversational tone, I had to speak right across Mr. Henninger, or in front of him to speak to Mr. Taylor.

By The Court:

Q. Do you mean that Mr. Henninger was further away than Mr. Taylor was?

A. No, sir, I was nearer to Mr. Henninger than I was to Mr. Taylor, Mr. Henninger was in front of the table, I was beside him, and Mr. Taylor was at the end.

By Mr. Emery:

Q. You were nearer to Mr. Hennniger than you were to Mr. Taylor?

A. Yes, sir.

FURTHER DIRECT:

Q. Who was nearest to Taylor, Henninger or yourself?

A. Henninger, he was between myself and Taylor.

Q. So that you had to talk across him?

A. Yes, sir.

Q. Had you any copy of that agreement in your hand?

A. Of the contract made at that time?

Q. Yes?

A. No, sir, I didn't take any copy, nor I never had the original.

Q. With whom did the original remain?

A. I don't know, but the understanding was that it should remain with Taylor in case I wanted to refer to it, or anything of that kind, and Henninger was to take a copy.

Q. The title to the McCoy farm was taken in the name of Depuy?

A. Yes, sir.

Q. For whom was the purchase really made?

A. For Mrs. Pratt.

Q. Did Mrs. Pratt remain interested in that farm until the foreclosure sale?

A. Not until the sale, no; but for four or three months after the foreclosure suit was begun.

Q. And then what was done?

A. In June I purchased her title and Mr. Depuy made a conveyance to me direct.

Q. Did you shortly after this sale have any correspondence with Mr. Henninger in reference to the Blanchard place and the mortgage upon it?

A. Yes, sir.

Q. Will you please turn to that correspondence, and I will be much obliged to you. (Handing witness a number of letters.)

A. I have a letter in my hand——

Q. First explain, sir.

A. Well, as near as I can remember, this letter opened the correspondence between Mr. Henninger

and myself in regard to getting the cancellation of the mortgage on this Blanchard property.

Mr. Parker: This is the letter from Henninger to Heald; I will read it, it is dated Allentown, March, 1890. C. W. Heald, Esq., I can manage to raise $1800, to have that mortgage on the Blanchard place, &c. (Counsel read same). I offer it in evidence. Marked Exhibit H 5.

The Witness: I don't know but what I ought to go back of this letter and explain a little. Some little time before this letter was written, or before the date of this letter, Mr. Meyer of Philadelphia, who then held this mortgage, came to me ——

Objected to.

Q. Only state what you communicated to Mr. Henninger. What did you tell Mr. Henninger about it?

A. I told Mr. Meyer to write direct to Henninger and make him an offer to cancel the mortgage.

Q. Let us pass to the next letter then, sir. You cannot state what Mr. Meyer said?

A. What is the next in date?

Q. March 22d.

A. I don't find that.

Q. Well, take the next you find, sir; there is one on April 10th.

A. April 10th: yes, sir.

Q. Have you got a letter from him April 10th?

A. April 11th I received it.

Mr. Parker: It is dated April 10th. C. E. Heald, Esq. Dear Sir: You will no doubt receive a letter from Edward Hoff, Attorney at Law, &c. (Counsel read same). Offered in evidence and marked Exhibit H 6.

Q. To what mortgage did that refer?

A. To that mortgage on the Blanchard place.

Q. Now the next one, June 17th.

A. Yes, sir.
Q. You find such a letter?
A. Yes, sir.

MR. PARKER: It reads as follows: June 11th, 1890. Dear Sir: Yours received. Will forward cancellation of McCoy place to-morrow morning if I can find it, &c. (Counsel read same). Offered in evidence and marked Exhibit H 7.

Q. The next is June 23d.
A. There is a letter here of June 18th.
Q. Let's see that?
A. That is not from Henninger himself.
Q. Not from Henninger?
A. No, sir; it was sent to Heninger and he sent it to me.
Q. You have a letter he forwarded to you of June 13th, of Mr. Ingram, who held the mortgage?
A. Yes, sir; he held it with Mr. Meyer; he did not hold it exclusively.

MR. PARKER: This is dated June 13th. W. R. Henninger, Esq., Dear Sir: I have prevailed upon the other parties, &c. (Counsel reads same). Marked Exhibit H 8.

Q. I see they ask a partial payment on the mortgage in that letter?
A. Yes, sir.
Q. Why?
A. That was after the six months had expired, within which they agreed to endorse a stipulation on the mortgage reducing it to $3,000, if the interest was paid for that time.
Q. The next is June 23d?
A. Yes, sir, I have it.

MR. PARKER: Allentown, Pa., June 23d. C. Heald, Esq., Dear Sir: I find there is something seriously wrong about the necessary pa-

pers of the Blanchard place, &c. (Counsel reads same). Marked Exhibit H 9.

THE WITNESS: You seem to have skipped two.

Q. I have here a letter of March 21st, 1890, which I had left out from Henninger to the witness?

A. Yes, sir.

MR. PARKER: Dear Sir:

I received a protest last evening concerning my note. As my deposits were not sufficient, &c. (Counsel reads the same). Marked Exhibit H 10.

Q. Will you explain why those letters were written?

A. Well, how they came to be written to me is this, Mr. Meyer—

Objected to.

BY THE COURT:

Q. What do you propose to prove?

MR. PARKER: These letters refer all the way through to the statements to Mr. Henninger that he wants Mr. Heald as his agent to arrange that certain sums may be taken for the mortgage. I want to prove by Mr. Heald what he did in reference to that matter, and what arrangement he was able to make for Mr. Henninger in regard to that matter, which I think is material.

THE COURT: I think it is competent so far as Mr. Heald followed out any instructions he received from Henninger.

Q. Now explain what you did under the authority to negotiate about that mortgage?

A. I looked the holder of the mortgage——

MR. LITTLE: This is taken subject to my objection, of course.

Q. Proceed.

A. And used my best efforts to get him to name the lowest sum he would take to cancel that mortgage, pursuant to Mr. Henninger's requests and instructions. I got Mr. Meyer to say that he would take $2,400 if he could get it right away, and within a very short time—he was very much distressed for money, and he would take $2,400 and cancel the mortgage. I communicated all this to Mr. Henninger, and he wrote me these letters making the offers. First he offered $1,800 for the cancellation of the mortgage, then he got up to $1,900 and $2,000, and I think the highest sum he named that he would give was $2,100. He never was able to get Mr. Meyer to say he would take less than $2,400, that was the lowest I could get him to. Mr. Henninger refused to give it, and the negotiations fell through as far as that went. All this was after the six months had expired, within which Mr. Henninger could have continued the mortgage and had it scaled down to $2,000 by a stipulation and paying five per cent. interest which he did not do.

Q. Now, Mr. Heald, let me pass again to the McCoy farm. After this farm was deeded to Depuy for the benefit of Mary Pratt, was there any arrangement made between you and Mr. Taylor in reference to the sale of that farm?

A. Yes, sir; after the deeds were passed some days, we made or entered into an arrangement to dispose of the property in some way.

Q. As to the time, it is material, when was it in reference to the deeds that the first suggestion of any such thing was made?

A. On the 21st day of December following.

Q. And what was done then, what was the arrangement. Here is the deed dated the 11th day of November, 1889, from Henninger to Depuy, acknowledged ths 22d day of November, 1889, before John W. Seth, Alderman, Pennsylvania. When was it received by you?

A. Within a day or two afterwards.

Q. After that date?

A. Yes, sir.

MR. PARKER: I offer that deed in evidence. Marked Exhibit H 11.

Q. Where is Depuy?

A. He is dead.

Q. When did he die?

A. He died in November, 1892.

Q. 1892?

A. Yes, sir; last year.

Q. Was he a witness to any of these proceedings?

A. Yes, sir.

Q. Which one?

A. The case of Taylor against Heald.

Q. Taylor against Heald, or Henninger against Heald?

A. Taylor against Heald.

Q. Let me ask you this, the deed being executed and delivered say on the 23d day of November, or within a few days after that, you say there was no agreement or suggestion, after the agreement between you and Taylor with reference to a sale of that property at that time?

A. No, sir.

Q. Afterwards, state if there was any such agreement, and if so, what was it?

A. There was an agreement made between him and I on the 21st day of December following. He came to my office ——

By MR. LITTLE:

Q. Was that agreement in writing?

A. Yes, sir; it was in writing.

FURTHER DIRECT:

Q. Well, I want the witness to state the previous conversations in reference to it; go on and state the circumstances?

A. He came to my office ——

MR. LITTLE: I object to those statements. Objection overruled.

Q. Proceed.

A. He came into my office on the morning of that day and he said he had just got a letter from Joe, meaning his son, who was then up near Lake Superior in Wisconsin somewhere, and who had previously been in the office in New York, and he said, Joe writes me about a man that he says I can sell that McCoy farm to. He said, I have written to him about your making trade for it with your parties. I said, Very well, if you can make a sale of it I shall be very glad to see that you get a commission. He said he would want more than a regular commission out of that. I asked him why? he said, Well, you know the farm is under foreclosure and is a hard thing to sell, and that the party Joe wrote about lived away up the State above Albany, and it would be a good deal of trouble and expense to get at him. I asked what Joe said he offered—what he could get, and he said he could get $7,000 from this party, and he said if I would agree to give him half of what there was in it above the mortgage and expenses and to pay him half the expenses of the trip to go and hunt this man up, he would go right at it, and after some talk we made an agreement of that kind. I told him that I would agree to that, and he said he wanted it in writing because, as I knew, and he knew, a commission would not be collected on the sale of a farm in New Jersey unless it was in writing. I told him all right; anything I would agree to verbally I had no objection to put in writing. Well, he said, draw up a little agreement, so I took a sheet of paper and a pen and wrote out the agreement at his dictation.

Q. (Handing witness a paper.) Is that the paper, sir?

A. That is the paper, and the agreement that was made at that time.

Mr. Parker: I will read that and have it marked Exhibit H 12. "New York, December 21st, 1889. Whereas on or about, &c." (Counsel read same.)

Q. Who did you understand J. B. Taylor to be?

A. Well, I supposed it was old Mr. Taylor. I never knew his name; he said just make it to J. B. Taylor, and I supposed that was his name; he never had a card, or had his name on the door, or, in fact, I never saw his name printed, or anything of that kind; he said just make it to J. B. Taylor, and I supposed they were his initials.

Q. Had you ever heard of Jane B. Taylor, his wife, at that time?

A. No, sir.

Q. Or until suit was brought against you in the name of Jane B. Taylor?

A. No, sir.

Q. Mr. Taylor swears that that agreement was signed in execution of an oral agreement had between you and him previous to the sale—previous to the deeds to you; is that correct?

A. No, sir, it is not true; no part of it is true.

Q. Now, sir, what was done under that agreement by Mr. Taylor? Did he make a sale?

A. No, sir, he did not.

Q. How long did he continue to act under this agreement?

A. He never took any active interest under that agreement after about six weeks—six or eight weeks afterwards.

Q. And after that what was done between him and you?

A. In regard to this property?

Q. Yes, about his going on under this agreement?

A. Well, he withdrew from it entirely, between us we got two different parties at different times within seven or eight weeks after the agreement was made to go and look at the property, one wanted to buy it for a farm, and the other was a brick manufacturer. Mr. Taylor took both of these parties down there. The first man was a man who wanted to buy it for farming purposes, and he would not, as Mr. Taylor told me, have it at all, he would not give any price for it, and

this being the first time that Mr. Taylor had ever seen the property, as he told me, he said it wasn't worth anything for farming, and could not be sold for anything above the mortgage, that the mortgage was more than it was worth, but he said that he was told that a part of the whole of it was underlaid with clay, and if a clay man, as he called it, could see it and wanted it, he might make an offer for it. Then I advertised it as a clay farm. In answer to that advertisement we had one call from a man who is a manufacturer of tile up in New York State up on North River at 50th street or somewhere, and Mr. Taylor took him down there. When Mr. Taylor came back next day he told me that the man was going to have some of the clay sent up to his factory to test, and if it would answer his purpose he thought he could get an offer of something above the mortgage; and this man did, as he told me himself afterwards—

Objected to.

Q. Never mind what the man said unless you told Mr. Taylor of it.

A. This was in Mr. Taylor's presence at the office. This man came there and said he had some of the clay sent up to his factory and tested it as to its baking qualities, and he produced a piece of tiling there, which he said was made of that clay, and he found that it would not answer his purpose at all, that it would not bake hard enough, it would break all up, because it would not bake hard enough or something like that, and therefore the property was of no value to him whatever; and upon that Mr. Taylor entirely abandoned any effort, or any semblance of an effort, to effect a sale of the property. He said certainly no one would buy it for a farm, that it wasn't worth the mortgage, and he was satisfied then that the clay wasn't good for anything, and that he would not spend another cent on it in any way, or spend any more time, and I was perfectly welcome to all I could get out of it if I wanted to be fool enough to spend my money

and time upon it, and from that time forward—and that wasn't over eight weeks after the agreement was made—he never made any effort whatever to my knowledge in that direction, and he ridiculed me all summer for being fool enough to follow it up—sticking to it as he called it.

Q. I understand the property finally became advertised for sale?

A. Yes, sir.

Q. And you put the matter in the hands of Mr. Savage as your attorney?

A. Yes, sir.

Q. And also the power to negotiate the sale of the property?

A. Yes, sir.

Q. Was this sale to Byers of which an agreement has been stated here reported to you by Mr. Savage?

A. Yes, sir.

Q. Was it confirmed by you?

A. It was, yes, sir.

Mr. Parker: Now, Mr. Little, the original McCoy contract is in the hands of Mr. Canda, and he has it locked up in his safe, I would like to use a copy.

Q. Before I come to that. After you made this sale to Mr. Byers, did you have any conversation with Mr. Taylor in reference of the sale to Byers of the property?

A. Not with reference to a sale specially to Byers, but I told him I had sold the salt meadow for nearly enough money to pay the whole encumbrance upon the property.

Q. Who was present when you said this?

A. I don't know as anyone was present at that time.

Q. Was there a conversation about that time between you and Taylor in reference to the sale of that property?

A. Yes, sir; he congratulated me two or three different times for sticking to it so, and getting out of it so

well, and one time especially he said I had made such a good thing out of it that I ought to pay this $100 note that he held against Henninger.

Q. When was this?

A. This was in the latter part of August, 1890.

Q. State that conversation as fully as you recollect it between you and Mr. Taylor in August, 1890?

A. Well, this conversation was in my office; he said that I was the darndest fellow to stick to anything that he ever saw, and he was mighty sorry he hadn't stuck with me where he could make something out of it, he said I had made such a good thing out of it that I ought to pay this note he held against Henninger for $100. I know some little time before that——

By Mr. Little:

Q. What note do you speak of?

A. A note he held against Henninger for $100, which passed due and unpaid. I knew that some little time before that he held such a note, and I asked him why I should pay Henninger's notes, and he said, well, I had made a good thing out of the property for one thing, and another thing was, if I hadn't told Henninger that I was going to pay him a commission, that Henninger would have paid that note when it was due. I told him that I did not tell Henninger that directly, but of course he recalled the fact that I told him so in Henninger's presence, and, at any rate, he said Henninger gave that as an excuse when he tried to collect the note, that Taylor got $100 commission out of me, and he thought he ought to be satisfied with that, that he was a poor man that could not pay his note anyhow.

Further Direct:

Q. That brings us down to August, 1890; I thought that the suit brought by Josiah Taylor and J. B. Taylor, complainants, was brought September 23d, 1890?

A. Yes, sir; this conversation was not more than two or three weeks prior to his bringing that suit.

Q. Before that you had to bring suit against Jardine to protect your title to the property?

A. Yes, sir.

Q. Do you remember making a contract for the sale of the rest of the property to Charles C. P. Hoyen?

A. Yes, sir; I remember it.

Q. Who was Mr. Hoyen—was he connected with any company?

A. I supposed, or understood, at that time that he represented the Canda Manufacturing Company.

Q. You executed a contract on the 20th day of November, 1890?

A. Yes, sir. I don't remember shape of it, but I know very well that is a copy.

Q. I will use this copy until I get the original; I will offer it in evidence as Exhibit H 13.

MR. PARKER: I will read it. It is an agreement of the 20th of November, 1890, between Charles C. Heald and C. P. Hoyen, &c. (Counsel read same.)

Q. At the time that contract was made, it mentioned the Jardine suit. Did you know of any claim on the part of Henninger as against you on this property?

A. I never had heard any intimation of any claim.

Q. Had you ever heard of any such claim until the bill was filed?

A. No, sir.

Adjourned until Friday, September 29th, 1893, at the hour of 10.30 A. M.

IN CHANCERY OF NEW JERSEY.

Between—
WILLIAM R. HENNINGER,
Compl't,
AND
CHARLES E. HEALD, *et als.*,
Deft's.
} Before V. C. Bird.

MR. THEODORE LITTLE for Complainant.

MR. JOHN R. EMERY for the Port Reading R. R. Co. and als.

Mr. WAYNE PARKER for Charles E. Heald.

Transcript of the shorthand report of the evidence given upon the continuation of the trial of this cause, at Newark, N. J., on Friday, September 29, 1893.

Charles E. Heald recalled for further direct examination by Mr. Parker:

Q. Mr. Heald, you wanted to see that agreement between you and Mr. Henninger?

A. I think I explained that.

Q. You think you have touched that altogether?

A. Yes, sir.

Q. Just explain about the value of the McCoy farm at the time you made this exchange with Mr. Henninger and since then?

A. At the time the exchange was made with Mr. Henniger—at the time the sale was made with Mr. Henniger of that farm, which I negotiated, the property was in a very dilapidated and run-down condition, as a farm, and the buildings also; and it was very difficult to get a sale of any kind for a property of that character in that neighborhood at that time. Afterwards, and in July of 1890, by reason of the Philadelphia and Reading people wanting terminal properties in that vicinity, and also by reason of the

Canda Manufacturing Company pitching upon that spot to locate their large works and factories, etc., this property and all other lands in the neighborhood very suddenly advanced in value to quite a large extent, properties that perhaps a month before that time could have been bought for perhaps $25 an acre, advanced to $500 and even more. So that at the time of the expiration of the redemption period, which I had on this property from the Jardines, the property was worth three or four times as much as it was a month or six weeks before that.

Q. You produced two contracts, one with Byers, the other with Canda; did you afterwards make deeds under those contracts?

A. Yes, sir.

Q. At the time of those deeds was there any suit pending against this property of any kind or description?

A. No, sir; there was not.

Q. You have not those deeds, have you?

A. No, sir.

By Mr. Emery: Well, I produce a deed from Mr. Heald.

Cross-Examined by Mr. Little:

Q. Mr. Little when was the deed made to Mr. Canda?

A. I cannot tell the date of it now.

Q. By whom was it made?

A. By myself and wife.

Q. Anybody else?

A. Myself and wife.

Q. Anybody else?

A. No, sir.

Q. In the answer filed in this case by the Port Reading Railroad Company, it is stated that the deed was made by Mr. Chambers to Canda, you don't know about that?

A. No, sir.

Q. And that $349.80 was paid by Mr. Savage to

whom that deed was delivered as attorney of said Heald; do you know anything about that?

A. I know there was some $349 paid over to the railroad company in final settlement of the whole transaction.

Q. Paid by who?

A. By myself through Mr. Savage.

Q. What was that for?

A. It was the balance due them on account of a mortgage to the Jardynes which they paid, the difference between that sum and the sum of $5,400, for which I sold them the salt meadow.

Q. What other consideration was there for the making of that deed by Mr. Chambers, if any?

A. I don't know of any at all.

Q. You don't know of any?

A. No, sir.

Q. This answer of Mr. Chambers says as a further consideration for the delivery of the said deed, the said Heald conveyed by the deed above mentioned his interest in the salt meadow tract?

A. Which deed do you refer to?

Q. The deed to Mr. Canda by Mr. Chambers?

By Mr. Emery: That is the consideration of our deed.

A. You mean to ask if I joined in that deed?

Q. (Reading) "And as a further consideration for the delivery of said deed, the said Heald conveyed by the deed above mentioned," that is, the deed to the Port Reading Railroad Company made by you, I suppose, "his interest in the salt meadow tract;" is that so?

A. I didn't join in any deed with Chambers to anybody.

A. I didn't ask you that. Just read my question, please.

The stenographer reads the question as follows: "And as a further consideration for the delivery of said deed, the said Heald conveyed

by the deed above mentioned his interest in the salt meadow tract;" is that so?

A. I didn't join in any deed with Chambers.

Q. I didn't ask you that sir.

A. Then I hardly get the drift of your question, Mr. Counsellor.

Q. This answer says that as a part consideration for the conveyance to Mr. Canda by Mr. Chambers, that you paid $349.80 to the Port Reading Railroad Company, and that you also conveyed to them at the same time your interest in the salt meadow as a part of the consideration of the Canda deed; now, is that so?

A. Yes, sir; that is so.

Q. That is so?

A. Yes, sir.

Q. Who holds that Canda deed?

A. I suppose Mr. Canda, himself, or the company. The deed, as I remember, was made to Ferdinand E. Canda individually.

By Mr. Emery: You mean the Canda Company?

By the Witness: Yes, sir; the Canda Company.

Q. How old are you Mr. Heald?

A. 42.

Q. Do you live in Brooklyn?

A. No, sir.

Q. Where do you live now?

A. New York.

Q. Have you a family?

A. Yes, sir.

Q. You married Mr. Pratt's daughter, you say?

A. Yes, sir.

Q. Is she alive or dead?

A. Who?

Q. Mrs. Pratt's daughter.

A. She is living.

Q. How old is she?

A. She is 38—you speak of my wife, I suppose?
Q. Yes. Is Mrs. Pratt a member of your family?
A. Yes, sir.
Q. How long has she been such?
A. Off and on for 8 or 9 years.
Q. Not longer than that?
A. No, sir—maybe 10 years.
Q. How old is she?
A. 66.
Q. Is she in good health?
A. Yes, sir; fairly good health.
Q. What business has she carried on heretofore?
A. She never carried on any business particularly that I know of.
Q. Where did she live before she came to live with you?
A. Vermont.
Q. Was her husband living at that time?
A. Yes, sir.
Q. You purchased the property, the Blanchard place, you say, from her?
A. Yes, sir.
Q. What did you pay for it?
A. It was an exchange.
Q. For the Brooklyn property?
A. Yes, sir.

By Mr. Little: Let me have the agreement, if you please, Mr. Parker.

Q. It was valued at what price?
A. Do you mean the Brooklyn property?
Q. No, I mean when you bought the property of her?
A. You mean the Blanchard place?
Q. Yes?
A. Either $8,000 or $8,500. I don't know which.
Q. Did you take the deed in her name?
A. The deed for the Blanchard property?
Q. Yes?
A. No, sir; that deed was made to Mr. Dupuy.

Q. Who is Mr. Dupuy ?

A. Well, he is a man about 65 to 68 years old ; he lived in Brooklyn.

Q. Was he a man of family ?

A. Yes, sir.

Q. What family had he ?

A. Three daughters and one son.

Q. What was his business ?

A. When do you mean ?

Q. For the last 7 or 8 years of his life ?

A. He was with Mr. Kelsey daily, who was his father-in-law ; that is, his father-in-law while his wife lived and Mr. Kelsey was president of the Williamsburg Savings Bank, and he was in the real estate business also.

Q. That institution ?

A. Yes, sir; with Mr. Kelsey.

Q. At the time this deed was taken in his name for the Blanchard property, what was he engaged in ?

A. With real estate transactions on his own account.

Q. You purchased the property from Mary Pratt ?

A. Yes, sir.

Q. Why didn't you take the title in your own name?

A. There are reasons for that which I can explain if you insist upon it.

Q. I ask you to do so.

A. The principal reason was that she was at that time and is yet estranged from her husband ; they never had been separated legally and I advised under the circumstances she should not hold any real estate in her own name.

Q. Is her husband still living ?

A. Yes, sir.

Q. Where is he living ?

A. In Vermont.

Q. Then you disposed of that property to Mr. Blanchard, did you ?

A. Which do you refer to ?

Q. The property in Pennsylvania ?

A. No, sir; I disposed of that to Mr. Henninger.

By Mr. Emery: The Brooklyn property he disposed of to Mr. Blanchard?

By Mr. Little: Yes.

Q. What is that valued at?

A. I think it was valued in this transaction at about $12,000.

Q. And the Pennsylvania property at about $8,500?

A. Yes, sir; something like that.

Q. That would make a difference of $3,500?

A. Yes, sir.

Q. How was that paid by Mr. Blanchard?

A. The difference?

Q. Yes.

A. It was paid by $3,000 in cash.

Q. The difference was paid by $3,000 in cash?

A. Yes, sir.

By Mr. Parker: The agreement states the consideration. It is not fair to cross-examine this witness without showing him the papers. I object to this line of examination.

The Court: Oh, Mr. Parker, I think it is perfectly fair, perfectly fair in this case. You must remember that fraud is charged.

By Mr. Parker; Very well sir.

Q. Anything you have said you may explain if you desire to.

A. You asked me how the difference in value was paid; I said it was paid by $3,000 in cash; that, rather instead of paying the difference, was a loan back on the property which was agreed upon at the time of the transaction.

Q. In other words, you took a mortgage upon the property for that amount?

A. Mr. Blanchard agreed to loan $3,000 back on the property to anyone that he disposed of it to. The amounts stated in the contract as the valuations of the

different properties was put in more to determine the amount of commissions than anything else.

Q. Now, Mr. Heald, the mortgage which was given was for $3,500?

A. No, sir; it was given for $3,000.

Q. Well, how do they make up the difference of $3,500; where was the other $500?

A. The amounts stated in the contract were not stated for the purpose of fixing the difference in value, they were stated for the purpose of fixing the amount of commissions.

Q. Whose commissions?

A. Mine.

Q. Commissions between who?

A. Mr. Blanchard and myself.

Q. Who paid your commissions?

A. Mr. Blanchard.

Q. How did it come that Mr. Dupuy made that mortgage upon that property?

A. Well I have explained why the property was conveyed to him.

Q. But that was not the question I asked you?

A. The reason he made the mortgage was he held the title.

Q. Did he give his bond?

A. Yes, sir.

Q. What consideration did he receive for giving his personal bond for $3,000?

A. $50.

Q. You paid him $50?

A. Yes, sir.

Q. In order to get his personal bond?

A. Yes, sir.

Q. Is Mr. Dupuy any relation of yours?

A. No, sir.

Q. How long have you known him?

A. I knew him 10 or 12 years before he died.

Q. Has he ever been a member of your family?

A. No, sir.

Q. Nothing more than a business acquaintance?

A. That is all.

Q. Have you ever had any other transactions of a like character with him?

A. I don't remember that I ever did.

Q. You said that Mr. Taylor said to you at one time that you ought to pay a note which he had in his hands?

A. Yes, sir.

Q. Of $100?

A. Yes, sir.

Q (Handing witness a paper). Look and see if that is the note referred to at that time?

A. I suppose it is, I did not see it at the time.

Q. You suppose this to be the note?

A. I suppose so.

By Mr. Little: This is Exhibit 3 for the Complainant.

Re-Direct by Mr. Parker:

Q. Was the Blanchard property mortgaged at the time you made the agreement with Mr. Blanchard?

A. No, sir.

Q. Was the Brooklyn property mortgaged?

A. Yes, sir.

Q. For how much?

A. $4,500 I think, or $4,000.

Q. $4,000 is stated in the agreement?

A. Well that is correct.

Q. So that the equity in it appeared to be $8,000?

A. Yes, sir.

Q. Well, I see the Blanchard property was sold subject to the taxes of 1888?

A. Yes, sir.

Q. And the memorandum is an absolute one that one should have one piece of property and the other have the other?

A. Yes, sir.

Recross:

Q. Then the equity in the Brooklyn property was more than $3,500?

A. The equity in the Brooklyn property, yes, sir.

Q. How was the difference paid ?

A. The difference wasn't paid at all if you put it that way, there wasn't supposed to be any difference. It was merely a contract to take one piece of property for another, with a proviso that Mr. Blanchard loan $3,000 on one property that he sold and conveyed.

Q. Mr. Blanchard would loan $3,000 ?

A. Yes, sir, which he did.

RE-DIRECT BY MR. PARKER :

Q. Is this the original contract between you and Mr. Hoyen which has been referred to (showing witness a paper) ?

A. Yes, sir, that is the original.

Q. At what date was that delivered ?

A. The date ?

Q. Yes, sir, in this agreement ?

A. It was delivered on the day of its date, and that was the 30th of November ?

Q. The 20th of November ?

A. Yes, sir.

Q. The 21st of November is the day of the receipt ?

A. Yes, sir.

Q. Mr. Savage acted as your attorney in that contract ?

A. Yes, sir, I was away all that year pretty nearly.

Q. Is this a confirmatory deed, or deed rather that you executed to Mr. Canda ?

A. Yes, sir, that is the deed of conveyance.

BY MR. PARKER : I offer in evidence the original agreement between Charles E. Heald and C. P. Hoyen, marked Exhibit H 16.

Q. This is the original conveyance you made to Mr. Canda ?

A. Yes, sir.

Q. In pursuance of the agreement of Mr. Hoyen ?

A. Yes, sir.

Q. I see it is stated to have been executed and ac-

knowledged on the 26th day of April, 1892, in the State of Connecticut and in the County of Fairfield; will you explain why?

A. At that time I was living in the town of Colebrook, Richfield County, Connecticut, which is something over 100 miles from New York.

Q. Were you able at that time to get to New York conveniently?

A. Not conveniently, by any means.

Q. Why not?

A. I was quite ill with a trouble I had had for a number of years, which I am thankful to say I have got considerably better of.

Q. And you had been ill for sometime?

A. I had for two years.

Q. How long did you remain there after the execution of this paper?

A. Until November.

Q. Regaining your health?

A. Yes, sir.

Q. It was executed, I see, before Edward S. Savage, Master in Chancery?

A. Yes, sir, he came up there and took the acknowledgement.

Q. The money mentioned in the agreement, $2,000, for the sale to Canda was to be paid either in cash or by way of mortgage, how was it paid?

A. It was paid in cash.

Q. All of it?

A. Yes, sir.

Q. This deed?

A. Yes, sir.

By Mr. Parker: I offer this deed in evidence, and ask that it be marked Exhibit H 17, F. E. C.

Cross-Examined by Mr. Emery:

Q. You paid nothing of that $10,000 to the Port Reading Railroad Company or to Chambers?

A. There was some $349, I think, which was deducted from that sum.

Q. From the $10,000?

A. Yes, sir, and that was paid over; that is, the money was received less that.

By Mr. Parker: I offer on the part of Ferdinand E. Canda the original deed of Gordon Chambers to Ferdinand E. Canda, dated April 17, 1892, acknowledged that day, recorded April 25, 1892, in Book 49 of deeds, page 505, I think, or 515, I don't know which. Marked Exhibit H 18, F. E. C.; also a deed of Ferdinand E. Canda to the Canda Manufacturing Company, dated May 2, 1892, recorded September 10, 1892, in Book 253 of deeds, on page 132. Marked Exhibit H 19, F. E. C.

By Mr. Little: I object to both of these deeds.

The Court admitted them subject to objection.

Elwood Byers sworn for Mr. Emery's clients:

Direct Examination by Mr. Emery:

Q. What is your occupation?

A. Clerk in the real estate office of the Philadelphia and Reading Railroad.

Q. What was your employment in 1889 and '90?

A. I was in the same occupation.

Q. Under Mr. Loomis of the real estate department of that company?

A. Yes, sir.

Q. He had charge of it?

A. Yes, sir.

Q. In the summer of 1889, did you on behalf of the company, or a company to be subsequently formed, make an agreement with Mr. Savage for the purchase of a tract of land on the Arthur Kill lot of salt meadow?

A. Yes, sir.

Q. I show you an agreement heretofore referred to dated the 8th of August; is that the agreement?

A. Yes, sir, that is the agreement I made with Mr. Savage.

Q. This agreement is made with you. On whose behalf did you make it?

A. I made it in behalf of the Philadelphia & Reading Railroad Company.

Q. Which was purchasing it for that purpose?

A. Purchasing it as far as I understood for the construction of a branch road.

Q. A road to be promoted by them?

A. Yes, sir.

Q. You were not purchasing yourself?

A. No, sir.

Q. And the money was furnished by them?

A. The money was furnished by the Philadelphia & Reading Railroad Company, as far as I understood.

Q. You paid the $50 mentioned in this agreement for the option?

A. Yes, sir.

Q. This agreement was dated the 8th of August, provided that by the 15th you should have the right to call for a conveyance of the property for $5,315; did you on behalf of the company make a demand within the time?

A. I did.

Q. What reply did Mr. Savage make?

A. Mr. Savage said he was not prepared just at that time to make title; he wanted an extension of time.

Q. Did you subsequently execute an assignment of your interest to the Port Reading Railroad Company after it was incorporated?

A. Yes, sir.

Q. I show you a paper attached to the agreement itself; is that the assignment?

A. Yes, sir.

Q. And that is your signature there too?

A. Yes, sir.

By Mr. Emery: I offer this in evidence.
The same marked Exhibit E 20.
Counsel read the same.

Q. That is an assignment made of the contract after the company had been formed for which you were buying the land?
A. Yes, sir.
Q. Now, at the time of making the agreement to purchase, had you any knowledge or information as to any claim of Mr. Henninger upon the premises?
A. No, sir; I knew nothing about it.
Q. That is all.

Not Cross-Examined.

Thomas Jardine, sworn in behalf of Mr. Emery's clients:

Direct-Examination by Mr. Emery:

Q. Where do you live?
A. Rahway.
Q. You were one of the owners of the mortgage upon the property spoken of here as the McCoy farm, also as the Jardine property?
A. Yes, sir.
Q. Located in Middlesex County on the Arthur Kill?
A. Yes, sir.
Q. Who else were the owners of that mortgage?
A. My sister and brother.
Q. And you had that mortgage foreclosed?
A. Yes, sir.
Q. After the failure to pay the interest?
A. Yes, sir.
Q. Mr. Henninger was the owner of the property at one time?
A. I understood him to be so.
Q. But you don't know personally about that?

A. No, sir.

Q. But you understood him to be the owner at the time you put the property in the hands of your lawyers to foreclose the mortgage or collect?

A. Well, we informed him we were going to foreclose.

Q. And afterwards did foreclose?

A. Yes, sir.

Q. And the property was sold under foreclosure?

A. Yes, sir.

Q. You bought it, didn't you?

A. Yes, sir.

Q. Now did you at that time know about any interest of Mr. Heald in the property?

A. Not at that time, no, sir.

Q. You did not know that he had any?

A. No, sir.

Q. What arrangement, if any, was made at the time of the purchase of that property, or what was said?

A. At the sale?

Q. Yes?

A. There was a proposition made through our counsel, Mr. Schaeffer, to give an option of thirty days, and when we went to sell, Mr. Schaeffer and Mr. Savage were on the inside, and they came out, or Mr. Schaeffer came out, and stated the case, that Mr. Savage wanted his option of thirty days, and my brother and I consented to give it. Mr. Schaeffer asked us to come inside, and Mr. Savage was in there, and he stated that the boys were willing to give an option.

Q. An option for thirty days to do what?

A. They expected to redeem the property.

Q. To redeem the property from you?

A. Yes, sir.

Q. You bought it?

A. Yes, sir; that is, Mr. Schaeffer bought it, he bought it in.

Q. For what amount?

A. If I remember right it was $4,000.

Q. That is right. You were willing that Mr. Savage should have the option for thirty days to buy the property back for the amount due on your mortgage?

A. Yes, sir.

Q. Within that 30 days did you have any conversation with Mr. Savage in reference to that option?

A. Yes, sir, within that thirty days.

Q. That sale took place on the 16th day of July?

A. Yes, sir.

Q. Now, when did you have any talk with Mr. Savage about that option?

A. Well, it was some 8 or 9 days before the option was up. Mr. Savage met my brother and myself and stated that that man of his could not buy and would not buy and we could go ahead and sell the property, and then I asked him who the man was and he told me.

Q. Who did he tell you?

A. Mr. Heald.

Q. And that was the first time you ever heard of him?

A. That was the first time I ever knowed that Mr. Heald was the interested man in that property.

Q. Did you then after that sell the property or make an agreement to sell the property?

A. I did not, but my brother did.

Q. Your brother did?

A. Yes, sir.

Q. But with your approval afterwards when reported to you?

A. Afterwards; yes, sir.

Q. I show you an agreement; with whom did your brother make the agreement to sell the property?

A. Mr. Renfrew.

Q. I show you a paper dated New York, August 7, 1890, is that the agreement?

A. That is it.

Q. Signed by your brother?

A. Yes, sir.

Q. How long was that made after your conversation with Mr. Savage; how many days?

A. I don't think it was over 26 days, it might not have been that.

Q. But it was after that?

A. Yes, sir.

Q. Was it made on the strength of that?

A. Yes, sir.

By Mr. Emery: I will read this agreement, it is dated New York, August 7, 1890, I have this day, &c. (Counsel read same.)

Q. Now at the time of the purchase of this property at sheriff sale, did you know anything about any claim of Mr. Henninger against Mr. Heald, such as is now sued upon?

A. No, sir; not at the time.

Q. Did you ever hear of any such thing?

A. Not at the time, no, sir.

Q. At the time of this agreement for the sale to Mr. Renfrew, had you ever heard of any such claim?

A. No, sir.

Q. Subsequently you and your brother and sister conveyed the property to the Port Reading Railroad Company, didn't you—you conveyed the salt meadow to the Port Reading Railroad Company, and the upland to Gordon Chambers some time in the year 1891, didn't you?

A. Yes, sir.

Q What did you receive on that conveyance by way of payment?

A. Amount of money?

Q. Yes, I mean how was it paid?

A. It was in cash.

Q. What, do you mean in bills?

A. Check.

Q. I show you a check dated May 12, 1891, of the Port Reading Construction Company for $22,000 payable to Thomas Jardine and William Jardine and Margaret Jardine; was that the check?

A. Yes, sir.

Q. Or draft that paid it, and that is endorsed by yourself and your brother and sister?

A. Yes, sir.

Q. Now, at that time you also assigned a bond and mortgage, didn't you, to the Port Reading Railroad Company; I show you the asssignment?

A. Yes, sir.

Q. Now at the time of receiving that payment did you know anything about this present claim of Henninger against Heald in relation to this property?

A. No, sir; not that I remember.

Q. Now, you had made an agreement to sell this property to Renfrew before carrying out this sale to the Railroad Company and Chambers; did you get a release from Mr. Renfrew of his interest?

A. Yes, sir.

Q. There appears upon this contract of Mr. Renfew a release signed by him?

A. Yes, sir.

Q. Is that his signature?

A. Yes, sir.

Q. And that was produced and delivered over at the time of carrying out of the sale, was it not?

A. Yes, sir.

By Mr. Emery: I will read this release (reading): "I hereby release my interest in the within agreement," &c. (Counsel read same.)

Q. Did you have to purchase Mr. Renfrew's interest for the purpose of getting that release?

A. Yes, sir.

Q. Mr. Jardine, do you recollect whether this deed to the Port Reading Railroad Company is for the lowlands, and the deed to Chambers for the high land. What about your being willing to sell any portion of it apart from the other? Were you willing to sell to the Railroad Company anything except the whole?

A. No, sir.

Q. Did you decline to do that?

A. Yes, sir.

Q. Did you know that the Railroad Company were obliged to get title? You held the legal title to the property, didn't you?

A. Yes, sir.

Q. Do you recollect about the application for the dock license?

A. Yes, sir; there was something about that.

Q. When did the time expire for making the application by the owner, the first of July, wasn't it?

A. By the owner?

Q. Yes.

A. Yes, and the freeholders under the law of 1890?

A. I don't remember, sir.

Q. That is all I believe.

Cross-Examination:

Q. Do you say or mean to be understood that you thought Mr. Savage when he got that option for redemption was acting for himself and not for anybody else?

A. I didn't know who he was acting for.

Q, I didn't ask you that. I asked you whether you meant to be understood as saying that you thought at that time he was acting for himself personally and not as acting for anybody else?

A. No; he was acting as an attorney for somebody else.

Q. You knew that, didn't you?

A. Yes, sir; I knew that.

Q. You said in your answer, didn't you, in the suit of Heald against you, that you understood he was acting for a client?

A. Yes, sir.

Q. And you did so understand?

A. Yes, sir.

Q. But you did not know at that time who the client was?

A. Yes, sir.

Q. That is all you mean to say?

A. Yes, sir.

Q. Where was the conversation which you say you had with Mr. Savage, in which he told you that this man would not do anything, and did I understand you to say that he said you could go on and sell?

A. Yes, sir.

Q. Did you so state on your examination? You were examined, were you not, in the suit of Heald against you?

A. Yes, sir.

Q. Did you so state on that examination?

A. I don't understand the question if you please.

Q. Did you state on that examination that Mr. Savage told you that his client would not exercise the option, and that you could go on and sell?

A. I think I did; yes, sir.

Q. Do you know where that conversation took place?

A. In Cherry Street, Rahway.

Q. At what time?

A. In the forenoon.

Q. At what day in the month?

A. I haven't tried to refresh my memory about those things; it was in August, I think, and the 5th or 6th or somewheres along there.

Q. What?

A. The 5th or 6th of August, I think it was. I didn't give that very much thought.

Q. Did you have any conversation after that time with a Mr. Klink about the purchase of the property by him?

A. Yes, sir; I think I had after that time.

Q. Did you tell Mr. Klink of the option that Mr. Savage had?

A. Yes, sir; I told Mr. Klink before that time about it.

Q. My question to you is whether you did not have a conversation with Mr. Klink after that conversation with Mr. Savage on the 5th or 6th day of August, and you say you think you had?

A. Yes, sir.

Q. Now, I want to know in that conversation whether you did not tell him that Mr. Savage had an option for thirty days, and after that 30 days expired you would talk with him if the option was not exercised, or words to that purport?

A. My impression is that I did. I had a good many conversations with Mr. Klink.

Q. Did not you have a conversation with him on the 7th day of August, in which you told him of Mr. Savage's option, and said to him that if he would wait until the expiration of that option you would sell him the property if it wasn't taken by Mr. Savage?

A. I told him that.

Q. On the 7th day of August?

A. Well, I told him that, but as to its being the 7th day of August, I don't remember.

Q. Didn't you swear in your examination of that case of Heald against you, expressly, that the conversation with Mr. Klink was after you met Mr. Savage and had your conversation with him in Cherry street?

A. Well, if I did—(interrupted)

Q. I ask you if you did not in plain terms.

A. I don't know as I can swear to that date on the 7th.

Q. Didn't you swear that it was after the conversation with Mr. Savage?

A. Yes, sir.

Q. In Cherry street?

A. Yes, sir.

Q. And that you told him in that conversation that Mr. Savage had an option for thirty days, and if it was not exercised you would talk with him, Mr. Klink?

A. Yes, sir, my impression is that I did.

Q. This paper which is shown you is dated the 7th day of August. Who drew it?

A. I don't know who drew it.

Q. Well, just look at the handwriting and see if you know who drew it.

A. This is the one I was looking at?

Q. Yes, sir.

A. That is my brother's signature.

Q. Whose handwriting is the body of the paper?

A. I rather think that it is his.

Q. Don't you know your brother's handwriting?

A. No, sir; not that I can say by the way this is that it is his handwriting.

Q. Where was that paper drawn?

A. It was drawn in Mr. Renfrew's office, I think.

Q. Where is that?

A. At 125th street, New York—Harlem.

Q. Were you present when it was drawn?

A. No, sir.

Q. When did you first see it or hear of it?

A. I heard of it the same night or the next night after it was done; it was either the same night or the next morning.

Q. Who is this gentleman, Mr. Renfrew?

A. He is in the real estate business.

Q. Who is he—not what he is doing; what relation to you, if any, is he?

A. Oh, well, it is quite distant; he is related by marrying a cousin.

Q. Are you and he quite intimate?

A. Well, not as intimate as we might be.

Q. And you might be less intimate than you are, I suppose; is not that so?

A. Well, it is hard to explain that; we are on speaking terms.

Q. Who is Henry H. Jardyne?

A. Oh, he is a son of mine.

Q. He was a witness to that paper?

A. Yes, sir.

Q. Whose handwriting is the red ink across it?

A. That I don't know. Allow me to look at it again?

(Paper handed to witness).

A. (After inspecting it carefully) It looks very much like my son's, but I am not positive of that.

CROSS-EXAMINED BY MR. PARKER:

Q. I believe I cross-examined you once before in the Heald case, Mr. Jardine?

A. Yes, sir.

Q. This little paper, Exhibit 1 for the defendants, made by Freeland Jardine to Renfrew, is all he had at that time?

A. That is all my brother had to show.

Q. That is all Mr. Renfrew had?

A. I believe it is; yes, sir.

Q. He was then a pretty good friend of yours, wasn't he?

A. Well, I don't know that he was any more than he is now, Mr. Parker. As I have stated before, we might have been a great deal more intimate than we were.

Q. When you came to sell to the railroad company, you knew from them that they had to get the title now?

A. Yes, sir.

Q. Immediate title?

A. Yes, sir, I understood that they had to get title.

Q. Of absolute seizer of the land to get their dock rights?

A. Yes, sir.

Q. And had to get it right away or else they would lose their dock rights?

A. Yes, sir.

Q. And you got $22,000 out of them because they had to buy it right away?

A. Yes, sir; that states the amount.

Q. Although Mr. Heald had a claim against you on this option you got $22,000 out of them for your mortgage of only $4,000 and interest?

A. Yes, sir.

Q. How much did you pay to Mr. Renfrew for this precious document signed by him?

Objected to.

A. If it is necessary to answer it, I will answer it.

THE COURT: I think the testimony ought to go in; you may answer the question.

A. $750.

Q. That was all?

A. Yes, sir; that was all. It has taken you gentlemen a long time to get that, but that is all the money that was paid in cash.

Q. Wasn't it represented in these leases that he asked $8,000?

A. He asked $16,000.

Q. And as I understand it, you got this large amount out of the Railroad Company because they were in a hurry?

A. Yes, sir.

Q. That is all.

CROSS-EXAMINED BY MR. LITTLE:

Q. Who was your attorney or solicitor in the matter of the foreclosure, and in the suit of Mr. Heald against you?

A. Shaeffer & Durand.

Q. There was a bond of indemnity presented here. Now in the matter of drawing of the papers and in negotiating with the railroad, that was left by you with Mr. Shaeffer—was the matter of the negotiating with the railroad left by you with Mr. Shaeffer?

A. Yes, sir; with Mr. Shaeffer.

RE-DIRECT BY MR. EMERY:

Q. Mr. Jardine, you speak of a conversation with Mr. Klink; you had seen Mr. Klink before you had this talk with Mr. Savage in Cherry street, hadn't you?

A. Yes, sir; several times.

Q. You had seen him several times before that?

A. Yes, sir.

Q. Now before that time, had you told him that Mr. Savage had an option?

A. Yes, sir.

Q. Now after you had the conversation in which he told you that his client was not going to take it and you could go ahead and sell it, did you afterwards tell Mr. Klink that Mr. Savage still held an option?

A. I don't clearly remember.

Q. After you had made a sale to Mr. Renfrew, did you ever tell him that?

A. No, sir, not after I made the sale to Renfrew.

Q. The sale to Renfrew was made by your brother?

A. Yes, sir.

Q. And was not communicated to you at once?

A. Well, it was either that night or the next morning. I won't be certain.

Q. But it was not on the 7th day of August, it may have been the 8th before you knew it?

A. Yes, sir.

FURTHER CROSS:

Q. Were you present when Mr. Klink was examined in this case of Heald against Jardine?

A. Yes, sir.

Q. You heard his examination?

A. Yes, sir.

Q. Did not he in your hearing swear expressly upo the subject (interrupted)

BY MR. EMERY: I object to that. That cannot be evidence against him, what anybody swore to in his hearing.

BY MR. LITTLE: He did not deny it.

Q. I want to ask you whether you have not heard Mr. Klink swear—(interrupted)

Objected to.

Q. Whether or not he did not swear in your hearing that you not only saw him on the 5th and 6th, but saw him also on the 7th, and told him in plain terms that Mr. Savage had an option, that if he would wait until the expiratien of that time you would sell him the property; and whether he did not himself go on the

stand afterwards and say that the conversation was on the 7th?

Objected to.

Objection overruled.

A. You want me to answer this, whether it was on the 6th or 7th?

THE COURT: Read the question.

The stenographer read as follows:

Q. "Whether or not he did not swear in your hearing that you not only saw him on the 5th and 6th, but saw him also on the 7th, and told him in plain terms that Mr. Savage had an option, that if he would wait until the expiration of that time you would sell him the property; and whether he did not himself go on the stand afterwards and say that the conversation was on the 7th?"

A. It might be; I cannot say whether it was the 7th or when it was that that conversation took place.

Q. Are you willing to swear that your conversation did not take place after the conversation with Mr. Savage?

A. I don't know that I am willing to say that, sir.

Freeland Jardine, sworn for Mr. Emery's clients.

DIRECT EXAMINATION BY MR. EMERY:

Q. You are a brother of the witness last on the stand?

A. Yes, sir.

Q. And one of the persons interested in the mortgage on the property called the McCoy farm?

A. Yes, sir.

Q. Did you along with your brother meet Mr. Savage in Rahway on Cherry street, in the early part of August, and have any conversation about the pur-

chase of this farm which had been purchased by your brother under foreclosure?

A. Yes, sir.

Q. Well, just state what it was.

A. We met him on the 5th of August on Cherry street, and Mr. Savage told us his client was not good —had not any money for to buy the property and to go on and do with the property what we liked.

Q. After that did you make an agreement for the sale of the property?

A. Yes, sir.

Q. I show you a paper here signed Freeland Jardine, is that your signature?

A. Yes, sir.

Q. The paper dated August 7th?

A. Yes, sir.

Q. That is the agreement with Renfrew for the sale of the property?

A. Yes, sir.

Q. And that was made afterward, as you understand it, Mr. Savage had given it up?

A. That was made on the 7th of August.

Q. After this conversation?

A. Yes, sir.

Q. Was it made in consequence of that conversation?

A. Yes, sir.

Q. That agreement was afterwards released when you conveyed to the railroad company, wasn't it, by Mr. Renfrew?

A. Yes, sir.

Q And this release is written on that paper?

A. I don't know whether that is his handwriting or not, it looks like it.

Q. Just look at the signature there?

A. I don't know whether he wrote that or not.

Q. Your brother said that that is the one produced— it wasn't written in your presence?

A. No, sir; I don't remember that.

Q. There was no (interrupted)

A. I don't remember his handwriting.

Cross-Examined by Mr. Parker:

Q. Look here, Mr. Jardine, you had no authority from your brother to make that agreement, had you?

A. Yes, sir; I had as much right in that property as he had.

Q. He gave you no authority to sell it?

A. Yes, sir; I had with his permission.

Q. Afterwards you mean, but not before?

A. I sold that property, sir, with his permission.

Q. Well, we have been all over that, sir, I suppose.

Re-Direct:

Q. You spoke to your brother after you came home about it?

A. Yes, sir; I told him of the transactions.

Q. Did he approve of it?

A. Yes, sir.

Mr. Little does not cross-examine.

Asa Hull, sworn in behalf of Messrs. Canda & Hoyen.

Direct Examination by Mr. Parker:

Q. What is your age?

A. 61.

Q. Where do you live?

A. I reside now in New York City.

Q. Do you know Josiah Taylor?

A. Yes, sir.

Q. Do you know Mr. Charles E. Heald?

A. Yes, sir.

Q. In August, 1890, you were in employment that carried you to Mr. Heald's office?

A. I had desk room in Mr. Heald's office.

Q. What was your business, real estate broker?

A. Real estate broker, I had desk room in Mr. Heald's office?

Q. Did you ever see Mr. Josiah Taylor there?

A. Yes, sir.

Q. Where was his office?

A. His office was on the same floor, right two rooms adjoining ours.

Q. Did you hear anything while you were there about a place called the McCoy farm?

A. Yes, sir.

Q. What did you hear of it?

A. I was in my office the latter part of August seated at my desk in the year 1890, and Mr. Taylor rushed in to see Mr. Heald and he said to Mr. Heald, well, you have sold the McCoy farm.

Q. What date was this?

A. The latter part of August. I don't recollect the date.

Q. What year?

A. 1890.

Q. Now proceed?

A. Mr. Heald said yes, he had sold the meadow part of it to the Reading Railroad Company, and that he had got a lawsuit about it with Jardine because they were not carrying out their contract. Taylor said, do you think you will win the suit. Heald said, I think there is no doubt about it. Mr. Heald said you are the greatest man to stick to anything that I ever saw in my life. He said, if I had stuck with you, I might have made a good thing out of it. Mr. Heald said Mr. Taylor, you didn't want to put in a cent, and you let it go. Taylor said he was sorry he hadn't stuck to it, he might have made some money out of it. Then there was something said about Mr. Henninger's note of $100. I think it was, and Taylor said that Mr. Heald ought to pay that note. Heald said he didn't see why he should pay it, he paid him commissions of $100. Taylor said you must have told Henninger you paid me commissions. He said no. I never told him sir, he may have heard me say so in your presence, but I never told him. There was some other conversation which I don't recollect, and they left the office.

CROSS-EXAMINED:

Q. Was this conversation in August, 1890?

A. 1890, yes, sir; the latter part of August.

Q. That was after Heald commenced his suit against Jardine, wasn't it?

A. I think it was, I am not certain after that, I know it was the latter part of August the conversation took place, they talked very loud over it, and my desk was in a radius of six or eight feet of them.

Q. Have you ever talked with Mr. Heald over this matter since that time?

A. No, sir; not particularly.

Q. Have you talked in general about it?

A. No, sir.

Q. Never told him what you would swear to here?

A. No, sir.

Q. Have you ever been asked what you would swear to here?

A. No, sir.

Q. By anybody?

A. No, sir.

Q. Did you know when you came here what they expected to prove by you?

A. No, sir.

A. You never knew what they expected to prove by you until you were asked questions on the witness stand?

A. I knew there was some dispute between Taylor and Heald

Q. Do I understand you that you did not know until you were here put on the stand what they expected to prove by you?

A. No, sir.

Q. That is all.

RE-DIRECT BY MR. PARKER.

Q. You don't mean to say that you didn't speak to me about it, you spoke to me about it yesterday?

A. Well yesterday you did, yes, sir.

Q. Do you remember the bringing of the suit of

Taylor against Heald in September, 1890, or thereabouts?

A. Yes, sir. Mr. Heald told me about it, that he had a suit.

Q. Did he then speak to you about remembering this conversation?

A. Well, he did, it was just a casual conversation, yes, sir.

Charles E. Heald recalled in his own behalf.

Direct Examination by Mr. Parker.

Q. Mr. Heald at the time when these deeds seem to have been made in April, 1892, in which conveyances were made to Canda and the Port Reading Railroad Company and in which it appears other deeds were executed by Gordon Chambers, did you have anything to do with the Jardines, directly or indirectly at that iime?

A. Nothing whatever.

Q. Personally or by attorney in any way?

A. No way whatever. I was very antagonistic to them and always have been.

Q. At the time of the execution of those deeds you appeared by your counsel to have given a consent to the discontinuance of your suit?

A. Yes, sir.

Q. At whose request was that given as you understood it?

A. I understood it from the railroad people, that they were perfectly willing to carry out their contract with me.

Q. Did you understand who held the title then to the land you had bought from the Jardines?

A. Yes, sir.

Q. You understood the railroad company had bought from the Jardines or agreed to?

A. Yes sir, or made some arrangement with them

whereby they would discontinue or something of that nature.

Q. They were ready to carry out everything you had agreed to do with your various purchasers and they wanted a discontinuance of the suit so as to make title complete in them ?

A. Yes, sir.

Q. And you were willing to do that for them ?

A. Yes, sir, I had no objection, they did everything they could.

Q. You got no consideration except the original consideration of your sales ?

A. No, sir.

Q. Nothing from the Jardines ?

A. No, sir.

Q. Nothing from the railroad company ?

A. Nothing at all.

Q. Except just carrying out the original contract you made with Hoyen & Byer ?

A. Yes, sir, the original sum mentioned in this contract is all I received from anybody.

Q. Subject to a deduction of the mortgage ?

A. Yes, sir.

Q. And thus you were out in the transaction ?

A. I suppose so.

Q. That is all.

By Mr. Parker : I rest.

By Mr. Emery : I don't know whether I offered yesterday a bill filed by Taylor in 1890, Jane B. Taylor and Josiah B. Taylor, bill filed Sept. 23, 1890, marked Exhibit No. 21.

The Court : Do you offer anything but the bill ?

By Mr. Emery : I merely desire to show the existence of a suit. I have no objection to anything else going on.

I would like to put these checks that were offered and the agreements. I suppose they will be marked. I believe all the records are in, but I am not certain.

I want also to put in evidence the record showing the status of the title of the Blanchard farm. I have copies of the records from the Pennsylvania courts. I think they are referred to in the answer.

I offer first an assignment of a bond and mortgage, Leon Blanchard to Charles W. Meyers, dated July 10, 1889, marked Exhibit 22.

Next an assignment of the same mortgage from Charles W. Meyer to Juan F. Portuoneo, December 16, 1880, marked Exhibit No. 23, and the assignment from him to Mary R. H. Meyer, dated January 18, 1890, marked Exhibit No. 24; then the deed of Josiah Henninger to Lizzie Henninger, dated February 28, 1890, marked Exhibit No. 24; then the proceedings in foreclosure of the mortgage with exemplified copy of the record of the proceedings and of the sale on the 6th of December, 1890, marked Exhibit No. 26.

MR. EMERY RESTS.

Josiah Taylor, recalled for further DIRECT EXAMINATION:

BY MR. LITTLE:

Q. Did Mr. Heald ever say to you at any time that he would pay you commissions for the exchange of that property?

A. No, sir.

Q. Did you ever ask him to do so?

A. No, sir.

Q. Did Mr. Henninger pay them?

A. He agreed to pay them.

Q. Look at this paper and tell what it is.

A. It is a note that Mr. Henninger gave me for my commissions.

Offered in evidence.

Q. Did you hear Mr. Hall's testimony?

A. Yes, sir.

Q. Did you ever say to Mr. Heald, in the presence of Mr. Hall or otherwise, that you thought he ought to pay you $100 commissions?

A. No, sir.

By Mr. Parker: I asked Mr. Taylor upon this very point and therefore I object to this testimony.

Q. Now, look at this paper, which is a letter from Mr. Henninger to you, dated November 23, 1889?

By Mr. Emery: I don't see how any letter from Mr. Henninger to him is admissible at this branch of this case.

Q. You see that paper, do you?

A. Yes, sir.

Q. That is all.

Not Cross-Examined.

William R. Henninger, re-called for further examination by Mr. Little:

Q. Will you look at this paper?

A. Yes, sir, that is my handwriting.

Q. You said that to Mr. Taylor?

A. Yes, sir.

By Mr. Little: That paper contains an endorsement; it has already been offered.

I now offer the letter in evidence.

By Mr. Emery: We object to that.

By Mr. Parker: I do not object to it.

Paper withdrawn for the present.

Q. Mr. Heald said you were down on November 16th, at the closing up of the contract, and that you were in his office (interrupted)—

THE COURT: (Referring to paper first above offered.) Do I understand this endorsement is in evidence in this case?

BY MR. LITTLE: Yes, sir, it was offered and marked Exhibit 10.

Q. Were you present at any time with Mr. Taylor and Mr. Heald at any place?

A. Yes, sir.

Q. Well, hold on a moment; when did Mr. Heald say in your hearing that he would pay Taylor's commissions—

BY MR. PARKER: One minute, before that question is answered. Are you through with the question?

BY MR. LITTLE: No.

Just read it, Stenographer.

The Stenographer read the question as fol-lows:

"When did Mr. Heald say in your hearing that he would pay Taylor's commissions?"

BY MR. PARKER: I object to that question, sir.

THE COURT: I think Mr. Heald spoke upon that subject, Mr. Parker.

BY MR. PARKER: Yes, sir, and I asked Mr. Henninger about it on cross-examination at the last hearing. I asked him all about it.

BY MR. EMERY: It is also objectionable as to the form of it. That is not the way it was said.

Q. Were you present on November 16th or at any other time when Mr. Heald said to Mr. Taylor in your presence that he was willing to wait for his commissions until the notes were paid that you proposed to give if he accepted your offer?

A. No, sir.

Q. Did you ever hear during the negotiations of any understanding by which Mr. Taylor was to receive his commissions from him?

A. No, sir.

By Mr. Little: Now, I offer that letter of November 23 in evidence for the purpose of showing what he wrote in that letter.

By Mr. Emery: He had no right to make declarations in his own favor.

Q. You say no such conversation ever took place. Did you ever, before accepting your deed, have any notice from Mr. Meyer or anybody else except what you got from Heald in reference to the mortgage on the property in Pennsylvania?

A. No, sir.

By Mr. Emery: I object to that; it has all been gone into.

Q. Did you draw any contract between yourself and Mr. Heald as attorney?

A. No, sir.

By Mr. Emery: As attorney?

Q. As agent?

A. No, sir.

Q. Or any contract?

A. No contract at all.

Q. I am going to refer to page 13, Mr. Emery, Mr. Henninger says (interrupted).

By Mr. Emery: Where is that contract?

By Mr. Parker: It is Exhibit 1.

(Witness produces it.)

Q. Mr. Heald says that "Henninger, as I said, wrote this contract and when he came to put in the clause about the mortgage on Mr. Blanchard's property, he wanted to know how to put that the mortgage as recorded was one amount and the real amount was another. I asked him if he hadn't looked that matter up, he had had Mr. Meyer's address, the person that held the mortgage; he told me he had.

Q. "Mr. Henninger told you so?"

A. "Yes, sir." He said he had either written to

Mr. Meyer or had seen him ; he also said he had obtained an attorney to examine the records, and he didn't quite understand why they should be willing to reduce the mortgage from the face of it to $3,000."

Q. Did you ever have any such conversation with him ?

A. No, sir ; neither any communication with Meyers.

Q. Did you have any communication with Meyers prior to the making of the contract ?

A. Oh, no, sir ; no, sir.

Q. And you didn't write any contract ?

A. No, sir ; I didn't write any contract.

Q. Did Mr. Heald show you the contract at that time or at any time between Mr. Blanchard and Mary Pratt ?

A. No, sir.

Q. Did he say to you in reference to looking at the clause about the mortgage, "I said just put it in $3,000, at 5 per cent., we all understand it and he understood it " ?

A. What is that ?

Q. Did he say to you "just put in $3,000 at 5 per cent., we all understand it and he understood it" ?

A. You ask me whether he said that ?

Q. He has testified that he said, "I said just put in $3,000 at 5 per cent., we all understand it and he understood it, too." Did he tell you to just put it in at $3,000 ?

A. No, sir.

By Mr. Little : I won't be sure whether all of my exhibits are in. I would like to have an opportunity to put them in.

Cross-Examined by Mr. Parker :

Q. Referring to this agreement produced here as Exhibit 1 on your behalf, that is your signature ?

A. Yes, sir ; that is my signature.

Q. That is Heald's signature ?

A. Yes, sir.

Q. That is Heald's signature there as a witness?

A. I presume so, yes, sir; the body of the paper is in the same handwriting?

Q. Is Taylor's or whose?

A. I didn't see that signature put down.

Q. You say this is your handwriting?

A. This part of it (indicating).

Q. How about this interlineation for the sum of $5,000?

A. That is my handwriting, sir.

Q. You stuck that in that paper yourself?

A. Yes, sir; that is my handwriting, sir.

Q. But the body of the paper, whose is that?

A. I take that for Mr. Taylor's handwriting.

Q. So do I.

A. It is not my handwriting.

Q. But the interlineation is yours, for the sum of $5,000?

A. Yes, sir.

By the Court: Now, gentlemen, see that your papers are marked as far as you can.

Re-Direct:

Q. When was that interlineation made by you?

A. That I don't know.

Q. Was it made at the time the contract was signed or was it made after the contract was signed or before?

A. That I don't know.

By Mr. Emery: We don't suppose he changed it after the contract was signed.

It was understood that in case any papers used as exhibits in this case had not been marked, they could be marked hereafter.

Rest All.

Adjourned for argument until

IN CHANCERY OF NEW JERSEY.

Between—

WILLIAM R. HENNINGER,
Complt.,

AND

CHARLES E. HEALD,
Deft.

MR. THEODORE LITTLE for the Complainant.
MR. R. WAYNE PARKER for the Defendant.

Transcript of shorthand notes in the above-stated cause, taken before his Honor, John T. Bird, V. C., at the State House in Trenton, New Jersey, on November 13th, 1894.

Edward S. Savage, a witness called by Mr. Parker on the part of the defendant, being duly sworn, testifies as follows:

DIRECT-EXAMINATION BY MR. PARKER:

Q. Mr. Savage, you have already been sworn in this case, and I believe it appears that you negotiated different sales that were made of this property?

A. Yes, sir.

Q. Will you kindly state the circumstances and under what agreement you made the first sale of the property?

A. Well, now I will, with permission, give the history of the case as I understand it from the beginning.

BY THE COURT: Of course we do not want to make the record too extensive in this case; a good many facts in connection with that really appear in this case, exclusive of the Jardine case, really appears here.

BY MR. PARKER: We will confine ourselves to the money matters.

By the Court: I think beyond that it is not worth while to go—beyond the money matters.

By Mr. Parker: I shall confine myself to that.

Q. Under what agreement or circumstances did you make these sales, sir?

A. Mr. Heald came to me and told me that the property was under foreclosure, and asked me to see whether the Jardines would accept principal and interest and allow the principal to remain. I found that they would not; I told him that; he was unable to raise the amount due upon the mortgage.

(Objected to.)

A. But that he wanted more time, and wanted me to assist him to raise the money. I attended the sheriff's sale; Mr. Heald at that time was absent, away in Connecticut, sick, undergoing an operation. And I attended the sheriff's sale and got what I supposed was an adjournment of the sale. Mr. Heald had agreed with me that if I could sell this property and so to save a foreclosure, that he would give me for my services one-half interest of whatever might be realized over and above the amount due on the mortgages; or if I would raise the money to pay off these mortgages, he would deed me a half interest in the property. I obtained an adjournment of the sheriff's sale, and a short time after that got, in connection with a man named Byers who offered to buy one of the tracts, known as the salt meadow tract, for which he agreed to pay $5,000, and I made a contract with him for Mr. Heald for $5,000.

Q. $5,400 you mean?

A. $5,400 to sell him that part of the property. When we came to deliver the deed I notified the Jardines that Mr. Heald would be willing to redeem, and they refused to give a deed of the property. I then told Mr. Heald, and advised Mr. Heald that the Jardines were legally responsible for a reconveyance of that property, and he thought that I had been remiss, so he said, in not getting that agreement in writing;

as I was to benefit from it, I ought to pay the expense of any litigation in which he might engage.

By Mr. Little: My objection covers all this. I object to the evidence as illegal in itself.

A. I had about that time negotiated with the Canda people for the purchase of the upland, they having just about that time come down into that community and bought a large amount of property for $10,000. I paid the expense, I furnished the money and tendered the Jardines their money, some $5,800 or $5,900, nearly $6,000, which they refused to accept. I then employed Mr. Parker to try this case and I paid him.

By Mr. Parker: Try the Jardine case?

A. And I paid him out of what was to be my share of the property, I think about $900. I finally settled with the Railroad Company and the Railroad Company in the meantime had bought from the Jardines this whole property, and when we brought the Jardine suit they agreed to deed back, or they agreed that they would convey this property, the uplands, if we pay the amount due on that mortgage under the arrangement. That amount was paid to the Railroad Company.

Q. $6,339.80 you mean was paid or deducted from the Railroad Company's account?

A. It was paid; you can call it deducted. And the Canda people they put in my hands $15,400, from which take $6,339.80, leaves a balance in my hands for division of $9,060.20, from which I was entitled to receive one-half. I paid Mr. Heald one-half of that amount in two checks, dated 28th day of April, 1892, one for $4,000, the other for $530.10; I will produce the checks.

By the Court: As shown by these two checks, one marked Exhibit C. 1 for complainant and the second Exhibit C. 2 for complainant.

By Mr. Parker: As the facts in the Jardine case are not in this case, if the record being put in is sufficient, I will not go over that.

By the Court: I suppose that would be useless.

By Mr. Parker: I want to get in the fact somehow before the Court that the Jardine case was fairly put through by Mr. Heald, and I will offer the record in the Jardine case and refer to it here.

By the Court: I see no objection to that at present; nothing occurs to me that can make it objectionable.

By Mr. Parker: I do it now, because if it is going to be refused I want to ask Mr. Savage some questions. I will, therefore, offer to refer to the record for the purpose of showing the *bona fides* of Mr. Heald's position in that case.

By the Court: That will appear.

By Mr. Parker:

Q. You say that you agreed to pay me my fees out of the Jardine case, out of your share?

A. Yes, sir.

Q. Was that your arrangement, or did you think that just?

A. Well, it was discussed, I think, in your presence and in the presence of Mr. Heald, and I think it was just and agreed to it.

Q. Under the circumstances?

A. Under the circumstances.

Q. That came out of your share?

A. That came out of my share.

Q. Did Mr. Heald ever receive any other sums than the sums that you have named from the proceeds of the sale of this property?

A. No, sir. I got the money and I paid Mr. Heald these two checks and no other money, $4,530.10.

Q. They were made up in the way you have stated?

A. Yes, sir.

Q. Who paid the expenses of the suit brought by John E. Taylor against Heald?

A. Mr. Heald.

Q. You had nothing to do with that?

A. I had nothing to do with that.

Q. Who paid the expenses of the suit brought by Henninger, which was dismissed?

A. Mr. Heald.

Q. You had nothing to do with that?

A. Nothing to do with that. I would like to say in explanation, if it is not proper it can be stricken out, that before these sales were made I went with Mr. Heald on this property, and while I claim to be familiar with the property in Woodbridge Township, having bought as much, I think, as anybody else in the last five years in the Township, and am a large property owner there, I advised Mr. Heald that this property was not worth any more than the mortgage, and would not have sold for any more if it had not been for two circumstances; one was the coming of the Philadelphia and Port Reading Railroad Company just at that time and the second was the coming of the Canda Company, who built their works; I was fortunate in being able to make these two sales at the time, and there has been no time since, or any time before in fifty years when the property would have sold for the half of $15,400.

Q. Then that agreement made at the time, that you would furnish the amount of the mortgage and take half, you considered to be a fair agreement, because the property was worth very little more at that time?

A. I did.

Q. And at that time you didn't expect to get so much for the property?

A. No, sir.

By Mr. Little: When was that agreement made between you and Mr. Heald that you have spoken of?

A. It was made before Mr. Heald went away to have his operation performed, and I should think 30 or 60 days prior to the sale of the properties; from 30 to 90 days prior to the sheriff's sale, while the property was under foreclosure and before the sheriff's sale. I can't fix the date closer than that.

Charles E. Heald, the defendant, being duly sworn, testifies as follows:

DIRECT-EXAMINATION by MR. PARKER.

Q. Mr. Heald, you have been already sworn in this case?

A. Yes, sir.

Q. How much rents did you ever receive from this property before the sale?

A. Rents?

Q. Yes, sir.

A. I never received any.

Q. Did you have any expenses? How much payments did you make in reference to that property after its purchase?

A. Do you mean the entire amount involved?

Q. No; I mean before the sales were made?

A. I paid out some $60 for the sale. Do you mean before the Sheriff's sale?

Q. Before Mr. Savage came in charge and sold to Byers and Canda. What in did you pay $60?

A. In paying expenses and looking up the property. Went down there several times; employed a man to try and procure a mortgage loan of sufficient amount to replace that that was on it at that time.

Q. After that time did you have any expenses connected with the property?

A. Yes, sir.

Q. What were they?

A. There was a bill of Cortlandt and Wayne Parker for their charges in the first suit of Mr. Henninger, and also in the suit of Josiah Taylor against me involving the property.

Q. (Paper shown witness.) Is this an account of the bill in the Taylor suit?

A. That is the account of the bill in the Taylor suit and in the first suit with Henninger.

Q. Up to what date?

A. It is up to about the first day of September, 1891.

Q. Or 1892?

A. It is up to the dismissal of the first Henninger suit, April 15, 1892.

Q. The total I see is $1,058.50?

A. Yes, sir.

Q. Did you pay all that money?

A. Mr. Parker kindly gave me a small discount.

Q. How much?

A. I think about twenty per cent.; I do not remember just now.

Q. My impression is that I received $800?

A. Yes, sir; I think you received $800.

The statement is marked Exhibit C 3 for complainant, November 13, 1894.

Q. I produce a paper dated November 13, 1892, Pay to order of R. W. Parker $1,000, indorsed by me?

A. Yes, sir; that was a retainer in the new suit brought by Henninger about or shortly before that time.

Offered in evidence.

Q. Did you make any other payments?

A. Yes, sir.

Q. In reference to the propesty?

A. I expended about $95 for witness fees, going to Stroudsburg, getting some exemplified copies of transfers by Mr. Henninger.

Q. In which suits were these $95 expended?

A. In the first Henninger suit and in the second Henninger, in both.

Q. It wasn't in the Jardine suit or the Taylor suit?

A. No, sir.

Q. How much was in the first Henninger suit and how much in the second?

A. I have no means of getting at that as I know of.

Q. Did you have any other expenses connected with the property that you remember now?

A. Yes; I had other expenses, I can't tell just how much; I presume $150 would cover it. I made several trips down from Connecticut to attend the trials in these cases, &c.

Q. The Jardine record will show how many times you were there?

A. Yes, sir.

Q. How much did you receive from this property?

A. You mean net?

Q. What actually came to your hands, how much money did you actually get?

A. I got $4,530.10.

Q. Did you ever get any more than that?

A. No, sir.

Q. You have heard Mr. Savage's testimony?

A. Yes, sir.

Q. As to how the amount came to be that figure?

A. Yes, sir.

Q. Is that testimony correct? I do not want to delay going over that.

A. That is correct so far as I know, I believe.

Q. Is there any correction that you would like to make to it or any addition that you would make to it?

A. I do not know that there is, unless——

Q. At the time of this agreement, was there such an agreement as he stated to divide the net proceeds after the payment of the mortgage, between you?

A. Yes, sir.

Q. When was that agreement made?

A. It was made within a few days after the 14th of June, 1890; within ten days at the outside.

Q. In what condition was the property then?

A. It was in as bad condition as property could be.

By the Court: I do not see that that could possibly help any.

By Mr. Parker: What was the value of the property?

A. It wasn't worth anything over the mortgage; I could not get anything further above the mortgage, and I could not get a mortgage for over $3,000.

Q. Was it, in your opinion a fair agreement at that time?

A. I considered it so by all means; I was very glad to make it.

By the Court: Was Mr. Savage your attorney and counsel at that time?

A. Yes, sir.

By Mr. Parker: You considered the amount that you agreed to pay him a fair compensation for the services he rendered?

A. Yes, sir.

Q. Did he at any time know anything about any claim of Taylor's on the property, or was there any claim then?

A. No, sir.

Q. Was there any claim then made by Henninger?

A. No, sir.

By Mr. Parker: I here offer likewise to refer to the record and decree of dismissal of the Jane E. Taylor suit in the same way as I did of the Jardine suit, and I believe Mr. Little can cross-examine.

Cross-Examination by Mr. Little:

Q. Mr. Heald, you were examined in this case, were you not, before the hearing before the Vice-Chancellor?

A. Yes, sir.

Q. In answer to a question put to you on that examination, the question put is this, "You paid nothing for that $10,000 to the Port Reading Railroad Company or to Chambers?" Your answer was, "Some $349; I think it was deducted from that sum." (Question) "From the $10,000?" (Answer) "Yes, sir; and that was paid over, that is, the money was received less that." Did you testify to that?

A. I presume that was my testimony; yes, sir.

By Mr. Parker: There was a settlement made in April, 1892, between you and the Railroad Company, was there not?

A. Through Mr. Savage I suppose there was; I never had a settlement.

Q. What was the condition of your health at that time?

A. It was in a very precarious condition.

Q. Where were you at that time?

A. I was in Connecticut all the time.

Q. Mr. Savage attended there when you got these checks, did he not?

A. Yes, sir; Mr. Savage came to Bridgeport and gave me these checks.

By Mr. Parker: If your Honor please, I suppose if counsel desire it I ought to get and examine the statement with the Railroad Company which I think Mr. Emery has. I have not the paper. If it is necessary to carry out Mr. Savage's statement about the settlement between him and Mr. Heald, to show that statement, it can be brought.

By the Court: I suppose you might submit it to Mr. Little.

By Mr. Parker: I do not think it necessary unless your Honor thinks it necessary to corroborate Mr. Savage's testimony. That is the way it was done, the money was received through Mr. Savage.

By the Court: I do not see the necessity of it at present.

By Mr. Parker: I do not either, sir.

COMPLAINANT'S EXHIBITS.

No. 1.

Agreemet made and entered into the 16th day of November 1889 between William R. Hennenger of Allentown Pa and Charles E. Heald agt of Abraham B. Dupuy of Brooklyn N Y

Witnessett that for and in Consideration of the sum of one dollar each to the other paid the receip whereof is hereby acknoledged the Parties of this agreement promice and agree as follows the said Hennenger agrees to deliver a full Covenat Warrentee deed of the McCoy farm situated in Woodbridge Township County of Middlsex and State of New Jersey now owned by him to Abraham B. Dupuy or his assigns free of all encumburence except a mortgage for the sum of Five Thousand dollars now on said pemises with intest and taxes Due thereon, and to pay the sum of Four Hundrid and Twenty-five dollars in the following maners Three Hundred Dollars in fifteen days and One Hundrid dollars in six months.

And the said Heald agt. for Dupuy agrees to deliver a full Covent Warrentee deed of the Blanchard Place situated in Middle Smithfield Township County of Monroe and State of Pensylvania and now owned by said Dupuy to said Hennenger or his assigns free of all encumbwon ecept a mortgag of Three Thousand dollars taxes interest from Noverb 1st 1889 at 5%. Said Deeds to be delivered on the second day of December 1889 at the office of J. Taylor 176 Broadry N. Y.

Witness
J. Taylor to both

W. R. Henninger
Charles E. Heald Agt
for A. B. Dupuy

Endorsed

The Three Hundred Dollars within mentioned is this paid by 15 day note of W. R. Henniger to C. E. Heald 11/16/89.

C. E. Heald Agt
for A. B. Dupy

No. 2 omitted in marking exhibits.

No. 3.

Adams Express Company Envelope marked as Containing $66—forwarded from Allentown Pa. Dec. 14 1889 from Wm. R. Henninger for J. Taylor 176 Broadway New York. Sealed with the Company's seal.

No. 4.

Assignment by Stephen H. Little and John L. Taylor to Wm. R. Henninger of all interest in McCoy farm and proceeds thereof, dated April 14th 1892.

No. 5.

Telegram dated Nov. 15th 1889 at Allentown, Pa. to J. W. Taylor 176 Broadway N. Y.; as follows:

Will be at your office ten tomorrow relation to trade.

W. R. Henninger.

No. 6.

Deed dated Dec. 19, 1889, from Abraham B. Dupuy to William R. Henninger, conveying to him the Blanchard place for a consideration of "one dollar and Exchange of property:" and containing the following recital, "and the above described premises are hereby conveyed free and clear of all encumberances except the taxes for the year 1889 and a certain mortgage on which there is to be paid a sum not to exceed Three Thousand ($3000) dollars and interest at five per cent. from November 1st, 1889."

No. 7.

Telegram dated Allentown, Pa., Nov. 14, 1889, and addressed to J. W. Taylor, 176 B'way, N. Y.; as follows:

Will allow four twenty-five provided party accepts mortgage six months six per cent. and exchange papers Saturday.

W. R. Henninger.

Across the face of this telegram is written in pencil, "I replied to this by letter. Heald."

No. E. 7.

Certified Copy of deed from Abraham B. Dupuy to Charles E. Heald dated June 14, 1890, acknowledged June 16, 1890. Recorded in Middlesex Co. Clerk's office in Book 235 of Deeds, Page 145, Aug. 28, 1890, Conveying the McCoy farm "for and in consideration of Valuable Considerations and the sum of one dollar."

No. 8.

Telegram dated at Allentown, Pa., Nov. 11th, 1889, addressed to J. W. Taylor, 176 B'way, N. Y.

Am agreed to pay three hundred make trade on that basis. Wire results.

W. R. Henninger.

No. 9.

New York, Nov. 11—89.

J. Taylor,

Dear Sir—I find there is due on the mortg. $383.33 for interest and $78.45 Taxes making a total of $461.78

as you see. Now you better Wire Henninger like the

$300 will not do; think I can make trade for $400 if you Come Wednesday, Answer.

We will get him to take the Taxes on the Blanchard Place ($28) and trade this way. Jardine will not Wait a day on foreclosure. Yours,

C. E. Heald.

No. E. 9.

Certified Copy of deed from Thomas Jardine to The Port Reading Railroad Company dated April 30, 1891, Acknowledged same day, recorded May 14, 1891, in Book 241, p. 86 in Middlesex Co'y Clerk's office. Conveys that portion of McCoy farm known as the Salt Meadow tract containing 18 acres more or less. Consideration $12000.

No. 10.

Allentown, Pa., Nov. 23, 1889.

J. W. Taylor, Esq.

Dear Sir:—Enclosed find check $300.00 from one of our Wealthiest Citizens so Mr. Heald need not hesitate to accept. Your Commission I will straighten next week. Will also forward note for balance to Mr. Heald $100.00 this P. M. as I have no blank here and want to catch mail.

Respt'y yours,

W. R. Henninger.

[Endorsed in pencil:]

Better write to Henninger that check is received, but as it is on Allentown Bank, will have to wait till money is rec'd before passing deeds, note, &c. Also say I have notified Shafer & Durand to hold up so far as Henninger is concerned as title is about to change hands, &c. I have put the check in bank for collection.

Heald.

No. E. 10.

Certified Copy of deed Thomas Jardine to Gordon Chambers dated April 30, 1891, acknowledged May 11, 1891, Recorded May 14, 1891, in Book 241, p. 88, in Middlesex Co'y Clerk's office. Conveys upland of McCoy farm for consideration of $10,000.

No. 11.

Letter dated Allentown, Pa., Nov. 8, 1889, written by W. R. Henninger and addressed to J. W. Taylor, relating to the proposed trade, suggesting some further negotiations. Letter consists of two sheets.

At the top of the first sheet is written in pencil:

"I opened this letter as I have to go away. You "better write him it is impossible to do any better than you wrote him, &c. C. E. Heald."

No. E. 11.

IN CHANCERY OF NEW JERSEY.

Between

Charles E. Heald,
Complt,

and

Thomas Jardine, Breeland Jardine and Margaret E. Jardine,
Defendants.

On Bill, &c.

Notice of *lis pendens* filed August 15, 1890, states that the object of the suit is to compel conveyance to complainant by defendants of McCoy farm. The proceedings in this action were also offered.

No. E. 11½.

IN CHANCERY OF NEW JERSEY.

Between

CHARLES E. HEALD,

Complt,

AND

THOMAS JARDINE, FREELAND JARDINE and MARGARET JARDINE,

Defendants.

On Bill, &c. Notice of *lis pendens.*

States that object of suit is to obtain a decree to set aside sheriff's sale, on foreclosure, made to Thomas Jardine of McCoy farm, and compel conveyance thereof to complainant. The proceedings in this action were also offered.

No. 12.

Draft of a letter as follows:

NEW YORK, Dec. 3, '89.

W. R. HENNINGER, Esq.

DEAR SIR:—Your telegram of to-day received. Mr. Heald is now here in my office ready with the deed of the Blanchard Place to pass the papers according to the contract. He has also been to the Bank to-day where he deposited the check and finds the money has not yet been received and the cashier tells him it may not come for three or four days yet, as some of the country Banks do not clear but once a week, You can call at your Bank and find out for yourself when the money is likely to reach N. Y. I showed Mr. Heald your deed and he objects to taking it for the reason that it is not drawn in accordance with the contract. If you will look at your copy of the contract you will

find that you agree to convey the farm "free from all incumbrances except a mortgage for the sum of five thousand dollars now on said premises with interest and taxes due thereon." Nothing is said about Mr. Dupuy *agreeing to assume and pay* this mortgage and which Mr. Heald in his behalf absolutely declines to do, so that there is no other way for you than to make out a new deed precisely in accordance with the contract. Mr. Heald also finds that the farm is under a lease which runs to April 1, '90, and that rent at the rate of $200 per year *has been paid* up to that time. I think I can get him to waive the matter of possession although under the contract which says nothing about the farm being subject to a lease you could be compelled to give possession but he demands that you pay over the rent for the unexpired term of the lease which you have received and which amounts as he figures it to $66.67, and this amount you will have to send *in cash* with your new deed. As soon as received we can close the whole matter at once. I am sorry there has been such delay, but as you can plainly it has not been the fault of anyone here. I enclose the deed you sent.

No. E. 12.

IN CHANCERY OF NEW JERSEY.

Between

WILLIAM R. HENNINGER,
Compl.,

AND

CHARLES E. HEALD,
Defendt.

On Bill, &c. Notice of *lis pendens*, filed April 1, 1891.

States that the object of the bill is to set aside a conveyance of the McCoy farm made by complainant to Abraham Dupuy because procured by fraud. The proceedings in this action were also offered.

No. 13.

Certified Copy of mortgage dated Dec. 22, 1888, from Abraham B. Dupuy to Leon T. Blanchard to secure the sum of $3,600, with interest at six per cent., covers the Blanchard place. Said mortgage was acknowledged Dec. 22, 1888, and recorded January 15, 1889, in Book 11, p. 60, of Mortgages, in Recorder's office, Monroe Co., Pa.

No. 14.

New York, Dec. 21, '89.

Whereas, on or about the eleventh day of November of the present year, one William R. Henninger conveyed to one Abraham B. Dupuy the equity of redemption in a certain piece of real estate known as the "McCoy Farm", situated in Woodbridge Township, Middlesex County, New Jersey; and whereas, one J. B. Taylor agrees to use every effort and to advance one-half of all expenses deemed necessary to effect a sale of said farm. Now, therefore, I, Charles E. Heald, agent for said Abraham B. Dupuy, do hereby agree with the said Taylor that in consideration of said efforts and expenses as aforesaid, that upon any sale of said farm the said Taylor may have and receive one-half the proceeds of said sale of said equity of redemption.

Charles E. Heald.

No. E. 14.

Whereas by a certain deed of conveyance bearing even date herewith, Thomas Jardine, of the City of Rahway in the County of Union and State of New Jersey, did convey to the Port Reading Railroad Company certain lands and real estate, being a certain lot or parcel of Salt Meadow situate in the Township of

Woodbridge, in the County of Middlesex and State of New Jersey, in said deed particularly described.

And whereas, by a certain other deed of conveyance, dated the thirtieth day of April, 1891, said Thomas Jardine did convey to one Gordon Chambers, of the City of Philadelphia, a certain other parcel of land, situate in said Township of Woodbridge, in said County and State, in said last-mentioned deed particularly described, and whereas the said Gordon Chambers is the trustee for said Port Reading Railroad Company and holds the said last-mentioned lands in trust for said Port Reading Railroad Company, the said Port Reading Railroad Company being the beneficial owner thereof.

And, whereas, a certain suit is now pending in the Court of Chancery of the State of New Jersey, wherein one Charles E. Heald is complainant, and the said Thomas Jardine, Freeland Jardine and Margaret E. Jardine are defendants, brought by the said Heald to redeem said lands and premises from the lien and encumbrance of a certain mortgage given thereon to said Thomas Jardine, Freeland Jardine and Margaret E. Jardine by one Anson B. Moore, dated August 4th, A. D. 1886.

And, whereas, the said The Port Reading Railroad Company, in consideration of the said above recited conveyance hath agreed to indemnify and save harmless the said Thomas Jardine, Freeland Jardine and Margaret E. Jardine against and from said suit and from and against all other suits, either in law or in equity, arising out of said suit and relating to the said conveyances now pending in said Court, and against and from all other litigations with said Heald and all other person or persons whomsoever in relation to said suit, or for damages and costs incurred, or that hereafter be incurred by reason of said suit.

Now, therefore, this writing witnesseth that the said The Port Reading Railroad Company "in consideration of the said conveyances and of the sum of one dollar to it in hand paid, the receipt whereof is hereby

acknowledged, doth hereby covenant and agree to and with the said Thomas Jardine, Freeland Jardine and Margaret E. Jardine that the conveyances are made subject to the result and final determination of the litigation in the said suit of said Heald against said Jardines.

And it doth further covenant and agree to and with the said Thomas Jardine, Freeland Jardine and Margaret E. Jardine that it will keep and bear harmless and indemnify them, the said Thomas Jardine, Freeland Jardine and Margaret E. Jardine, and each of them, their and each of their estate of and from and against said suit and all decrees therein, and of and from and against any and all other suit and suits in law or in equity now pending or which may hereafter be brought against them, or either of them, by whomsoever instituted for or by reason of or arising out of any alleged right of said Heald or the right of any one claiming under him in any way or claiming his alleged rights or any ground to redeem the said mortgaged premises so conveyed as aforesaid, or any part thereof and of and from and against all decrees or judgments against the said Thomas Jardine, Freeland Jardine and Margaret E. Jardine or either of them in such suits or any of them and against all costs, damages and expenses incurred therein.

And the said The Port Reading Railroad Company doth further covenant and agree to and with the said Thomas Jardine, Freeland Jardine and Margaret E. Jardine to execute such decree as the Court may make in said suit in the place and stead of the said Thomas Jardine, Freeland Jardine and Margaret E. Jardine, or any or either of them if any decree against them or any or either shall be made, and to make, execute and deliver all such conveyances as may or shall be required by the Court in such suit.

Witness the corporate seal of The Port

Reading Railroad Company this
[SEAL.] 30th day of April A. D. 1891.
THE PORT READING R. R. Co,
By A. A. McLEOD
President.

Attest:
W. R. TAYLOR,
Secretary.

Witness:
The words "ninth" and "May" on the ninth line from top of first page erased and the words "thirteenth" and "April" interlined before execution
A. H. O'BRIEN.

No. 15.

Note made by W. R. Henninger to order of J. W. Taylor, dated at Allentown, Pa., Nov. 16, 1889, payable in four months, for $100; with notarial certificate of protest annexed.

No. E. 15.

Agreement made this Twenty Seventh day of April A. D., 1892, by and between William R. Henninger of Allentown, Pennsylvania and Stephen H. Little of Morristown in the State of New Jersey.

Whereas, said William R. Henninger believes he has a just claim against one Charles E. Heald of the City of New York, Thomas Jardine, Vreeland Jardine and Margaret Jardine of Rahway, New Jersey and The Port Reading Railway Company of the same State, arising out of the sale by said Henninger of a tract of

land known as the McCoy farm situate in the County of Middlesex in said State of New Jersey; which claim is disputed by said parties and can be asserted only by the institution and prosecution of a suit in the Court of Chancery involving the expenditure of a very considerable sum of money for expenses and Counsel fees and the costs incident to a possible failure to recover in such suit, and involving possibly the raising of money also to redeem the property known as the Blanchard property, conveyed to said Henninger in exchange for the said McCoy farm; and whereas said Henninger is unable to provide the money which will be required for the prosecution of said claim and said Stephen H. Little agrees to furnish the same, and to provide such Counsel as he may think necessary, to pay such costs as may be adjudged against said Henninger in case of a failure to recover in said suit; and also to raise and advance such sum of money as may be required to redeem said Blanchard farm conveyed to said Henninger as above mentioned if such redemption becomes necessary, if the same can be redeemed at a cost not exceeding four thousand dollars. Now therefore in consideration of this agreement on the part of said Stephen H. Little, the said Henninger hereby covenants and agrees not to make any compromise or settlement of his said claim with either or any of said parties except through or with the consent of said Stephen H. Little, and to secure him for such advances as he may make in the prosecution of said claim of whatsoever kind the same may be, and for his services in that regard and also for such money as he has already expended, and such services as he has already rendered, the said Henninger hereby assigns to him an equal interest in said claim with himself, provided such half interest shall not exceed, after deducting the actual expenses hitherto paid by him and the expense he may be required to pay, the sum of five thousand, and if said one-half of the amount which may be recovered shall exceed the said expenses and the said sum of five thousand dollars, the surplus is to be paid

to said Henninger ; and provided further if it becomes necessary or advisable to carry the cause to be instituted to the Appellate Court, then, in such case, the interest of said Stephen H. Little is to be one-half of the full amount recovered after deducting the actual expenses incurred in the prosecution of the suit. It is further agreed that if the said McCoy farm is decreed to be reconveyed to said Henninger, such reconveyance shall be made to said Henninger and said Stephen H. Little, jointly ; and shall be by them disposed of by public or private sale, and the proceeds used for the purpose of carrying into effect the foregoing agreement.

The expenditures hereinbefore provided for are understood to embrace all costs incurred in the prosecution of a suit by said Henninger against said parties by a recent suit in said Court of Chancery which has been dismissed and to include such costs as have been paid or are yet to be paid to the defendants on said decree of dismissal.

In witness whereof the parties hereto have hereunto set their hands and seals the day and year hereinabove first written.

W. R. HENNINGER. [SEAL.]

STEPHEN H. LITTLE. [SEAL.]

Signed sealed and delivered in the presence of as to
STEPHEN H. LITTLE.

J. M. BURNS as to
HENNINGER.

No. 16.

MORRISTOWN, May 3, 1892.

DEAR SIR:—I send you the agreement made with Mr. Taylor, which he has surrendered, and also the agreement between Taylor and my son Stephen.

I also send you a new agreement with Stephen which I prepared as you requested. In view of his expenditures already and the necessary expenditures in future, as well as the possibility of advancing money for the redemption of the Blanchard place, I think the agreement a fair one. I wish only *to add I have no interest in the matter beyond my regular Counsel fees.*

Examine the agreement carefully, advise with your friends and do as you think best as to signing the agreement. Send one copy when signed to Stephen or to me for him and retain the other copy. *Act at once.*

MR. W. R. HENNINGER. Yours,

THEO. LITTLE.

No. E. 16.

MORRISTOWN, June 11, 1891.

WAYNE PARKER, EEQ.:

DEAR SIR:—Have you filed the order of the Chancellor referring Henninger *v.* Heald to V. C. Bird?

Of course the cause cannot properly be heard until you file your decree in the Jardine case.

I think it much better for all parties that the sale of the property shall be completed and the money paid into Court after paying the Jardine claim, and will aid to accomplish this so far as I can as Counsel for Henninger.

Yours,

THEO. LITTLE.

No. E. 16½.

Morristown, June 27, 1891.

R. Wayne Parker, Esq.

Dear Sir:—On my return last evening Stephen handed me your letter addressed to him. As Vice Chancellor Green cannot hear the case of Henninger *v.* Heald before September. I see no reason for changing the order made by the Chancellor referring the case to Vice Chancellor Bird.

I trust you will at once file the decree in Heald *v.* Jardine and save the necessity of application for an Order to do so. Also the order made by the Chancellor on the hearing of your motion to dissolve the injunction in H. *v.* H.

Yours,

Theo. Little.

No. 17.

Morristown, May 7, 1891.

Thos. H. Shafer, Esq.,

Dear Sir:

Stephen showed me last evening a letter from Mr. Parker in reference to the Heald complication. Mr. Parker referred to a suggestion from you as to completing the sale to the Railroad Co. & depositing the money in Court or in a Trust Co. to be disposed of according to the result in the various claims now in litigation. I would advise Henninger to consent to an agreement of that kind if properly drawn, and it seems to me very judicious *for all parties.*

I suppose it would amount to about this:

1st. That your clients shall at once receive the Amt. of their claim, under their mortg. debt int. & costs.

2. That if their claim is sustained they shall receive the balance.

3. If they are required to reconvey to Heald and Taylor succeeds in his suit he shall be paid his claim, unless:
3. Heninger sustains his suit agst. Heald & Taylor, in which case the money shall be paid to Hen inger.
4. I write with the understanding that the R. R. Co. is to pay $600 or thereabouts per acre for the land.

Now, if the Company has an agreement with Heald to buy at a considerably *less price*, it may want another provision as to the repayment of all the money over & above such price, provided Heald succeeds in his suit with the Jardines, & *also in the suit of Henninger.*

If Mr. Parker will draw an agreement embracing something like the above so as to meet your views and Taylor's, I shall be inclined to advise Henninger to sign it.

Yours, &c.,
THEO. LITTLE.

No. 18.

COURT OF CHANCERY.

HEALD
v.
JARDINES.

Law Office
SHAFER & DURAND,
146 Main Street.

THOMAS H. SHAFER,
JAMES H. DURAND. } RAHWAY, N. J., April 29, 1891.

DEAR SIR:—I see no immediate prospect of an agreement or settlement of the above suit. I have about exhausted all my efforts and shall after one more interview with the R. R. let things take their course.

Mr. Renfrew (your man of straw) through whom my *clients* were trying to cheat the *childlike Heald*, proves himself to be a man of the most determined

spirit—we can do nothing with him. He tells us our money is ready for us and demands his deed—and threatens us with suit if we dare to act without his knowledge and consent; he declares that he knows the value of the property and almost swears he is going to have it—Can sell it for a fabulous Amt. and will not let up. If you are going on with your suit and want my clients to answer I will answer at once. I have called at your office but was not fortunate in finding you in.

Yours truly,

THOS. H. SHAFER.

S. H. LITTLE, Esq.

P. S.—Anything I can do to help you or your father in your suits, I will cheerfully do.

S.

NOTE.—*Nos. 19 to 29, inclusive, were not used for marking Complainant's Exhibits.*

No. 30.

This exhibit is also marked 3 for identification.

NEW YORK, Nov. 14/89.

W. R. HENNINGER,

DEAR SIR:

Your last telegram received, and as you cannot come till Saturday I will have time to reply by letter. I have consulted the parties and after a long argument they will do this and say if it is not done by Saturday to *drop it*. They will take $300 cash and your note for $125 for 6 months @ 6% provided you will take the taxes on the Blanchard Place, which are $28. I wrote you the taxes were paid, but I was mistaken as I now have the bill. Now this is the very best I can get them to do, but it is possible they might do a few dollars better after you get here. But you better come right here Saturday morning and you may rest assured I will do all I can to make a satisfactory deal for you, but be sure and bring $300 cash at least as

they will not take any mortg. with all its formalities, &c., and no doubt you rather it would be the this way. When I showed your telegram to them to-day they at first refused to do anything more about it and said "drop it," but after a time I got them to make above offer. You had better wire me as soon as you get this if you will be here Saturday as unless *I knew* you were coming I might be away.

Yours, &c.,
J. W. TAYLOR,
176 B'way,
Room 42½.

No. 31.

This exhibit is also marked 2 for identification.

NEW YORK, Nov. 13/89.

W. R. HENNINGER,

DEAR SIR:

I wired you on Monday that I could make the trade if you would pay $400 (instead of the $300 you offered) and asked you to answer, but have heard nothing further from you. Now if you wish to make the deal, and I know it is a splendid deal for you to make, you will have to come on at once & close it up, for if a foreclosure suit is begun on your farm I don't think you can then make the trade at all. I sent a party to see Shafer & Durand and they said they would hold off till Thursday morning, when if the whole amount was not paid, *both principal & Interest*, they would be obliged to commence, so you see there is absolutely not a day to wait. The owner of the Blanchard Place is very indifferent about the deal anyway, & unless I hear from you to-morrow either by letter or telegraph I think the whole thing will be "off." Wire immediately on receipt of this what you will do and what day you will be here.

Yours truly,
J. W. TAYLOR,
176 Broadway.

Exhibits of Defendant Charles E. Heald.

H. No. 1.

This is a letter from Leon F. Blanchard, of Newark, N. J., to C. E. Heald, dated December 28, 1888.

H. No. 2.

Contract between Leon F. Blanchard and Mary Pratt, dated Dec. 17, 1888, as follows:

AGREEMENT made and entered into the seventeenth day of December, A. D. 1888, between LEON F. BLANCHARD, of the City of Newark, N. J., party of the first part, and MARY PRATT, of the City of New York, N. Y., party of the second part, in manner following: That said party of the first part, in consideration of the sum of One dollar duly paid by the party of the second part, the receipt whereof is hereby acknowledged, and also in consideration of the conveyance of the property as hereinafter mentioned, doeth hereby agree on his part to give, grant and convey or cause to be given, granted and conveyed unto the said party of the second part or to any other party whom she may designate, all that certain tract or parcel of land containing about seven acres more or less, with the buildings thereon and with all the household furniture and appurtenances thereto belonging—situated, lying and being in the County of Monroe and State of Pennsylvania, on the road to Bushkill Falls, and known and being the summer residence of the said party of the first part. The purchase price of said premises shall be $8,500, and to be free and clear of all incumbrances except the taxes for the year 1888. And the said party of the first part further agrees to loan to said party of the second part or to the party to whom the above premises may be conveyed the sum of $3,000 for three years at 6% semi-annual interest, taking as security

therefor his properly executed bond and mortgage (covering said premises) for the sum of $3,500.

And the said party of the second part in consideration of the sum of One Dollar duly paid by the party of the first part, the receipt whereof is hereby acknowledged, and in exchange of and for the property and consideration first above mentioned, doeth likewise agree on her part to give, grant and convey or cause to be given, granted and conveyed unto the said party of the first or to any other party whom he may designate, all that certain tract or parcel of land with the buildings thereon, situate, lying and being on the westerly side of Tompkins Place, in the City of Brooklyn, County of Kings, and State of New York, measuring 20 feet front and rear by 112 feet and 6 inches deep, and known as No. 44 Tompkins Place. The purchase price of said premises shall be $12,000 and to be free and clear of all incumbrances except a certain mortgage on which there remains to be paid the sum of $4,000 and interest at 5% from October 24th, 1888.

The parties to these presents mutually agree to execute, acknowledge and deliver or cause to be executed, acknowledged and delivered, each to the other, or as above set forth, a proper warantee deed or deeds for the conveying and assuring the fee simple of the property above described free of all incumbrances except as aforesaid, and the said party of the second part agrees to deliver the above-mentioned duly executed and acknowledged mortgage, and the said party of the first part agrees to pay or loan the said sum of $3,000 as aforesaid, all of which shall be done on or before the 24th day of December, A. D. 1888, at 12 o'clock noon of that day, at the office of C. E. Heald, 176 Broadway, in the City of New York.

And for the true and faithful performance of all and every of the covenants and agreements above mentioned, the parties to these presents bind themselves each unto the other in the penal sum of Two Thousand Dollars as fixed, settled and liquidated damages, to be

paid by the failing party to the other or to his or her assigns;

And it is understood and agreed that the stipulations aforesaid are to apply to and bind the heirs, executors, administrators and assigns of the respective parties.

In witness whereof the parties to these presents have hereunto set their hands and seals the day and year first above written.

LEON F. BLANCHARD, [SEAL.]
MARY PRATT. [SEAL.]

Sealed and delivered in presence of

The erasure as to taxes on Brooklyn property made before signing.

C. E. HEALD to both.

H. No. 3.

Bill of Sale dated December 22, 1888, Leon F. Blanchard to Mary Pratt as follows :

Know all men by these presents, that I, Leon F. Blanchard, of the City of Newark, in the County of Essex and State of New Jersey, party of the first part, for and in consideration of the sum of one dollar, lawful money of the United States, to him in hand paid, at or before the ensealing and delivery of these presents by Mary Pratt, of the City of New York, County and State of New York, party of the second part, the receipt whereof is hereby acknowledged, has bargained and sold, and by these presents does grant and convey unto the said party of the second part, her executors, administrators and assigns, all that certain lot of goods and chattels situated in and about the land and buildings this day conveyed by the said party of the first part to one Abraham B. Dupuy (said lands and buildings be located in the Township of Middle Smithfield, County of Munroe and State of Pennsylvania), a partial

schedule of which is hereto attached, to have and to hold the same unto the said party of the second part, her executors, administrators and assigns for ever. And I do for myself, my heirs, executors and administrators, covenant and agree, to and with the said party of the second part, to warrant and defend the sale of the said goods and chattels hereby sold unto the said party of the second part, her executors, administrators and assigns, against all and every person and persons whomsoever.

In witness whereof, I have hereunto set my hand and seal the 22d day of December, in the year one thousand eight hundred and eighty-eight.

LEON F. BLANCHARD. [SEAL.]

Sealed and delivered in the presence of

FREDERIC W. WARD.

SCHEDULE OF THE FOREGOING BILL OF SALE.

One two seated buckboard carriage in stable.
" one " " " " "
All veranda and other chairs " "
" farming, garden and stable tools " "
One parlor suit " house.
" dining table " "
All " chair " "
All other " " "

All bedsteads, chamber furniture, carpets, stoves, crockery, glass and silverware, mattresses and all and every article contained in and about the said premises except what are packed in boxes and barrels in stable and one chiffonier on 2d floor of house.

On this 5th day of August, A. D. 1889, in consideration of the sum of one dollar and other value to me in hand paid by Addie M. Heald, I do sell, assign, transfer and set over to the said Addie M. Heald all my right, title and interest in and to the property described in the foregoing bill of sale.

In presence of

MARY PRATT.

H. No. 4.

$100.00. ALLENTOWN, PA., Nov. 16, 1889.

Six months after date I promise to pay to the order of C. E. Heald, at the Allentown National Bank, One Hundred $\frac{00}{100}$ dollars, without defalcation, for value received. Credit the drawer.

WM. R. HENNINGER.

(Endorsed).

Collect for acct. of C. E. Heald.

H. No. 5, Letter Henninger to Heald, dated March 12, 1890.
H. No. 6, " " " " April 10, 1890.
H. No. 7, " " " " June 17, 1890.
H. No. 8, " " " " June 13, 1890.
H. No. 9, " " " " June 23, 1890.
H. No. 10, " " " " March 21, 1890.

H. No. 11.

Deed from Wm. R. Henninger to Abm. B. Dupuy, dated Nov. 11th, 1889, for the lands in question, acknowledged November 22nd, 1889.

H. No. 12.

Copy of the agreement between Heald and J. B. Taylor, dated December 21st, 1889. The original is Exhibit No. of complainant.

H. No. 13.

Copy of contract between Charles E. Heald and C. P. Haughian, dated November 20, 1890, as follows:

This agreement made and entered into this twentieth day of November, in the year one thousand eight hundred and ninety, between Charles E. Heald, of the City, County and State of New York, party of

the first part, and C. P. Hanghian, of the City of Brooklyn, party of the second part.

Witnesseth :

Whereas the party of the first part is or claims to be the owner of a certain tract of land situate in the Township of Woodbridge, in the County of Middlesex, and State of New Jersey, bounded as follows: Southerly by the road leading to the Blazing Star Landing; northeasterly by land formerly of Jacob F. Randolph ; northwesterly partly by land formerly of John Noe and partly by land formerly of Nathan Bunn ; southwesterly and northwesterly by land formerly of said Bunn and southwesterly by the Mooty Kinsey property ; containing eighty-nine acres of land more or less ; excepting and reserving from and out the above-described tract twenty-one acres more or less formerly sold and conveyed by Benjamin Shotwell to Abraham B. Miller by deed dated August 14, 1856, and recorded in Book 72, page 268 : and

Whereas one Thomas Jardine and others, by virtue of a mortgage which they held upon said premises, claim some right or interest therein ; and

Whereas the said question of the title to said premises is now in dispute, said Heald having brought an action in the Court of Chancery of New Jersey to establish his title hereto, and

Whereas the said action will not be tried before January next,

Now, therefore, it is agreed by and between the parties as follows :

That when the said action above referred to is determined and said title is perfected in the party of the first part, the party of the first part hereby covenants and agrees with the party of the second part to convey, as soon as said title is perfected in him, the premises above described free and clear of all encumbrances to the party of the second part, his executors, administrators, or assigns, in consideration of the sum of ten thousand dollars, which said consideration is to

be paid as follows: Five thousand dollars upon the execution and delivery of the deed.

The balance to be secured by mortgage upon the premises, payable within one year with interest at six per cent. per annum, or all cash, at the option of the party of the second part.

And the party of the second part hereby agrees to accept said deed provided said premises are free and clear of all encumbrances, and the title is undisputed in the party of the first part according to the terms and conditions hereinbefore mentioned.

And it is further mutually agreed between the parties that upon the execution and delivery of this contract the party of the second part shall deposit with Edward S. Savage, President of the Union County Bank at Rahway, New Jersey, the sum of five hundred dollars; that said Savage shall hold said sum until the delivery of the deed above mentioned, and upon the delivery of the deed shall pay over to the party of the first part, as part of the consideration to be paid on the execution and delivery of the deed of said premises, said sum of five hundred dollars; and if said title is not perfected and said deed delivered according to the terms and conditions of this contract within six months from the date hereof, the said Edward S. Savage is to return the same to the party of the second part, and this contract is to become null and void.

In witness whereof the parties have hereunto set their hands and seals the day and year first above written.

CHARLES E. HEALD, [L. S.]
C. P. HANGHIAN. [L. S.]

Signed, sealed and delivered in the presence of
EDWARD S. SAVAGE as to
C. E. Heald and C. P. Hanghian.

NEW YORK, Nov. 21, 1880.

Received of C. P. Hanghian five hundred dollars on

account of purchase price according to conditions above mentioned.

EDWARD S. SAVAGE.

H. No. 14 not found.
H. No. 15 " "

H. No. 16.

This is the original agreement of which H. No. 13 is a copy.

H. No. 17.

Deed from Charles E. Heald and wife to Ferdinand E. Canda, dated April 26, 1892, for part of the lands in question, being the same conveyed by Gordon Chambers to Ferdinand E. Canda, by deed dated April 19, 1892, and recorded April 25, 1892. Consideration $10,000. Not recorded.

H. No. 18.

Deed from Gordon Chambers to Ferdinand E. Canda, dated April 19, 1892, acknowledged April 19, 1892, and recorded April 25, 1892, for lands conveyed to Chambers by Thomas Jardine by deed dated April 30, 1891.

H. No. 19.

Deed from Ferdinand E. Canda to Canda Manufacturing Company for part of lands in controversy, dated May 2, 1892, acknowledged same day. Recorded September 10, 1892.

Exhibits of the Port Reading R. R. Co., one of the Defendants.

Ex. P. R. 2.

Deed from Abraham B. Dupuy to William R. Henninger of Blanchard property, dated Dec. 19, 1889, being Exhibit No. 6 of Complts.' Exhibits (p. 254 of case).

Ex. P. R. 3.

Deed from William R. Henninger to Josiah Henninger of Blanchard property, dated Dec. 22, 1889, acknowledged Dec. 23, 1889. One of the covenants therein is the following: "And the above described premises are hereby conveyed free and clear of all encumbrances except the taxes for the year 1889 and a certain mortgage on which there is to be paid a sum not to exceed three thousand ($3,000) dollars and interest at five per cent. from Nov. 1, 1889."

Ex. P. R. 4.

Record of foreclosure suit based on mortgage on property of Wm. R. Henninger, known as McCoy farm, in which Thomas Jardine *et al.* were complainants, and Anson B. Moore *et ux.* and William R. Henninger *et ux.* were defendants. The bill was filed Nov. 23, 1889. The final decree in the usual form of foreclosure decree was filed May 21, 1890. The execution tested June 4, 1890, was returnable at the October Term following. Sheriff's report of sale to Thomas Jardine was filed July 17, 1890, and the sale was confirmed by decree dated July 28, 1890.

Ex. P. R. 4.

Sheriff's deed from Sheriff of Middlesex County to Thomas Jardine for McCoy farm, given pursuant to execution and sale aforesaid, dated July 29, 1890, recorded August 1, 1890.

Ex. P. R. 5.

Deed from Thomas Jardine to Port Reading R. R. Co. for Salt Meadow tract, dated April 30, 1891, recorded May 14, 1891.

Ex. P. R. 6.

Deed from Thomas Jardine to Gordon Chambers for upland, dated Apr. 30, 1891, recorded May 14, 1891.

Ex. P. R. 7.

Mortgage given by Anson B. Moore to Thomas Jardine *et al.* upon which above foreclosure was founded, dated August 4, 1886, recorded August 23, 1886.

Ex. P. R. 8.

Bond accompanying said mortg. of even date therewith.

Ex. P. R. 9.

Assignment of said bond and mortgage to Port Reading R. R. Co., dated May 9, 1891, recorded May 14, 1891.

Ex. P. R. 10.

Deed from Charles E. Heald *et ux.* to Gordon Chambers for use of Port Reading R. R. Co. for Salt

Meadow tract, dated Apr. 26, 1892, recorded May 17, 1892.

Ex. P. R. 11.

License from Board of Freeholders to Port Reading R. R. Co. to construct dock upon the premises in question.

Ex. P. R. 12.

Articles of Association of Port Reading R. R. Co., filed Nov. 5, 1890.

Ex. P. R. 13.

Survey of route of Port Reading R. R. Co., filed Nov. 8, 1890.

Ex. P. R 14.

Location of terminal properties of said Company, filed Dec. 10, 1890.

Ex. P. R. 20.

Agreement of sale of meadow lands between E. S. Savage and Howard Byers, dated Aug. 8, 1890, and assignment of Byers to Port Reading Co., dated Dec. 9, 1890.

Ex. P. R. 21.

Option dated Aug. 7, 1890, given by Freeland Jardine to William Renfrew.

Ex. P. R. 22.

Assignment of mortgage on Blanchard property by Leon F. Blanchard to Chas. W. Meyer.

Ex. P. R. 23, 24.

Assignment of mortgage by Meyer to Portuondo, dated Dec. 16, 1889, and by Portuondo to Mary Meyer, dated January 18, 1890.

Ex. P. R. 25.

Deed of Josiah Henninger to Lizzie Henninger, dated February 28, 1890.

Ex. P. R. 26.

Record of sale on foreclosure of the Blanchard mortgage.