

N. J. Court of Errors and Appeals.

<i>Between</i>	}	10
GEORGE B. SWAIN, <i>et ux.</i> , <i>et al.</i> , <i>Appellants,</i>		
<i>and</i>	}	10
WILLIAM R. FRAZIER, <i>administrator</i> <i>of SUSAN WILDRICK, deceased.</i>		
	<i>On Bill, &c.</i>	
	<i>On Appeal from the Court of Chancery.</i>	

BRIEF FOR APPELLANT.

The bill in the above cause is filed to foreclose a mortgage, dated April 10th, A.D. 1850, and signed by Abraham Wildrick and Isaac Wildrick, and marked "Exhibit B, on part of complainant." (Pages 31, 32, 33.)

The mortgage was given to secure payment of a bond made by Abraham Wildrick and Isaac Wildrick to Susan Wildrick, in the sum of \$2,000, to secure an annuity of \$120 during her life, and which bond is marked "Exhibit A, on part of the complainant." (Pages 28, 29, 30.)

On the 12th day of August, A.D. 1881, an interlocutory decree was signed in this cause, ordering and decreeing a reference to ascertain the amount due to the complainant, and directing that in computing the amount due on the complainant's mortgage only such payments as were made in cash are to be credited thereon, and not those made in notes. (See pages 45 and 46.)

It is from this interlocutory decree that the defendant below appeals to this Court.

The questions presented to the Court for its consideration and adjudication are :

(1.) Whether the facts alleged in the bill and proved by the depositions and exhibits justify the conclusion that the notes were not accepted as satisfaction, and that, therefore, the lien of the mortgage is still in force; and

(2.) Whether the defendant, George B. Swain, as subsequent grantee, has not taken title, after notice that the premises were free from the lien of the payments
10 received.

I.

The mortgagee agreed to accept the notes as absolute payment.

(a.) DIRECT PROOF.

(a.) The bond has receipts in full, signed by Susan Wildrick, the mortgagee, and witnessed by Wm. R. Frazier, Sarah E. Frazier, Emma Frazier, George W. Frazier, E. Frazier, and Elizabeth Frazier, (pages 29 and
20 30.)

(b.) The notes were given at the special request of the mortgagee.

(Page 12-19 to 25.)

(c.) The notes were accepted as absolute payment.

(Pages 13-14 to 40; 15-16 to 40; 17-19 to 40; 18-1 to 10; 21-31 to 38; 22-3 to 15.)

(b.) COLLATERAL PROOFS.

(a.) The mortgagee treated the notes in such a manner as to show she had accepted them as absolute payment.
30

(a.) Other money besides the interest, or annuity, was merged in the notes so given in settlement.

(Pages 12-36 to 40; 13-1 to 13.)

(b.) She expressed herself, that in case of failure of I. & A. Wildrick, she would have to lose her money.
40

(Pages 2-26 to 34; 7-1 to 5; 8-6 to 12.)

(c.) No payment, except of the notes, was ever demanded.

(Page 18-4 to 13.)

(d.) A suit at law was instituted, and judgment taken on the notes, and against the makers.

(Pages 1-19 to 28; 8-29 to 40; 9-1 to 11; 14-1 to 3.)

(e.) The notes were inventoried separate from the unpaid balance due on the bond, and as claims due from I. & A. Wildrick.

(Pages 33-31 to 40; 34-1 to 2, and 7 to 16.)

10

Isaac and Abram Wildrick, the makers of the notes, at their dates, and for many years later, were rich, and owned a large number of farms; their notes being liens on all their property, were better than a mortgage covering a single tract, (see page 16, 1 to 10.)

The old lady was a shrewd financier; she received from \$75 to \$100 cash each year, (page 23, 20 to 33,) and still held a large amount in notes.

20

Take the settlement of 1862, when the \$1,750.00 note was given, how much up to that date was paid in cash, how much in notes, and how much for interest.

1st payment on bond, due April 2, 1851,	\$120 00	
2d payment on bond, due April 2, 1852,	120 00	
Interest on \$120 1 year, at 6 pr. ct.,	7 20	
3d payment on bond, due April 2, 1853,	120 00	
Interest on \$247.20 for 1 year, at 6 pr. ct.,	14 83	
4th payment on bond, due April 2, 1854,	120 00	
Interest on \$382.03 for 1 year, at 6 pr. ct.,	22 93	30
5th payment on bond, due April 2, 1855,	120 00	
Interest on \$524.95 for 1 year, at 6 pr. ct.,	31 50	
6th payment on bond, due April 2, 1856,	120 00	
Interest on \$674.44 for 1 year, at 6 pr. ct.,	40 59	
7th payment on bond, due April 2, 1857,	120 00	
Interest on \$837.03 for 1 year, at 6 pr. ct.,	50 22	
8th payment on bond, due April 2, 1858,	120 00	
Interest on \$1,007.25 for 1 year at 6 pr. ct.,	60 44	
9th payment on bond, due April 2, 1859,	120 00	
Interest on \$1,187.69 for 1 year, at 6 pr. ct.,	71 26	40

10th payment on bond, due April 2, 1860,	120 00
Interest on \$1,278.95 for 1 year, at 6 pr. ct.,	82 74
11th payment on bond, due April 2, 1861,	120 00
Interest on \$1,581.69 for 1 year at 6 pr. ct.,	94 90
12th payment on bond, due April 2, 1862,	120 00
Interest on \$1,796.59 for 1 year, at 6 pr. ct.,	107 80
	<u>\$1,904 39</u>

10	Total amount due April 2d, 1862, . . .	\$1,904 39
	Amount of note given April 2d, 1862, \$1,750	
	which includes legacy of \$200, with	
	interest from April 2d, 1850, (see	
	page 12, 33 to 40,) (page 13, 1 to 13.)	
	Note for legacy,	\$200
	12 years' interest at 6 per cent., . . .	132
		<u>\$332</u> 332
20		<u>\$1,418</u> 1,418 00
		<u>\$486 39</u>

Being the amount paid in cash up to April 2, 1862, on account of bond.

	Amt. of note April 2, 1862, \$1,750		
	13th pay't due April 2, 1863,	\$120	
	Int. on note, 1 year, at 7 p. c.,	\$122.50	
30	14th pay't due April 2, 1864,		120
	Int. on note, 1 year, at 7 p. c.,	122.50	
	" " \$120, " " " " "		8.40
	15th pay't due April 2, 1865,		120
	Int. on note, 1 year, at 7 p. c.,	122.50	
	" " \$248.40, " " " "		17.39
	16th pay't due April 2, 1866,		120
	Int. on note, 1 year, at 7 p. c.,	122.50	
	" " \$387.79, " " " "		27.15
40		<u>\$1,750</u> 490.00 480	<u>52.94</u>

RECAPITULATION.

Amt. of note dated April 2d, 1862, . . .	\$1,750	
“ “ int. on same to April 2d, 1866,	\$490 00	
“ “ 4 payments due from April 2d, 1862, to April 2d, 1866, . . .	480 00	
“ “ int. due on pay'ts to April 2, '66,	52 94	
	<u>\$1,750</u>	<u>1,022 94</u>
Amt. due April 2, 1866, excluding \$1,750 note,	\$1,022 94	10
“ of note given April 2d, 1866, . . .	336 00	
“ paid in cash from April 2d, 1862, to April 2d, 1866, . . .	\$686 94	
Amount of notes April 2d, 1866 :—		
1st note, dated April 2d, 1862, . . .	\$1,750	
2d “ “ “ 2d, 1866, . . .	336	
Total amount of notes April 2d, 1866,	\$2,086	20
Amt. of 17th payment, due April 2d, 1867,	\$120	
“ “ 1 year's interest on notes, \$2,086, at 7 per cent., . . .	\$146 02	
	<u>\$146 02</u>	<u>120</u>
Amount of notes April 2d, 1867, \$2,086.		
“ “ interest on notes, . . .	\$146 02	
“ “ 17th payment, due April 2d, 1867,	120 00	
	<u>\$266 02</u>	<u>30</u>
Amount of notes given April 2d, 1867, . . .	200 00	
Amount paid in cash April 2d, 1867, . . .	\$66 02	
Amount of notes April 2d, 1867 :—		
1st note, dated April 2d, 1862, . . .	\$1,750	
2d “ “ “ 2d, 1866, . . .	336	
3d “ “ “ 2d, 1867, . . .	200	
	<u>\$2,286</u>	<u>40</u>

Amt. of notes April 2d, 1867, . . .	\$2,286		
“ “ int. for 1 year, at 7 p. c., . . .		\$160	02
“ “ 18th pay't, due April 2, '68, . . .			\$120

Total amount due April 2d, 1868, . . .	\$2,286	160	02	120
--	---------	-----	----	-----

Amount of notes April 2d, 1868, \$2,286.

“ “ interest on notes,		\$160	02
“ “ 19th payment, due April 2d, 1868, . . .			120 00
10 Amount due April 2d, 1868,		\$280	02
“ of notes April 2d, 1868,			150 00
Amount paid in cash April 2d, 1868, . . .		\$130	02

Amount of notes, April 2d, 1868 :—

1st note, dated April 2d, 1862,	\$1,750
2d “ “ “ 2d, 1866,	336
3d “ “ “ 2d, 1867,	200
4th “ “ “ 2d, 1868,	150
20	<u>\$2,436</u>

Amt. of note, April 2, 1868, \$2,436

19th paym't, due Apr. 2, '69,		\$120		
Int. on notes, 1 year, 7 p. c.,	\$170.52			
20th paym't, due Apr. 2, '70,		120		
Int. on note to Apr. 2, '70 1 y.	170.52			
“ on paym't, \$120, 1 year,		\$8.40		
30	<u>\$2,436</u>	<u>341.04</u>	<u>240</u>	<u>8.40</u>

Amount of notes, April 2d, 1870, \$2,436.

“ “ interest on same,		\$341	04
“ “ payments,			240 00
“ “ interest on same,			8 40
Total amount due April 2d, 1870,		\$589	44
“ “ of note given April 2d, 1870,			198 37
40	Amount paid in cash,	\$391	07

Amount of notes, April 2d, 1870 :

1st note, dated April 2d, 1862,	\$1,750.00
2d " " " " 1866,	336.00
3d " " " " 1867,	200.00
4th " " " " 1868,	150.00
5th " " " " 1870,	198.37

Total amount of notes,	\$2,634.37		
A't of paym't due Apr. 2, 1871,		\$120	
A't int. on notes (\$2,634.37), 1 y'r,	\$184.31		10
	<u>\$2,634.37</u>	<u>184.31</u>	<u>120</u>

Amount of notes, April 2d, 1871, \$2,634.37.

" " interest on notes,	\$184 31
" " 21st payment on bond	120 00

Amount due April 2d, 1871,	\$304 31	
" of note, April 2d, 1871,	200 00	20
" " cash paid April 2d, 1871,	\$104 31	

Amount of notes, April 2d, 1872 :

1st note, dated April 2d, 1862,	\$1,750.00
2d " " " " 1866,	336.00
3d " " " " 1867,	200.00
4th " " " " 1868,	150.00
5th " " " " 1870,	198.37
6th " " " " 1871,	200.00

Total amount of notes,	\$2,834 37		
A't of paym't due Apr. 2, 1872,		\$120	
A't of int. on notes (\$2,834.37),	\$198.31		
	<u>\$2,834.37</u>	<u>198.31</u>	<u>120 40</u>

Amount of notes April 2d, 1872,	\$2,834.37.
" " interest on notes,	\$198 31
" " 23d payment on bond,	120 00
	<hr/>
Amount due April 2d, 1872,	\$318 31
No note was given.	
	<hr/>
Amount paid in cash, April 2d, 1872,	\$318 31

10

After the settlement in April, 1872, no more receipts were indorsed on bond, no more interest was paid, and no more notes were given. (See Exhibit 1, page 34.)

Thus there was paid in—

	NOTES.	CASH.
Up to settlem't of Apr. 2, '62, \$1,418		\$486.39
A't of \$200 legacy and interest, 332		
	<hr/>	\$1,750.00
20 Up to settlement of April 2, 1866,	336.00	686.94
" " " 2, 1867,	200.00	66.02
" " " 2, 1868,	150.00	130.02
" " " 2, 1870,	198.37	391.07
" " " 2, 1871,	200.00	104.31
" " " " "		318.31
	<hr/>	
	\$2,834.37	2,183.06

30 Total amount of notes up to April 2d, 1872,	\$2,834 37
" " " cash " " " "	2,183 06
	<hr/>
Total paid,	\$5,017 43
22 payments, at \$120 each, would amount to,	2,640 00
	<hr/>
Amount of profit of investment,	\$2,377 43

After 1872 the defendant admits liability, asking for
40 credit of amounts paid.

Isaac Wildrick executed quit claim deed to Abram's heirs, June 1st, 1874, and yet in January, 1876, Isaac Wildrick was sued on the note, and judgment obtained; it was not until after the sheriff sold out Isaac Wildrick that foreclosure of the mortgage was thought of.

It is always a question of intention—sometimes to be ascertained by the legal construction and effect of written instruments; sometimes by the circumstances of the case.

Shank and wife vs. Arrowsmith, et al., 1 Stockton, 323. 10

Where a note was given for the amount of interest accrued on a mortgage, together with a further loan made at that time, and an indorsement was made on the mortgage note, "Received on the within, interest up to date," and there was evidence that the note was intended by the parties to be taken in payment of the interest, it was held that such interest was no longer secured by the mortgage.

2 *Jones on Mortgages*, § 923, and note 2. 20

A mortgage is security only for the debt thereby secured, and cannot be held for other debts from the mortgagor, even as against him; and the mortgagee will be compelled to discharge the mortgage upon the payment of that debt.

Beardsley vs. Tuttle, 11 Wis., 74.

(2.) The defendant, George B. Swain, took title without notice that the receipts indorsed on the bond did not represent actual payment.

(a.) The defendant, George B. Swain, was informed by the mortgagor that all the interest was paid up to 1872. 30

(Page 16-24 to 36.)

(b.) He was informed by the mortgagee's administrator, that there was only \$350 due on the bond.

(Pages 16-36 to 40; 17-1 to 7.)

Mr. Swain showed by his acts and conduct, that he acted upon the information given him that the interest was paid up to 1872.

40

(a.) He paid off junior liens.

(Exhibits Nos. 5, 10, 11 and 12, pages 35-36.

(b.) He perfected his title and bought out heirs who had interests prior to complainant's mortgage.

(Page 24-8 to 30; Exhibit No. 6, page 35.)

(c.) Mr. Swain was objected to and prevented from testifying.

(Pages 11-11 to 15.)

10

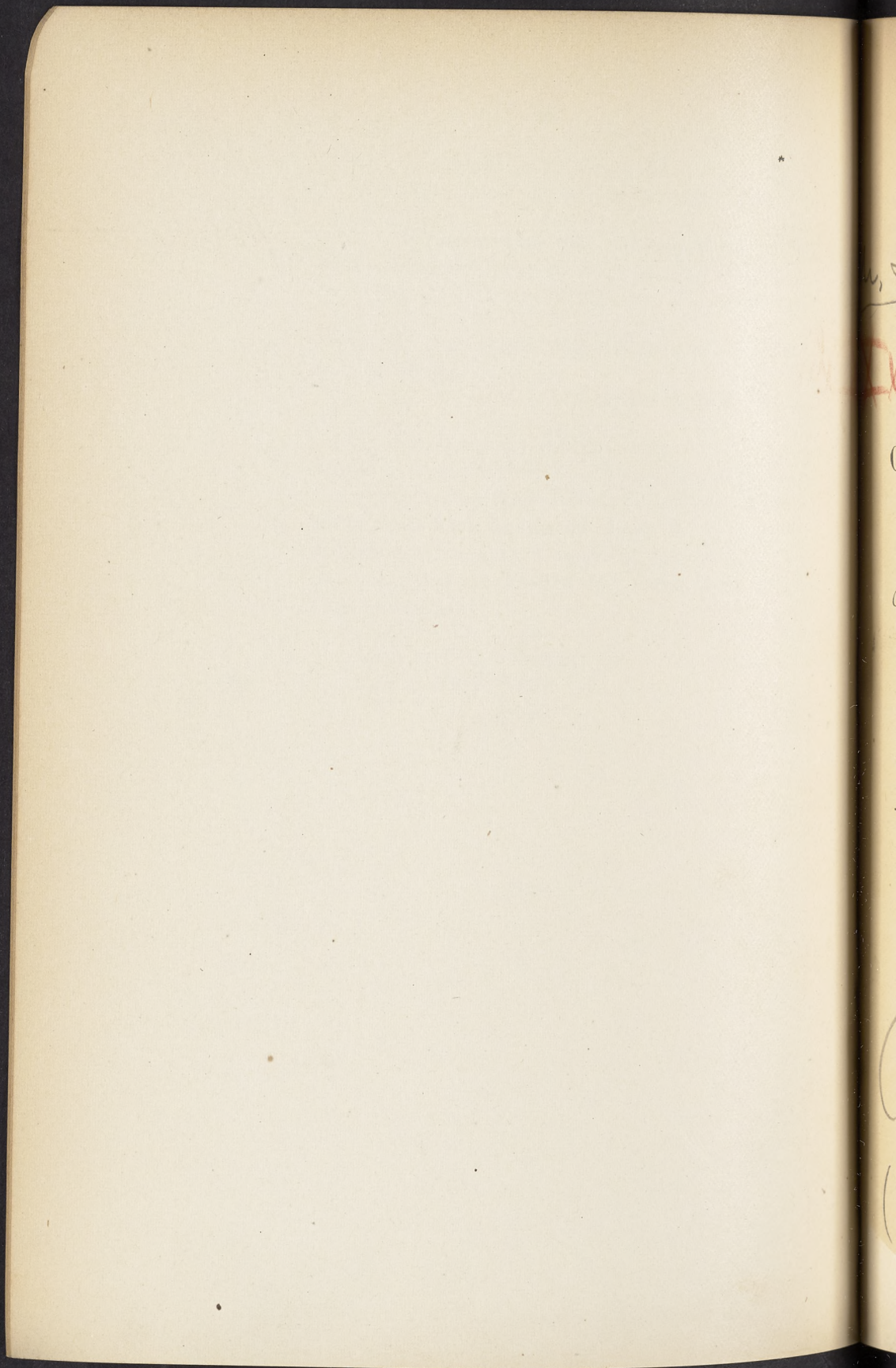
(d.) Wm. R. Frazier, the complainant, and the witness to most of the receipts, although always present at the examination, (page 5-34 to 36,) and who necessarily must have known all about the agreement and amount due, did not contradict Isaac Wildrick's testimony, that he, Frazier, told Swain from \$300 to \$400 was due.

Morse vs Vail, 2 Beasley, 295.

20

2 *Jones Mortg.*, § 931.

" " § 918.



L. Sewell Taylor, for respondent

161

NEW JERSEY
COURT OF ERRORS AND APPEALS.

GEORGE B. SWAIN,
Appelant,

and

WILLIAM R. FRAZIER,
Adm'r of Susan Wildrick, Respond't.

RESPONDENT'S POINT.

Counsel for Respondent would respectfully submit the following points :

- I. The decree advised by the Vice Chancellor should be affirmed, because the answer and the evidence show clearly that the money agreed to be paid according to the condition of the bond has not been paid.)
- II. That the receipts signed on the bond do not represent payments in cash.)

III. That Susan Wildrick never received or accepted the notes given for the annual payments on the bond (which bond was intended to provide an equivalent for the mortgagee's interest as doweress in the lands mortgaged) in satisfaction of the annual payments due on the bond, and the lien of the mortgage is in full force.

IV. That there is no settlement proved to have taken place between Complainant and Defendant at which time as alleged in answer, it was ascertained there was due \$452.27 on the bond in suit.

V. That there can be no estoppel in this case, as Defendant Swain is one of the grantees named in the deed (exhibit No. 4) dated June 1, 1874, for a part of these premises, and Oct. 16, 1875 conveys the mortgage premises to Charles B. Thurston, and this conveyance contains this language, "This conveyance is made subject to certain encumbrances now liens on said premises."

(The notes given for the annual payment did not operate as a discharge or satisfaction of the debt, and the acceptance of them cannot have that effect as there is no proof that they were accepted as a discharge or satisfaction of the debt.

(Schenck v. Arrowsmith, 1 Stock., 323.)

(Hutchison v. Swartsweller, 4 Stew., 206.)

(Byles on Bills, 6th Edition, page 571.)

1 (Smith's Leading Case, vol. 1, page 616.)

2 (Jones on Mortgages, vol. 2, sec. 924 & 926.)

(Freeholders of Middlesex v. Thomas, 5 C. E. Gr. 41.)

(New York authorities hold the same view and go farther, and hold that the acceptance by a creditor of a new promise from his debtor to pay a preexisting debt affords no defence whatever to a suit on the original cause of action, even if the creditor expressly promised that the new promise shall operate as a satisfactor of the old.

(Frisler v. Larned, 21 Wend. 452)

(Rice v. Dewey, 54 Barb., 455.)

In Chancery of New Jersey.

<p style="margin: 0;"><i>Between</i></p> <p style="margin: 0;">WILLIAM R. FRAZIER, ADMR., &C., of SUSAN WILDRICK,</p> <p style="margin: 0; text-align: center;"><i>Complainant,</i></p> <p style="margin: 0; text-align: center;"><i>and</i></p> <p style="margin: 0;">GEORGE B. SWAYNE ET UX., <i>et al.</i>,</p> <p style="margin: 0; text-align: center;"><i>Defendants.</i></p>	}	<i>On Bill, &c.</i>	10
---	---	-------------------------	----

To the Honorable the Chancellor of the State of New Jersey:

Humbly complaining show unto your Honor your orator, William R. Frazier, administrator of the goods and chattels, rights and credits of Susan Wildrick, deceased, of the township of Frelinghuysen, in the county of Warren and State of New Jersey, that on or about the tenth day of April, in the year one thousand eight hundred and fifty, Abram Wildrick and Isaac Wildrick, of the township of Blairstown, in the county of Warren and State of New Jersey, became and were justly indebted unto the said Susan Wildrick, in the sum of two thousand dollars; and being so indebted, the said Abram Wildrick and Isaac Wildrick, in order to secure the payment of the said sum of money, with interest, did make and execute under their hands and seals and deliver unto the said Susan Wildrick, a certain bond or obligation, bearing date the same day and year last aforesaid, in the penal sum of \$2,000, lawful money of the United States, with a condition thereunder written, that if the said Abram Wildrick and Isaac Wildrick, or either of them, and each of them, their heirs, executors or administrators, should well and truly pay, or cause to be paid,

unto the said Susan Wildrick, her agent or assign, executors, administrators or assigns, the just and full sum of one hundred and twenty dollars, lawful money aforesaid, yearly and every year during her natural life, commencing from the first day April last past; also, to furnish to the said Susan Wildrick fifteen two-horse loads of fire wood, standing in the woods on the farm lately occupied by George Wildrick, deceased, to be furnished from the west side of the mansion house of
 10 said farm, at such place where said Wildrick directs, each and every year during the natural life of the said Susan Wildrick, then this obligation to be void, otherwise to remain in full force and virtue; as in and by the said bond or obligation and the condition thereof, reference being thereunto had, will more fully and at large appear.

And your orator further shows, that the said Abram Wildrick and Isaac Wildrick, in order to secure the payment of the said sum of money above mentioned, together with the interest which should accrue or become due
 20 thereon, executed and delivered unto the said Susan Wildrick, a certain indenture of mortgage, bearing date the same day and year last aforesaid, made by the said Abram Wildrick and Isaac Wildrick, of the first part, and the said Susan Wildrick of the second part; in and by which said indenture of mortgage the said party of the first part did grant, bargain, sell, alien, release, enfeoff, convey and confirm unto the said party of the second part, her heirs and assigns forever, all the following described tract or parcel of land and premises, situate,
 30 lying and being in the township of Frelinghuysen, in the county of Warren and State of New Jersey, being all and singular the farm lately occupied by George Wildrick, deceased, containing two hundred and seventy acres, more or less, adjoining lands of Jacob Armstrong, A. and I. Wildrick, James Blair, John Johnson and others, together with all and singular the tenements, hereditaments and appurtenances thereunto belonging or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues and profits there-
 40 of; and also, all the estate, right, title, interest, use,

property, possession, claim and demand whatsoever, as well in law as in equity, of the party of the first part to the said indenture of mortgage, and every part and parcel thereof, with the appurtenances: to have and to hold the therein above granted and described premises, with the appurtenances, unto the said party of the second part, her heirs and assigns, to and their own proper use, benefit and behoof forever: provided always, and the said indenture of mortgage was therein declared to be upon this express condition, that if the said Abram 10 Wildrick and Isaac Wildrick, the party of the first part to the said indenture of mortgage, their heirs, executors or administrators, should well and truly pay, or cause to be paid, unto the said Susan Wildrick, or to her certain attorney or attorneys, executors, administrators or assigns, the said sum of money mentioned in the condition of the aforesaid bond or obligation, with the interest thereof, at the time and in the manner mentioned in the said condition, according to the true intent and meaning 20 thereof, then the said indenture of mortgage, and the estate thereby granted, should cease, determine and from thenceforth be null and void.

And your orator further shows, that after the execution of the said indenture of mortgage, the same was in due form of law acknowledged by the said Abram Wildrick and Isaac Wildrick before Henry Mingle, a commissioner of deeds, and duly recorded in the office of the clerk in and for the said county of Warren, in Book 7 of mortgages, page 544, on the twenty-fourth day 30 of April, in the year one thousand eight hundred and fifty, as by the certificate of the clerk of the said county, endorsed on the said indenture of mortgage, more fully appears, and to which your orator, for greater certainty, begs leave to refer, if it be necessary so to do.

And your orator further shows unto your Honor, that since the execution of the said bond and mortgage as aforesaid by the said Abram Wildrick and Isaac Wildrick to the said Susan Wildrick, the said Susan Wildrick— 40 to wit—some time in the year of our Lord one thousand

eight hundred and seventy-five, departed this life intestate; and, that afterwards, and on the second day of September, in the year of our Lord one thousand eight hundred and seventy-five, letters of administration upon the estate of the said Susan Wildrick, were granted by George Lommasson the then Surrogate of the county of Warren, upon the estate of the said Susan Wildrick, deceased, to your orator, who accepted the said trust, and took upon himself the burthen of the administration
 10 of said estate.

And your orator further shows, that upon the accepting the duties of said administration, the bond and mortgage so made as aforesaid by the said Abram Wildrick and Isaac Wildrick to the said Susan Wildrick, came into his hands as part of the assets of her said estate, and are now held by him.

And your orator further shows unto your Honor, that since the executon of the said mortgage as aforesaid, and to wit, on or about the sixteenth day of October, in
 20 the year of our Lord one thousand eight hundred and seventy-five, George B. Swayne and Isabella, his wife, John Van Doren and Emma, his wife, (the said parties being the heirs at law of Abram Wildrick, deceased, the said Isaac Wildrick having theretofore, to wit, on or about the first day of January, in the year of our Lord one thousand eight hundred and seventy-four, released and quit claimed all his right, title and interest in and to the premises, described in the mortgage of your
 30 orator, to the said heirs of Abram Wildrick, which deed of release or quit claim is recorded in Warren county clerk's office, in Vol. 21 of deeds for Warren county, page 36, &c.) conveyed part of the above described premises, together with other premises, to one Charles B. Thurston, which conveyance so made of the above described premises, was made subject to all legal encumbrances thereon existing.

And your orator further shows unto your Honor, that on the twenty-sixth day of September, in the year of our
 40 Lord one thousand eight hundred and seventy-six, the

said Charles B. Thurston conveyed part of the premises described in your orator's said mortgage, together with other premises, to the said George B. Swayne, who now owns the same.

And your orator further shows unto your Honor, that since the execution of the said mortgage, now held by your orator, Albert C. Simpson acquired title to some part of the said premises therein described.

And your orator further shows unto your Honor, that since the purchase thereof by the said Albert C. Simpson, all the estate formerly owned by the said Albert C. Simpson and his wife was sold and conveyed by John Gardner, then being sheriff of the county of Warren, to Philip W. Squires and Mrs. Job L. Homadieu, who now own the said premises. 10

And your orator further shows, that, by virtue of the said purchase, as aforesaid, of the premises, Job L. Homadieu, the husband of the said Mrs. Homadieu, claims to have some interest in the said mortgaged premises. 20

And your orator further shows unto your Honor, that John P. Ryan, since the execution of your orator's said mortgage, purchased some part of the premises described in your orator's said mortgage, and now owns the same, and thereby claims to have some interest in some part of the said mortgaged premises.

And your orator further shows unto your Honor, that one Andrew T. Hill, since the execution of your orator's said mortgage, purchased some part of the premises mentioned and described therein, by virtue of which said purchase the said Andrew T. Hill claims to have some interest in the said mortgaged premises. 30

And your orator further shows unto your Honor, that one Catharine M. Lewis now owns a part of the premises mentioned and described in the complainant's bill of complaint, and that she purchased the said premises since the execution of your orator's said mortgage.

And your orator further shows unto your Honor, that one Jesse Lewis, since the execution of your orator's said 40

mortgage, purchased a part of the premises mentioned and described in your orator's said mortgage, and claims to have some lien upon or interest in the said mortgaged premises.

And your orator expressly charges, that if the said Andrew T. Hill, Catharine M. Lewis, Jesse Lewis, Philip W. Squires, Job L. Homadieu and Mrs. Job L. Homadieu, his wife, and John P. Rynan, or any or either of them, have any interest at all in said mortgaged premises, or
 10 any part thereof, said interest is subsequent to the encumbrance of the mortgage now held thereon by your orator.

And your orator further shows and expressly charges, that the said sum of one hundred and twenty dollars, as mentioned in said bond, so secured by the mortgage covering the premises described in this bill, and agreed by the said Isaac and Abram Wildrick to be paid to the said Susan Wildrick yearly and every year during
 20 her natural life, has not been paid; that said sum was not paid yearly and every year during the natural life of the said Susan Wildrick, to her, nor was it paid to any one else for her, or for her use; neither has said sum, that was to have been paid to the said Susan Wildrick during her natural life, been paid to your orator, her administrator, since her decease.

And your orator expressly charges, that more than the said sum of two thousand dollars, as mentioned to be secured in and by said mortgage, now remains due and
 30 owing upon said bond and mortgage to your orator, and your orator expressly charges that while the bond secured by the said mortgage, so held by your orator as aforesaid, has receipted upon it at various times payments of the interest due thereon at the date of such receipt, but your orator expressly charges that said receipts were endorsed thereon, when in fact no money was paid, but that notes of the said Abram and Isaac Wildrick were given at such times for the interest due, and that the said notes have never been paid, although proceedings
 40 have been taken for the purpose of collecting the same,

—yet the interest or money agreed to be paid according to the condition of said bond and mortgage, remains due and unpaid, the same never having been paid to the said Susan Wildrick before her decease, or to your orator since.

And your orator further shows, that the principal money mentioned in the said bond or obligation and secured thereby and by the said deed of mortgage, with large arrears of interest, still remains due and owing to your orator, no part thereof having been paid to the said Susan Wildrick prior to her decease, or to your orator, her administrator, since, so that your orator is greatly delayed and disappointed in the receipt of the said moneys, by means of which said several premises the said deed of mortgage, and the estate thereby mortgaged as aforesaid, have become absolute in your orator and his heirs. 10

And your orator further shows, that the said George B. Swayne and Isabella, his wife, Andrew T. Hill, Catharine M. Lewis and Jesse Lewis, Philip W. Squires, Job L. Homadieu and Mrs. Job L. Homadieu his wife, and John P. Ryman, since the execution of your orator's said mortgage, have possessed and enjoyed, and that they do still possess and enjoy the said mortgaged premises, with the appurtenances, and that they have always received, and still do receive, the rents, issues and profits thereof. 20

And your orator further shows, and expressly charges, that the said mortgaged premises are a slender and scanty security for the payment of the said principal and interest moneys so due to your orator as aforesaid, and that he, or some other person or persons for him, has frequently and in a friendly manner applied to the said defendants above named, or one of them, and requested them, or one of them, to pay and discharge the said principal and interest moneys so due to your orator on the said bond or obligation and deed of mortgage hereinbefore mentioned and set forth; and your orator well hoped that they would have complied with such reason- 30 40

able request of your orator, and would have paid to him the said principal and interest moneys, so as aforesaid due to your orator on the said bond or obligation and deed of mortgage, as in equity and good conscience they ought to have done.

But now so it is, may it please your Honor, that the said defendants above named, combining and confederating together, and to and with divers other persons at present unknown to your orator, but whose names, when
 10 discovered, he prays may be inserted herein, with proper and apt words to charge them as parties defendant hereto, and contriving how to injure and aggrieve your orator in the premises, and to defraud him of the said principal and interest moneys so as aforesaid due to your orator on the said bond or obligation and deed of mortgage hereinbefore mentioned, sometimes give out and pretend, that although your orator's estate in the said mortgaged premises may have become absolute at law, yet that your orator cannot dispose of the same to any purchaser in
 20 any manner, and that the same will be subject to an equity of redemption.

And at other times the said confederates pretend that the said mortgaged premises are charged or chargeable with other encumbrances prior to your orator's said mortgage, but when and to whom given, and for what consideration, they refuse to discover.

Whereas, your orator charges and insists that if any such pretended encumbrances do exist, they are fraudulent and void, and given for no good or valuable con-
 30 sideration, or are paid and satisfied, and kept on foot by fraud to injure and aggrieve your orator; and ought to be delievered up to be canceled, or declared to be of no effect against your orator, who had no notice of any such pretended encumbrances.

All which actings and doings of the said defendants and their confederates are contrary to equity and good conscience; and tend to the manifest wrong, injury and oppression of your orator.

In tender consideration whereof, and forasmuch as
 40 your orator has not a complete and safe remedy in the

premises at and by the strict rules of the common law, nor can foreclose the equity of redemption of the said mortgaged premises, or safely sell the same for the payment and satisfaction of the said principal and interest moneys, so as aforesaid due to your orator on said bond and obligation and deed of mortgage, without the aid and decree of this Honorable Court,

To the end, therefore, that the said defendants herein named, and their confederates, when discovered, may true, full and perfect answer make to all and singular 10
the premises, as fully and particularly as if the same were here again repeated, and they and each of them thereto particularly interrogated, according to the best of their respective knowledge, information, remembrance and belief, without oath, your orator expressly waiving that; and that the said defendants, or some one of them, may be decreed to pay to your orator the said principal sum, so due to him on the said bond or obligation and deed of mortgage hereinbefore mentioned and set forth, and all the interest money now due and to grow due 20
thereon, together with all your orator's costs and charges in this behalf sustained, by a short day, to be appointed by this Honorable Court;

And in default thereof, that the said defendants, and each of them, and all persons claiming or to claim under them, or any or either of them, may be foreclosed of and from all equity of redemption or claim of, in and to the said mortgaged premises, and every part and parcel thereof, with the appurtenances, and may deliver over 30
unto your orator all deeds, demises and writings whatever relating to or concerning the same; or that all and singular the said mortgaged premises, with the appurtenances, may, by the order and decree of this Honorable Court, be sold, and out of the moneys arising from the sale thereof your orator may be paid the full amount of the said principal sum of money, so due to your orator on the said bond or obligation and deed of mortgage as aforesaid, and all the interest now due and to grow due thereon, together with all your orator's costs and charges 40
in this behalf sustained.

- And that your orator may have such further and other relief in the premises as to your Honor may seem meet and shall be agreeable to equity and good conscience, may it please your Honor, the premises considered, to grant unto your orator a writ or writs of subpœna, issuing out and under the seal of this Honorable Court, to be directed to the said George B. Swayne and Isabella, his wife, Andrew T. Hill, Catharine M. Lewis and Jesse Lewis, Philip W. Squires, Job L. Homadieu and Mrs. 10 Job L. Homadieu, his wife, and John P. Ryan, therein and thereby commanding them, and each of them, on a certain day, and under a certain penalty therein to be inserted, 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.
- 20 And your orator as in duty bound, will ever pray, &c.

L. DEWITT TAYLOR,

Solicitor for, and of Counsel with Complainant.

A true copy,

G. S. DURYEE, *Clerk.*

In Chancery of New Jersey.

Between

WILLIAM R. FRAZIER, ADMR., &C.,
of SUSAN WILDRICK, *Dec'd,*

Complainant,

and

GEORGE B. SWAYNE ET UX., *et al.,*

Defendants.

On Bill, &c.

Answer of 10
Geo. B. Swain

The answer of George B. Swain, one of the defendants to the bill of complaint of William R. Frazier, administrator of the goods and chattels, rights and credits of Susan Wildrick, deceased, complainant, and against whom the said complainant hath exhibited his said bill by the name of George B. Swayne, and who says that he is named and called by the name of George B. Swain, and by the said sur-name of Swain hath hitherto been called or known. 20

This defendant, now and at all times hereafter, saving and reserving to himself all and all manner of benefit and advantage of exception to the many errors, uncertainties, and imperfections, in the said bill of complaint contained, for answer thereunto, or unto so much thereof as this defendant is advised it is material or necessary for him to make answer unto, answering, says: 30

This defendant has been informed, and believes it to be true, that the said Abram Wildrick and Isaac Wildrick, in the complainant's bill named, did make and execute a certain bond or obligation and an indenture of mortgage, of such date and of such purport and effect as in the complainant's said bill is mentioned and set forth, but this defendant, for greater certainty therein, craves leave to refer to the said bond and mortgage when the same shall be produced. 40

And this defendant admits that the said Susan Wildrick departed this life about the time mentioned in the said bill of complaint; and that letters of administration were in due form of law granted to the said complainant, and that the said complainant hath taken upon himself the burthen of the administration of said estate, and has in his possession the said bond and mortgage as a part of the assets of said estate.

10 And this defendant further admits the said several conveyances of the said mortgaged premises or parts thereof by the heirs at law of Abram Wildrick, deceased, to one Charles B. Thurston, and also the conveyance of said premises or parts thereof by said Thurston to this defendant, by such indenture of deeds, of such date and of such effect and purport as in the complainant's said bill is mentioned and set forth.

20 And this defendant, further answering, saith he knows not and has not been informed, save by the said complainant's said bill, and cannot set forth as to his belief or otherwise whether the said defendants, Philip W. Squires, Mrs. Job L. Homadiou, Job L. Homadiou, John P. Rynan, Andrew T. Hill, Catherine M. Lewis and Jesse Lewis, or any or either of them, have any interest in said mortgaged premises, or any part thereof, but leaves the said complainant to make such proof thereof as he shall be advised to produce.

30 And this defendant, further answering, denies that the said sum of one hundred and twenty dollars, as mentioned in the said bond and so secured by the mortgage, as set forth in the complainant's bill of complaint, and which said sum as charged in the complainant's bill of complaint, the said Isaac Wildrick and Abram Wildrick agreed to pay to the said Susan Wildrick, yearly and every year during her natural life, has not been paid, but on the contrary this defendant has been informed and believes, and he therefore avers and charges that the said sum of one hundred and twenty dollars was so paid and satisfied to the said Susan Wildrick, yearly, and during every year of her natural life, except as herein
40 below admitted; and this defendant denies that more

than the said sum of two thousand dollars now remains due on said bond so secured by said mortgage; and this defendant insists that on or about the sixth day of May, in the year of our Lord one thousand eight hundred and seventy-six, this defendant, for the purpose of ascertaining the amount remaining due and unpaid on said bond and mortgage, had a settlement with the complainant, and that the amount then and there ascertained to be due from this defendant to the complainant, was the sum of four hundred and fifty-two dollars and twenty-seven cents; that this defendant then and there paid to the complainant the sum of one hundred and two dollars and twenty-seven cents, and that after payment of said last-mentioned sum, the balance due the complainant from this defendant was ascertained and stated to be the sum of three hundred and fifty dollars; and this defendant admits that said sum of three hundred and fifty dollars, together with interest from the sixth day of May, in the year of our Lord one thousand eight hundred and seventy-six, is due and owing to the said complainant on said bond and mortgage.

And this defendant, further answering, admits that said bond has receipted upon it at various times payments of the interest or money due thereon at the date of such receipt or receipts, but this defendant denies that such receipts were endorsed thereon without the payment of money, but this defendant has been informed and believes, and he therefore avers and charges that full payment was made of the moneys so due, on the date of such receipt or receipts, and that the notes so given at such times, were given by the said Isaac and Abram Wildrick, or either of them, in payments of all such sums of money so due for interest, and that they were accepted by said Susan Wildrick as such payments, and that it was the intention of the said Isaac and Abram Wildrick and Susan Wildrick, at the time when said notes were given and taken, that said notes should be in payment and discharge of all such sums of money or interest due on said bond, when such notes were so given, and that the sum now remaining due on said bond is

only the sum of three hundred and fifty dollars, together with interest so as aforesaid.

And this defendant submits and humbly insists that the account so stated and settled as aforesaid, was in fact stated and settled by the said complainant and this defendant, as it purports to be, on the day of the date thereof, and this defendant claims the benefit thereof as a settled account, as if the same had been so pleaded.

And this defendant further submits and humbly
 10 insists that the said several payments so made as aforesaid, and for which the said receipts were given and so endorsed on said bond as aforesaid, were intended and received in full discharge of the moneys so then due and owing on said bond, and that the said Susan Wildrick in her life-time, and the said complainant since her de-
 cease, treated the said notes as full and absolute payments, and that said receipts were intended to signify and show them to be so, and this defendant claims the same benefit as if he had pleaded the same.

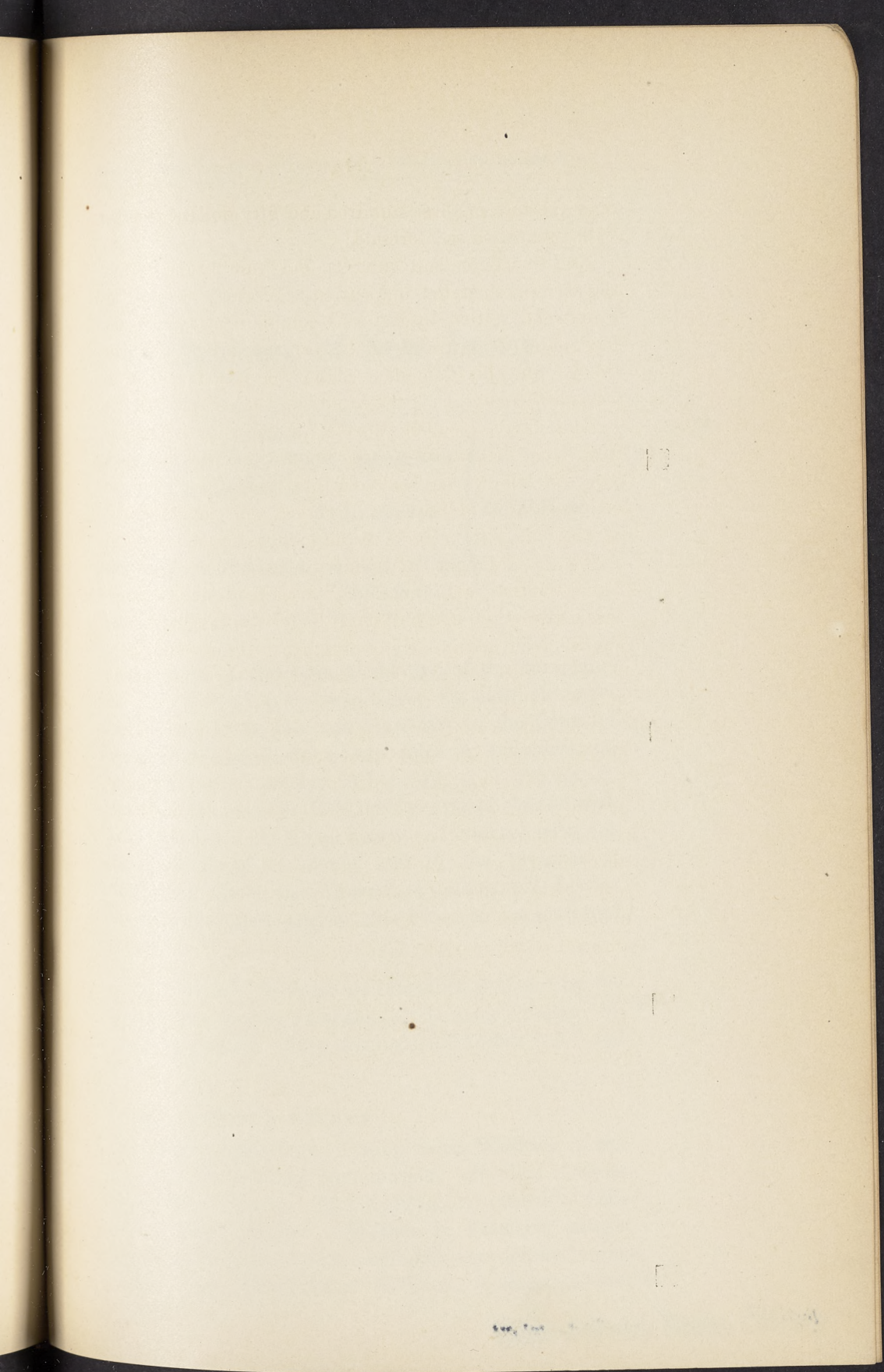
20 And this defendant denies all and all manner of unlawful combination and confederacy wherewith he is by the said bill charged, without that, that any other matter or thing, in the said complainant's said bill of complaint contained, material or necessary for this defendant to make answer unto, and not herein and hereby well and sufficiently answered, confessed or avoided, traversed or denied, is true to the knowledge or belief of this defendant; all which matters and things this defendant is ready and willing to aver, maintain and prove, as this Hon-
 30 orable Court shall direct, and humbly prays to be hence dismissed with his reasonable costs and charges in this behalf most wrongfully sustained.

CARL LENTZ.

Sol'r and of Counsel of Defendant George B. Swain.

A true copy,

G. S. DURYEE, *Clerk.*



1891

In Chancery of New Jersey.

<i>Between</i>	}	10	
WILLIAM R. FRAZIER, <i>Administra-</i>			} <i>On Bill, &c.</i>
<i>tor of Susan Wildrick,</i>			
<i>Complainant,</i>			
<i>and</i>			
GEORGE B. SWAIN, <i>et ux., et al.,</i>			
<i>Defendants.</i>			

Depositions of witnesses on the part of the complainant, taken in the above cause before GEORGE M. SHIPMAN, one of the masters and examiners of the Court of Chancery of New Jersey, at my office in Belvidere, on the fourth day of October, A.D. 1879, at 1 o'clock, P. M., in the presence of L. DEWITT TAYLOR, of counsel with the complainant, and CARL LENTZ, of counsel with the defendant George B. Swain, and in the presence of CHARLES D. THOMPSON, solicitor of Catharine M. Lewis; the notices of the taking of this evidence are produced before me. 20

The bond and mortgage are offered in evidence by the complainant, and the execution of the same admitted by all the defendants. They are marked Exhibits "A" and "B." 20

SARAH ELIZABETH REYMAN.

I reside at Marksboro; I knew Susan Wildrick in her life-time; she was my grandmother; she died August third, three years ago—four years ago, August third; she died in 1875; she died at William R. Frazier's, Marksboro; she was one hundred and one years old, and twenty-four days; I know Isaac Wildrick; I knew Abram 40

Wildrick in his life-time; he is dead; I left home ten years it will be next April; been married eleven years; I am thirty-nine years old.

Witness being shown bond, marked Exhibit A, on part of complainant, says: I have seen that paper before in the hands of Isaac Wildrick, and in Susan Wildrick's hands.

I was present when Isaac Wildrick came to pay interest on that bond—a number of times when he came for
10 that purpose; my name is signed as a witness to some of the indorsements; the indorsements on that bond are in the handwriting of Isaac Wildrick; Susan Wildrick was step-mother of Isaac.

Isaac Wildrick gave notes in payment of interest indorsed on that bond; the notes were made by Isaac Wildrick; they were signed A. and I. Wildrick.

I was present when indorsements of interest were made when I did not sign as a witness.

I know what became of notes given to Susan Wildrick; these notes I saw my father have to bring to Belvidere.
20

Q. Do you know for what purpose he brought them to Belvidere?

(Objected to by Mr. Lentz, because not best evidence.)

A. He brought them to get the money that was due on them; I have heard Mrs. Wildrick ask Isaac Wildrick more than once to pay these notes.

Mrs. Wildrick said she would like to have the money
30 on the notes—notes given—these notes given to her; he said there was no danger but what they would pay her; he had property enough for to pay it all; she said the notes were getting so large she was afraid he would not pay them.

I remember conversation between Mrs. Wildrick and Mr. Wildrick at the time he cried George W. Frazier's vendue.

I heard her ask him for money; he did not pay her
40 any; he hadn't any; I often heard her ask him for money; this vendue was about December 17th, 1873; she

said she was afraid he would never pay it—the money on the notes ; he said he hoped he might sink into hell if he would ever cheat her out of a cent ; I have heard him frequently promise to pay her this money.

I have heard Susan Wildrick say before her death that she was saving, and after her death there would be a nice amount left for my mother ; my mother was only child of Susan Wildrick.

Cross-examined :

10

I am married ; I was married in February, 1869 ; I now reside in Marksboro, not in same house with Mr. Frazier ; I lived with him one year after I was married, and then moved away ; I lived home up to April, 1870, then I left.

Grandmother died in 1875 ; during those last five years I did not live in same house with my grandmother, Susan Wildrick ; she was over one hundred years old ; she knew what she was doing to the time of her death ; she knew what she was doing ; she had her mind all the time ; at the times when Isaac Wildrick came to transact business, he talked with Susan Wildrick, and I never had any thought about whether she was able to transact her business or not ; I saw Mr. Wildrick frequently talked with her on various subjects, not on business, though I did hear her say that she would leave a nice sum, and I thought she was in her senses then. 20

Q. During all the time up to the time of her death, did you see anything that would indicate to you that Mrs. Wildrick was not in a sensible condition—not able to transact her business ? 30

(Objected to, because no cross-examination.)

A. She had her mind until she died.

Q. How often were you present when money was paid on that bond ?

(Question objected to by Mr. Taylor, because witness has not testified to any money being paid.)

A. I don't know the number of times, but I was present quite often.

My father's name is William R. Frazier ; he is the ad- 40

ministrator; George W. Frazier is my brother; Sarah E. Frazier is myself; Emma Frazier is my sister.

Indorsements shown witness on bond, identifies the various signatures of witnesses to indorsements, as William R. Frazier, her father, as Sarah E. Frazier, herself, Emma, her sister, and George W. Frazier, her brother.

10 (Counsel of defendants objects to any evidence from this witness with reference to transactions at any time when indorsements of interest were made on bond, except when she signed as subscribing witness.)

I signed one indorsement as witness, as E. Frazier.

At the time of the first indorsement which I signed as a witness, a note was given; I couldn't say whether there was only a note given; I couldn't say whether money was paid at that time.

The second indorsement I witnessed as E. Frazier, date of which is April 1st, 1865.

20 A note was given at that time; I couldn't say whether anything else besides a note was given.

Q. How did that note read?

(Objected to, because better evidence, by Mr. Taylor.)

A. I don't remember.

The next indorsement I witnessed is dated April 1, 1868, for \$120, and wood in full, witnessed as Elizabeth Frazier; a note was given at that time.

Besides Susan and Isaac and myself at these times, my mother was always present, and Abram was present until he died.

30 My mother handed these notes to Mr. Frazier; I don't know the number of them; I saw them; I could not tell the amounts of the notes; my grandmother kept these notes before she died in her own possession; I couldn't say whole amount of those notes; I knew the notes were the notes Isaac gave, for I saw them; I saw him give them.

Q. Had you seen those three notes that you have testified here before—from time they were given—down to the time Mrs. Frazier gave them to your father?

40 A. I seen them when Isaac Wildrick would be

there; I seen them—all the old notes and new ones; they were all in one box together.

Q. Will you swear that those three identical notes, one for \$240, dated April 1st, 1856, one for \$240, dated April 1st, 1865, and one for \$120, dated April 1st, 1868, were amongst those notes your mother handed to your father to bring to Belvidere?

A. I don't know what notes I put my name to; they were all together, and I supposed they were all brought here; I didn't have the notes in my hands; I didn't read any of them that day. 10

Re direct:

Q. You testified, Mrs. Raymond, you were present when money was paid on this bond; were you correct in that answer?

A. I was not correct in that answer; I did not ever see any money paid on the bond. George W. Frazier is dead.

Q. Do you not know that certain of these notes given for interest on this bond were taken up, and one note given for a large amount of them by I. and A. Wildrick in the life-time of your grandmother? 20

A. Yes, sir.

I don't recollect clearly why it was done; I remember it was all put in one note up to a certain time.

There were other notes given for interest after the large note; I don't remember when large note was given.

Q. Did these notes which your father brought to Belvidere consist of this large note and other notes given after the large note was dated? 30

A. I suppose it did; I had seen these notes before; I saw them every time Isaac Wildrick was there.

Re-cross examined, by Mr. Lentz:

William is not dead; he is here present; Emma is not dead; she is here.

I suppose this \$1,500 note was amongst the notes mother gave father; I did not see them the morning mother gave them to father; that is a part; each note by itself; but I saw her give him the notes to bring to Bel- 40

videre; I saw my mother give my father a bundle of notes to bring to Belvidere.

Witness being shown a paper (Exhibit A), produced by defence, says:

I don't know whether that is my father's handwriting or not; I will not swear anything about it; I am not very familiar with my father's handwriting.

Witness being shown bond, says: this signature to one of the indorsements is in my father's handwriting.

- 10 I know that is father's signature there, because when they were there giving the notes, sometimes they would call on father, and sometimes on me to sign as a witness, and this time he signed.

Witness being shown a paper with the signature of a party to it—

I will not swear that to be the signature of my father.

- 20 (Mr. Taylor objects to production of any paper by solicitor of defendant, and to the examination in reference to same, which papers are marked A and B, on part of defendants, as the same were not produced for examination, and are withheld by the solicitor.)

Sworn and subscribed before me, October 4th, 1879, } SARAH E. FRAZIER.

GEORGE M. SHIPMAN, *M. C. C.*

EMMA MARTHS:

- 30 I am thirty-seven years old; I knew Susan Wildrick in her life-time; she could not write; I left home in 1869; I know Isaac Wildrick.

(Shown bond, marked Exhibit A, on part of complainant)—

- I was present when the indorsements or some of them were made on that bond; I witnessed two; I was present when other indorsements were made; notes were given when these indorsements were made; A. and I Wildrick's notes were given; I saw notes given frequently when I did not sign as a witness.
- 40

I was present when Mrs. Wildrick asked Isaac for the money on these notes; Mr. Wildrick said he would pay her; said he would never cheat her out of a cent; she said she was afraid they would break, then how would she get her money.

I have heard her ask him to pay her all the interest due on this bond; I heard her dun them every time they came, but they never seemed to have any money.

The last conversation I remember, was about a year before I was married; then she wanted him to pay up 10
all; that took place at father's; the small notes given to my grandmother and indorsed on bond, were exchanged for a note of \$1,575.00; when the amount of indorsements reached that sum, the notes were exchanged for that sum; don't just remember what year that note was given; there were other notes given with stamps on; they said they would pay her; let the \$1,575.00 note stand, and pay her seven per cent. interest on it; the same as on the other notes that were given afterward; the seven per cent. law came around then; they used to 20
come every year, and give a new note for the old note and the interest for the last year, and tear up the old note; they sometimes paid her a little money—interest money on the notes; they never paid any interest on the bond in money.

I don't know how many notes were given, or the amount of them, after the note for \$1,575.00 was given.

Cross-examined, by Mr. Lentz:

I lived with my grandmother until 1869 in same 30
house; she was a very saving woman; she lived with my father the same as one of the family; she spent no money for food at all.

Q. Where did she get means to buy her clothes?

(Objected to by Mr. Taylor.)

A. The little interest money they paid on the notes. I cannot tell how much interest—money in cash, Abram and Isaac Wildrick paid Susan Wildrick.

I know the conversation was had about paying interest when Susan asked them for money the year 1868, 40

for it was the year before I was married; I don't know what year the \$1,575.00 note was given; it was oldest of all; it was three or four years before I was married. Every year notes were given, and notes were given after that.

She said to him: "There are so many failing I am afraid you will fail, and how will I get my money then," and he said: "Oh, God! I am not going to die yet; I have a lease on my life; I have got plenty of property,"
 10 and he would not cheat her out of a cent; that was in 1868; since then I know nothing about it; I was not present at any transaction.

I don't know how much money has been paid since 1868, either by Mr. Wildrick, or by Mr. Swain.

Re-direct, by Mr. Taylor:

Q. Did Susan Wildrick at any time, when these notes were given on this bond, say that she didn't expect them to pay her the interest on this bond?

20 A. No, sir.

Sworn and subscribed before me, October 4th, 1879, } MRS. EMMA MARTHIS.

GEORGE M. SHIPMAN, M. C. C.

HENRY S. HARRIS:

I am a counsellor-at-law; I was a partner of John N.
 30 Givens, formerly.

William R. Frazier, in 1875, brought to our firm notes for collection.

(Witness being shown statement purporting to be receipt, marked "Exhibit C," is asked)—

Is that a statement of the notes put in your hands for collection by Mr. Frazier?

A. I believe it is; it is signed by Mr. Givens in the firm's name; I think we brought suit on the notes therein described; we never collected anything that I
 40 know of on these notes; three suits were brought.

Q. Will you give the date when judgment was entered, and the amounts for which payment was obtained?

(Objected to by Mr. Lentz. Record of judgment is the best evidence.)

A. Two of the suits were in the Warren Circuit Court, and one in the New Jersey Supreme Court; on the two in the Circuit, judgment was entered January 7th, 1876, for \$737.61 and \$301.57, respectively; that includes costs, and February 23, 1876, judgment for \$2,488.53 was entered in Supreme Court, also including costs. Pleas filed, and a trial. 10

I have been applied to by Mr. Taylor for these notes, and I have searched for them, and I could not find them; I have been applied to more than once.

My recollection is that the judgment for \$301.57 is against Isaac Wildrick alone.

(All above testimony is objected to by Mr. Lentz.)

Cross-examined, by Mr. Lentz:

I don't recollect, but I think notes were given to Mr. Givens; that receipt would indicate. 20

At the date these notes were given, I don't know what they were given for; I didn't talk with Frazier; I simply knew they were notes against Abram and Isaac Wildrick; my impression is they were given for loans or her interest in some estate; the dates of the notes I don't know; I will look for notes further; I may find them.

(Shown mortgage, says)—I can't remember whether I ever saw this mortgage or not before. 20

I think our firm made a search for Mr. Smith.

It was on one of the Wildrick farms in the township of Blairstown, commonly called the "dairy farm;" I never saw Mr. Smith personally.

(Mr. Taylor objects to all the examination of Mr. Harris in reference to the title to the dairy farms, or anything passed with Mr. Smith.)

Sworn and subscribed before me October 4, 1879, } HENRY S. HARRIS.

GEORGE M. SHIPMAN, M. C. C.

In Chancery of New Jersey.

	<i>Between</i>	
10	WILLIAM R. FRAZIER, <i>Administrator of Susan Wildrick, deceased,</i>	}
	<i>Complainant,</i>	
	<i>and</i>	
20	GEORGE B. SWAIN, <i>et ux., et al.,</i>	}
	<i>Defendants.</i>	

On Bill, &c.

Examination of witnesses, &c., on the part of complainant in the above stated cause, taken on the twentieth day of October, A.D. 1879, before SAMUEL H. PENNINGTON, Jr., one of the Masters and Examiners in Chancery of this State, at his office, 751 Broad street, in the city of Newark, in the presence of L. DEWITT TAYLOR, Esq., solicitor for the complainant, and CARL LENTZ, Esq., solicitor for the defendant, George B. Swain, and by their consent.

The complainant offers in evidence copy duly certified of the inventory and appraisement of the personal estate of Susan Wildrick, made by William R. Frazier, administrator, September 1, 1875, for the purpose of showing the amount of note held by the deceased at her death against A. and I. Wildrick and Isaac Wildrick. Same marked Exhibit 1, on the part of complainant.

The complainant's solicitor hereby declared the testimony on the part of the complainant closed.

S. H. PENNINGTON, Jr.,
Master and Examiner in Chancery.

October 20, 1879.

Examination of witnesses, &c., on the part of the defendant, George B. Swain, taken in the above stated cause on the twentieth day of October, A.D. 1879, before SAMUEL H. PENNINGTON, Jr., one of the Masters and Examiners in Chancery of this State, at his office in the city of Newark, in the presence of CARL LENTZ, Esq., solicitor for said defendant, and L. DEWITT TAYLOR, Esq., solicitor for the complainant, by consent of counsel.

10

Defendant's counsel offers as a witness on the part of the defendant, George B. Swain, and complainant's counsel objects to his being sworn as a witness, being a party defendant to the suit and complainant, suing in a representative capacity. Not sworn.

ISAAC WILDRICK, a witness produced on the part of the defendant, being duly sworn on his oath, says :

I reside at Blairstown, Warren county, New Jersey, and am survivor of the firm of A. & I. Wildrick ; Abram Wildrick was my brother, and is dead ; I think he died in 1871, on the twenty-second day of February.

(Witness being shown mortgage marked Exhibit B, for complainant,) says :

I identify the signatures to this mortgage ; one is my signature, and the other is the signature of my brother Abram.

30

(Witness being shown bond marked Exhibit A, for complainant :)

I identify the signatures to this bond ; one is my signature, and the other is that of my brother, Abram ; the indorsements of interest on this bond are all in my handwriting, I believe ; I don't see any there that is not mine ; they are all in my handwriting ; Mrs. Susan Wildrick was my step-mother ; my father's second wife ; I do not know how old she was ; I knew her from the time I was a little boy ; I made the settlement with

40

Mrs. Susan Wildrick as indorsed on the bond in my handwriting.

(Complainant's counsel objects to the last answer, on the ground that there has been no proof that there was any settlement.)

Q. How did you come to write these receipts on this bond?

A She wanted the pay; I came to settle on the bond; 10 she told me how much money she wanted for the year, and then she wanted our note for the balance; she said she wanted it settled up every year, the first of April.

Q What was the understanding or agreement between you and Mrs. Susan Wildrick with regard to the mode of payment? in what manner was the same to be made?

(Question objected to, as being a question relating to a defence not made by the answer.)

A She said she wanted so much money; then she 20 wanted our note for the balance; it was once or twice, or I don't know how often, but it was twice at least; we had plenty of money; she said she only wanted what money she had to use, and would rather have our note for the balance; the notes were drawn, payable with interest; I dated them all the first of April, I think, except when that day fell on Sunday; I went once or twice, and she scolded me because I did not come earlier.

(Defendant reads to witness the testimony of Mrs. Marthis with reference to the conversion or exchange of 30 small notes for a note for \$1,575.)

Q Do you remember such an exchange as mentioned in Mrs. Marthis's testimony?

A My memory is, that there were some other notes, which, put together, made up \$1,575, for which a new note was given.

Q Amongst those notes so exchanged, were there any notes or note given in payment by you for other debts than the interest due on the bond and indorsed thereon?

A Two hundred dollars, I think, was willed to her; 40 that went in; I don't remember of any more; my father

died, I think, the first of April; it was in 1850; my brother and I settled his estate.

Q Was any interest due on that two hundred dollars at the time when the exchange for the \$1,575 note was made?

A I presume the interest would be from 1850; I don't know the date of the note.

Q What note?

A The \$1,575 note; it went into that note; I had before given a note for this \$200 legacy. 10

Q What became of this \$200 note, together with the interest thereon?

A It went into the \$1,575 note.

Q What was the understanding and agreement between you and Mrs. Susan Wildrick with reference to the indorsements or receipts written by you on the bond, and the settlement or settlements made at the time of the indorsement of such receipt, and the notes given at those times?

(Question objected to, 1. Because the indorsements 20 are in writing, and speak for themselves. 2. Because a repetition of a former question.)

A It was considered a final settlement every time a note was given up to the time the note was given.

Q A settlement of what?

A What was due her on the bond.

Q What do you understand by settlement?

A Payment of what was due.

Q What was the understanding and agreement between you and Mrs. Susan Wildrick with reference to A. 30 and I. Wildrick's indebtedness to her—whether the same was to be on the notes, or on the bond?

A On the notes.

Q Was there any reason why Mrs. Wildrick was desirous to have your notes in preference to holding your bond?

(Question objected to, as no part of defendant's answer.)

A She said she wanted to settle up every year, and would rather have notes than the money. 40

Q Were judgments recovered on those notes against you?

A Yes; I believe they were.

Q Have you had any conversation with Mr. Frazier, the complainant, with reference to the release from the lien of those judgments of a part of your lands?

(Question objected to, as no part of the defence made by answer.)

10 A Yes, sir; I agreed to sell a farm in 1876, I think in January of that year, to Jacob Smith of Blirstown for \$10,500; I wanted them to release those judgments from that farm so I could deed it to Mr. Smith, and they would not do it; by they, I mean Mr. Frazier and his wife; his wife was the heir to the estate.

(The whole of the last answer objected to.)

Q What reason did they give for their refusal to release?

(Question objected to, as irrelevant and incompetent.)

20 A I think that they said that their attorney advised them not to do it; the sale did not take place, because of not obtaining the release.

Q Did you suffer any pecuniary damage from the refusal of the Fraziers to release your lands from the lien of their judgments?

(Objected to.)

A Yes, sir; well, if the sale should come now, with loss of interest, it would be \$4,000—perhaps \$5,000.

30 Q Have you lost your property since then?

A Yes; the sheriff sold it.

Q Did you tell Mr. and Mrs. Frazier that upon the sale to Smith being consummated, you would pay them out of the proceeds of the sale?

A No; I could not answer that way; but if they would release it, I could make arrangements so that they could get their pay; the property I bargained to sell to Smith has been sold by the sheriff; I think it was in 1877 or 1876—in the fall, 1877; I could not say for certain the
40 year, without referring.

Q In what year did you part with the property described in the complainant's mortgage?

(Objected to.)

A I think it was in 1875; it might be earlier; I presume George B. Swain, the defendant, is the present owner.

Q Did you have any conversation with Mr. George B. Swain and William R. Frazier, in which you communicated to Mr. Swain the amount of the incumbrances on the lands mentioned in the complainant's mortgage? 10

(Objected to, as irrelevant.)

A I don't remember; we were together; I don't remember much about it.

Q Did you consider the amount for which A. & I. Wildrick had given notes in payment of the interest due, as a lien on the land described in the complainant's mortgage?

(Objected to on the same ground.) 20

A No, sir.

Q Did Mrs. Susan Wildrick, in her life-time, so consider it?

A I think not.

Q Did Mr. William R. Frazier, since her decease, ever claim to you that it was a lien on the land?

A No, sir.

Q Against whom was the debt considered to be?

(Objected to.)

A Against Abram and I, I suppose. 30

Q What do you mean by "I suppose?"

A Against us, of course.

Q Did Mrs. Wildrick in her life-time, and Mr. Frazier since her decease, ever demand of you payment of the bond?

(Objected to.)

A No.

Q What did they ask you to pay?

A The notes. 40

Q What was the financial situation of A. & I. Wildrick during the time these notes were given down to April 1, 1872?

(Objected to, as irrelevant.)

A It was good; we were worth a good deal of money—\$50,000 easy; we considered ourselves worth a good deal more than that.

Q Up to 1872, did Mrs. Susan Wildrick take your notes in preference to cash?

10 A Yes, sir.

Q At the time when the real estate was divided between you and the heirs of Abram Wildrick, deceased, to whom did the land described in the complainant's mortgage go?

(Objected to as irrelevant.)

A To Abram's heirs.

Q At the time of division, were those lands considered by all the parties encumbered with the whole
20 amount of the notes now in controversy?

(Objected to as irrelevant.)

A No, sir; they wasn't so considered; they were conveyed clear of them.

Q Did you communicate to Mr. Swain the fact that those lands were not incumbered by those notes?

(Objected to.)

A Yes, you may say; I don't know that we said any thing but the lands were put in the division as unincum-
30 bered with the notes.

Q Did you tell Mr. Swain that the dower was all paid up to the time of the division between you and Abram's heirs?

A I told him it was settled up to 1872; I think we settled it up to the time of the division, and after that he paid.

Q Were you present at a settlement made between Mr. Frazier and Mr. Swain?

A I was present when Mr. Frazier and Mr. Swain
40 were talking about the amount due on the bond.

Q At that time, did Mr. Frazier claim the amount of the notes as due on the bond?

A No, sir.

Q Can you recollect as near as possible, the amount that he claimed as due?

A I could not be specific as to the amount, but I know it was between \$300 and \$400.

(Witness being shown receipt for \$50, dated March 15, 1877, marked Exhibit 1 for defendant), says—

I should think that the signature to this paper 10 was in the handwriting of Mrs. Frazier, the wife of the complainant.

(Receipt offered in evidence, and marked Exhibit 1 for defendant.)

(Objected to by complainant as no part of defendant's answer.)

(Defendant's counsel offers in evidence check, dated March 29, 1878, made by Swain & Jones, to order of Mr. William Frazier, administrator, for \$50, and by him 20 indorsed, and marked Exhibit 2 for defendant.)

(The signatures and indorsements are admitted by complainant.)

(Receipts dated May 6, 1876, of William R. Frazier, administrator, for \$102.27, offered in evidence, and marked Exhibit 3 for defendant.)

(The signature to this receipt is admitted by complainant's counsel.)

Q Do you know what the understanding and agree- 20 ment was between Mrs. Wildrick and A. & I. Wildrick, as to whether the notes were to be considered as payment?

(Objected to.)

A They were; as I said in the beginning, she was to take part in money, and the rest in notes; this was to be the way of settling every year.

Q What do you mean by saying, "Yes, they were?"

my question was, what were those notes considered by Mrs. Wildrick?

A As cash in settlement.

Q Did Mrs. Wildrick, in her life-time, ever demand of you the payment of the sums of money due on the bond, as distinguished from the notes?

A No; she asked for the money on the notes; the bond was always produced at the time to receipt it for what was due in money and notes at the time of pay-
10 ment.

Q Did Mr. William R. Frazier ever demand of you payment of the sum he now claims as due on the bond?

A No, sir; the notes are what he claimed; I am seventy-six years old last March; I have resided all my life in Hardwick and Blairstown, Warren county, in this State; I have, in my life-time, been constable, justice of the peace, deputy sheriff, sheriff, and member of Congress.

20 Witness being *cross-examined* by complainant, says:

I knew Emma Marthis; I have frequently seen her at Susan Wildrick's when I came to pay interest; she was sometimes there present when I paid interest.

Q Do you now swear that Susan Wildrick, in her life-time, never asked you to pay her all the interest due her on this bond, and that when Emma Marthis was by?

A No, sir; I always paid her; she sometimes asked me when I had not the money by me, but I always gave her what she wanted, and the balance in a note; she has
30 asked me for money; it was for money that I owed her on this bond; when she asked me for money I promised to pay it to her, and did pay it to her.

Q You swear you did pay it to her? did you pay her all that was due her on this bond?

A Every time; in money and notes.

(Witness being shown bond, Exhibit A, for complainant, and his attention called to payment as entered April, 1868.)

40 I gave her money—cash—at the time of that payment;

I gave her money and notes to make up \$120 ; I can't tell you how much was cash, but it was all she asked for.

Q At that date, April 1, 1868, did Mrs. Wildrick hold notes for a large amount which you had given her before that time for interest on that bond ?

A Yes, sir.

Q Did you, on the first April, each year, pay her the interest due upon the notes you had given her before that time, for interest on this bond ?

A In cash and notes, I did, every Spring, but not always on the first of the month. 10

Q Did you continue to pay interest on these notes up to the time of her death ?

A I did ; in cash and notes again ; I paid some of these notes, but the notes held by her at the time of her death, I have not paid ; they are in judgment against me ; I owed Susan Wildrick that \$200 and interest we spoke of to-day, besides the moneys which had accumulated from interest due on this bond.

Q You owed Susan Wildrick no other money except as stated in your last answer ? 20

A I think not ; neither did A. & I. Wildrick.

Q What relation is George B. Swain to you ?

A He married my brother Abram's daughter ; Mr. Lentz married my eldest daughter.

Q Did you cause pleas to be filed in the suits brought against you in these suits ?

A I did ; Mr. Lentz prepared the paper, and I signed them as he directed me.

(Objected to, as not best evidence of the fact.) 30

Q Did you set up as a defence to their notes that part of them were outlawed ?

(Objected to.)

A I don't know ; I did not read it ; I suppose I swore to the plea.

Q Do you swear that you did not set up as a defence to those notes that a part of them were outlawed ?

A I don't know that I did.

Q Do you remember on one occasion before Abram 40

Wildrick's death, Susan Wildrick asking you for interest on this bond in the presence of Mrs. William R. Frazier, and you did not have the money to pay her, and you borrowed \$25 of Mrs. Frazier, for which you gave your note to Mrs. Frazier, and gave the money to Mrs. Wildrick?

A I don't remember.

Q Do you swear that you don't remember ever borrowing any money of Mrs. Frazier to pay interest on this bond?

10 A I don't remember it; I might have done so; if I did, it was to pay on a note.

Q You said on direct-examination that your land property was all sold by the sheriff; was the farm covered by the mortgage sold by the sheriff?

A No, sir; my interest in it was not sold by the sheriff; I had devised it away before that; I deeded it to Abram's heirs; I think it was a year or two before the judgments were recovered; I cannot tell as to dates, but the deeds will show.

20 Q At the time you refer to entering into an agreement for sale of this farm to Mr. Smith, were there any judgments against you?

A There were, held by various parties, for a considerable sum of money altogether.

Q The real estate you spoke of as being sold by the sheriff, was not that sold by virtue of judgments obtained previous to the judgment on these notes?

A They was; my memory as a general thing is good; I know William Van Horn, the assessor of Frelinghuy-
30 sen township.

Q Did you not in 1876, write a letter to Mr. Van Horn, in which letter you requested him to assess William R. Frazier, this complainant for \$3,000, due him on this farm from the Wildricks for interest on this dower bond, and in the same letter ask him to allow a deduction of this amount to George B. Swain, the then owner?

(Question objected to, because Mr. Wildrick had no interest in the property from June 1, 1874, and no testimony has been offered showing at the time specified he acted
40

or was authorized to act, if he acted at all, as the agent of Mr. George B. Swain.)

A I don't remember that I did it; if I did, they can show it.

Q Do you swear that you did not write such a letter?

A No; I do not swear that I did not.

Q Did Mrs. Wildrick ever say to you when you went to settle the interest, and you gave her the notes you have testified to as given, that she never expected or intended that you should not pay her the interest you owed her when you gave her those notes? 10

A She never said to me that she took the notes as pay; how could I tell what she expected.

Q Did she ever say, using the words, "I'll take the notes as pay?"

A Yes, sir; she took the notes as pay, and we settled so every year; that is what she said.

Q Did she say every year, "she took the notes as pay," using those words?

A I would not say "every year," but she would bring the bond out, and we would settle every year, part in cash, and part in notes; that is the way we settled. 20

Q Did she ever say the notes were to be a final settlement, if they were never paid?

A No such question was ever asked her.

(Question repeated.)

A The "never paid" was never talked of; she had it just as she wanted it, part in notes, and part in cash. 30

Q Did Mrs. Wildrick ever say to you that these notes were to be full payment of the interest due on this bond, and did she so agree, even if the notes were never paid?

A She agreed that the notes and money were to be full payment; the words "if never paid," were never talked about.

Q Did Susan Wildrick ever say to you that she considered the note as full payment of the interest due her, and did she ever say that she accepted them in 40

full settlement of the interest on this bond? did she use the words "full payment," or "in settlement?"

A I paid her every Spring, part in money, and part in note, and it was understood that it was full payment and settlement up to the time when the payments were made, every time.

(Question repeated.)

A She wanted the notes and the money in full settlement; that was the understanding; one time she chose
10 the note in preference to the money.

(Question repeated.)

A She said she wanted the money and notes in full payment up to the time—well, yes, she said so, that she accepted them as full settlement of the interest up to the time.

Q Will you give the date when Susan Wildrick ever used the words, "I accept these notes in full settlement of the interest due on this bond?"

20 A No, I could not.

Q Did she use those words April 2, 1860?

A I don't recollect.

Q In 1861?

A I could not put any one year; it was understood what she wanted, and I gave her what she asked for.

Q Did she use these words April 2, 1862, April 1, 1863, April 1, 1865, April 1, 1866, April 1, 1867, April 1, 1868, April 1, 1869, or April 1, 1870?

A I can't recollect no date.

30 Q Did she use these words April 1, 1871, April 1, 1872, April 1, 1854, April 1, 1856, April 1, 1857, April 1, 1858, April 1, 1859?

A I don't remember any date.

Re-direct:

I had made arrangement that if Mr. Frazier and his wife had released the land from the judgments on the notes so that I could have conveyed to Mr. Smith, I could then have paid off the money due on the other judgments.

40 (Objected to.)

Q You have testified to Mrs. Wildrick using certain language, but you could not recollect exact dates; did she not continually, and always on the day of such settlement, use said language or words, or similar words, expressing the same intentions?

(Question objected to, because the witness has testified to her using certain words.)

A I shall have to qualify this; I will not say that she used exactly the form of expression contained in the question; she always, when we settled, was satisfied with the settlement by notes and money; she always said she was satisfied with the settlements. 10

Q You have testified that she said that she accepted the notes as full payment, but you could not recollect the dates when she said so; did she in fact not almost always say so, namely, that she was satisfied with the notes in full payment on each settlement day?

(Question objected to as leading.)

A Not every time; we did not talk about it every time, but she always told me how much money she wanted, and I paid her what she told me, and paid the rest in notes; Mrs. Wildrick was a saving woman in respect of her habit of spending money; she spent no more than she could help. 20

Q How much money did she spend a year?

(Objected to.)

A From \$75 to \$100, I should think.

Q Who supplied her with this money?

(Objected to.) 30

A Myself, or Abram, my brother; she told me she wanted to save all, except what she spent; she lived with Mr. Frazier's daughter, and did not need to spend much; the heirs of Abram Wildrick, deceased, were Isabella, wife of George B. Swain, Isaac H. Wildrick, and Emma Van Doren, wife of George Van Doren.

(Defendant's counsel offers in evidence a quit-claim deed from Isaac Wildrick to George B. Swain and others, dated June 1, 1874, recorded in clerk's office, Warren 40

county, in book 91, pages 36, 37 and 38, marked Exhibit 4 for defendant.)

I wrote this deed ; I put the names of George B. Swain and George Van Doren, because they were the husbands of two of the heirs-at-law of Abram Wildrick ; the deed was intended to be made to Abram's heirs, as their share of the real estate of A. & I. Wildrick ; we executed mutual quit-claims ; I purchased an interest in this property covered by the complainant's mortgage, from William T. 10 Wildrick's heirs ; their heirs were Edward, Adelaide wife of Henry Hulshizer, and Margarie, wife of Thomas H. B. Armstrong ; I gave them a mortgage on the same property ; this is that mortgage—(producing it.)

(Mortgage dated May 19, 1868, recorded April 9, 1869, in Warren county clerk's office, in book 19 of mortgages, on page 13, offered in evidence, and marked Exhibit 5 for defendant.)

The deed, Exhibit 4 for defendant, mentions a legacy 20 to Mrs. Johnson, another heir of George Wildrick, my father ; outside of that, William C. Wildrick and Nancy Wildrick, children of William T. Wildrick, have an interest in this property ; I did not buy their interest ; I understood that Mr. Swain bought it.

(Quit-claim deed from William C. Wildrick and Nancy Wildrick to George B. Swain, dated August 23, 1878, and recorded in Warren county clerk's office in book 105 of deeds, page 604, offered in evidence, and marked Exhibit 6 for defendant.)

30 (Deed from George B. Swain and wife and al., to Charles B. Thurston, dated October 16, 1875, recorded in book 94 of deeds for said county, pages 557, &c., offered in evidence, and marked Exhibit 7 for defendant.)

(Deed from Charles B. Thurston and wife to George B. Swain, dated September 28, 1876, recorded in book 98 of deeds for said county, pages 458, &c., offered in evidence, and marked Exhibit 8 for defendant.)

40 (Release of dower made by Susan Wildrick to Abram & I. Wildrick, dated April 9, 1850, recorded in clerk's

office of said county, in volume 32 of deeds, folio 339 and 340, offered in evidence, and marked Exhibit 9 for complainant.)

(Three notes, each for \$345, to secure which mortgage marked Exhibit 5 was given, and made by Isaac Wildrick and Abram Wildrick, particularly mentioned in said mortgage, offered in evidence, and marked respectively Exhibits 10, 11, and 12 for defendant.)

(Complainant's counsel objects to the offer of Exhibit 10 4 to Exhibit 12, inclusive, because no part of the defence made by the answer, and as being irrelevant; also to the testimony of Mr. Wildrick concerning these several exhibits, as not being re-direct examination, and as being irrelevant.)

Re cross:

Q At the time of the conveyance of this farm in question to George B. Swain, did not Swain know that a large amount of interest on this bond was unpaid? 20

A I think not; he did not complain of it.

Q Was it not agreed that Mr. Swain was to pay the interest due on this bond as part of the consideration for this conveyance?

A No, sir.

Q Has not Mr. Swain, to your knowledge, paid interest on this bond?

A He took possession of the farm, and I understood he paid after that; that is what I heard.

Q You have testified that you were present when Mr. 30 Swain and the complainant were talking about the interest due on this bond; was there any money paid by Mr. Swain at that time?

A I don't recollect whether there was or not.

Taken, sworn and subscribed }
this 20th day of October, } ISAAC WILDRICK.
A.D. 1879, before me, }

S. H. PENNINGTON, Jr.,
Master and Examiner in Chancery.

This examination adjourned by mutual consent of counsel, to Monday, December 8, A.D. 1879, at 10 o'clock in the forenoon at the same place.

S. H. PENNINGTON, Jr.,
Master and Examiner in Chancery.

On Monday, December 8, A.D. 1879, pursuant to adjournment, the defendant, George B. Swain, appeared by
10 his counsel, and offered in evidence warranty deed of Issac H. Wildrick to George B. Swain, dated November 25, 1874, acknowledged in due form before D. A. Ryerson, Esq., Master in Chancery, and recorded in the clerk's office of the county of Warren, on the 27th day of November, A.D. 1874, in book 92 of deeds for said county, on pages 100, &c., as appears by indorsement thereon; same marked by me Exhibit 13 on the part of said defendant.

20 The offer of said deed, Exhibit 13, is objected to by complainant's counsel, as being an attempt to make a defence not set up in the answer.

The complainant, further, by his counsel, "expressly waives any lien by virtue of the judgments recovered on the notes given for interest on the bond in question, and hereby tenders himself ready to surrender the notes when found," and says that he "has only offered evidence in reference to the notes and judgments thereon, for the express purpose of showing the amounts due on the bond
30 for interest, and not for the purpose of having a decree in his favor on said notes, or on the judgments."

To the above waiver, tender, and explanation by complainant's counsel, the defendant, George B. Swain, enters his objection, and by his solicitor, declares the testimony on his part closed this eighth day of December, A.D. 1879.

The above depositions have been taken down in the narrative form, and not by entering both question and

answer, except in cases where from the subject matter and the manner of witnesses, it was, in the opinion of the examiner, necessary for the correct understanding of the evidence, or the deposition of the witness, to take down both question and answer.

S. H. PENNINGTON, Jr.,
Master and Examiner in Chancery.

Newark, December 8, A.D. 1879.

EXHIBITS FOR COMPLAINANT.

Exhibit A.

- Know all men by these presents, that we, Abram Wildrick and Isaac Wildrick, of the township of Blairstown, in the county of Warren, state of New Jersey, are held and
- 10 firmly bound unto Susan Wildrick, of the township of Frelinghuysen, in the county of Warren, state of New Jersey, in the sum of two thousand dollars, to be paid to the said Susan Wildrick, her heirs, executors, administrators or assigns, to which payment well and truly to be made, we bind ourselves and each of us for himself, our and each of our heirs, executors and administrators, jointly and severally, firmly by these presents; sealed with our seals and dated this tenth day of April, in the year of our Lord one thousand eight hundred and fifty.
- 20 The condition is that if the said Abram Wildrick and Isaac Wildrick, or either of them, and each of their heirs, executors, administrators, shall well and truly pay unto the said Susan Wildrick, her agent or assigns, the just and full sum of one hundred and twenty dollars yearly, and every year during her natural life, commencing from the first day of April, last past; also to furnish to the said Susan Wildrick fifteen two-horse loads of fire wood, standing in the woods on the farm lately occupied by
- 30 George Wildrick, deceased, to be furnished from the west side of the Mansion house on said farm, at such place where said Wildricks direct, each and every year during the natural life of the said Susan Wildrick, then this obligation to be void, else to remain in full force.

ABRAM WILDRICK, [L. s.]
 ISAAC WILDRICK, [L. s.]

Sealed and delivered in the presence of
 (The words "at such place where said Wildricks direct" was
 interlined before signing.)

40 JOHN MOORE.

[Endorsements on foregoing bond.]

\$480. Rec'd April 1, 1854, of Isaac and Abram Wildrick, on settlement, four hundred and eighty dollars in full of the amount due to this date; also the wood named in the bond.

SUSAN ^{Her} × WILDRICK.
Mark.

WM. R. FRAZIER.

\$240. Rec'd April 1, 1856, of I. and A. Wildrick, two hundred and forty dollars in full of interest; also the 10 wood up to date.

SUSAN ^{Her} × WILDRICK.
Mark.

SARAH E. FRAZIER.

\$120. Rec'd April 1, 1857, one hundred and twenty dollars in full of interest for this date; wood.

SUSAN ^{Her} × WILDRICK.
Mark.

WM. R. FRAZIER.

\$120. Rec'd April 1, 1858, of I. and A. Wildrick, one hundred and twenty dollars in full of interest, and the wood. 20

SUSAN ^{Her} × WILDRICK.
Mark.

WM. R. FRAZIER.

\$120. Rec'd of I. and A. Wildrick, one hundred and twenty dollars in full to April 1, 1859.

SUSAN ^{Her} × WILDRICK.
Mark.

EMMA FRAZIER. 30

\$120. Rec'd April 2, 1860, one hundred and twenty dollars, and the wood, in full up to date.

SUSAN ^{Her} × WILDRICK.
Mark.

\$120. Rec'd April 2, 1861, one hundred and twenty dollars, and wood, in full to date.

SUSAN ^{Her} × WILDRICK.
Mark.

GEO. W. FRAZIER. 40

\$120. Rec'd April 2, 1862, of I. and A. Wildrick, one hundred and twenty dollars, and wood, in full up to this date.

SUSAN ^{Her} × WILDRICK.
Mark.

GEO. W. FRAZIER.

\$120. Rec'd April 1, 1863, of I. and A. Wildrick, one hundred and twenty dollars, and wood, in full up to this date.

10

SUSAN ^{Her} × WILDRICK.
Mark.

EMMA FRAZIER.

\$240. Rec'd April 1, 1865, two hundred and forty dollars in full, for two years, and wood.

SUSAN ^{Her} × WILDRICK.
Mark.

E. FRAZIER.

20 \$120. Rec'd one hundred twenty dollars and wood, for the year 1865, to 1st April, 1866.

SUSAN ^{Her} × WILDRICK.
Mark.

GEO. W. FRAZIER.

\$120. Rec'd April 1, 1867, of I. and A. Wildrick, one hundred and twenty dollars, and wood, for the year 1866.

SUSAN ^{Her} × WILDRICK.
Mark.

30 \$120. Rec'd April 1, 1868, of I. and A. Wildrick, one hundred and twenty dollars, and wood, in full.

SUSAN ^{Her} × WILDRICK.
Mark.

ELIZABETH FRAZIER.

\$120. Rec'd April 1, 1869, one hundred and twenty dollars in full, for interest, and wood.

\$120. Rec'd April 1, 1870, one hundred and twenty dollars in full, for interest, and wood.

40 \$120. Rec'd April 1, 1871, one hundred and twenty dollars in full, for interest, and wood.

\$120. Rec'd April 1, 1872, one hundred and twenty dollars in full of interest, and wood.

Exhibit B.

THIS INDENTURE, made the tenth day of April, in the year of our Lord eighteen hundred and fifty, between Abraham Wildrick and Isaac Wildrick, of the county of Warren, and state of New Jersey, of the first part, and Susan Wildrick, of Frelinghuysen, county of Warren, of the second part, the county of Warren, and state of New Jersey, of the second part, witnesseth, that the said party of the first part, for and in consideration of two thousand dollars, good and lawful money of the United States of America, to them in hand well and truly paid, by the said party of the second part, at and before the sealing and delivery of these presents, the receipt whereof is hereby fully acknowledged, and the said party of the first part therewith fully satisfied, contented and paid, have given, granted, bargained and sold, aliened, enfeoffed, conveyed and confirmed; and, by these presents, do give, grant, bargain, sell, alien, enfeoff, convey and confirm, to the said party of the second part, and to her heirs and assigns forever, all singular the farm lately occupied by George Wildrick, deceased, containing two hundred and seventy acres, more or less, adjoining lands of Jacob Armstrong, A. and I. Wildrick, James Blair, John Johnson, and others; the same is situated in the township of Frelinghuysen, Warren county, New Jersey; together with all and singular, the profits, privileges and advantages, with the appurtenances to the same belonging, or in any wise appertaining; also all the estate, right, title, interest, property, claim and demand whatsoever, of the said party of the first part, of, in and to the same, and of, in and to every part and parcel thereof; to have and to hold, all and singular, the above described tract or lot of land and premises, with the appurtenances, unto the said party of the second part, her heirs and assigns, to the only proper use, benefit and behoof of the said party of the second part, heirs and

assigns forever; provided always, and it is agreed by and between the parties to these presents, that if the said Abram Wildrick and Isaac Wildrick, their heirs, executors, or administrators, do and shall well and truly pay or cause to be paid to the said Susan Wildrick the sum of one hundred and twenty dollars yearly and every year during her natural life, and furnish her with fifteen two-horse loads of fire wood each and every year during her natural life, according to the condition of a certain bond

10 bearing even date herewith, without any deduction or defalcation for taxes, assessments or any other imposition whatsoever, that then, and from thenceforth, these presents and the said bond, and everything herein and therein contained, shall cease and be void, anything herein and therein contained to the contrary in anywise notwithstanding; and the said Abram Wildrick and Isaac Wildrick doth for themselves, their heirs, executors and administrators, covenant and grant to and with the said party of the second part, her heirs and assigns, that the

20 said Susan Wildrick shall and may from time to time, and at all times, after default shall be made in the performance of the proviso or condition herein contained, peaceably and quietly enter into, have, hold, use, occupy, possess and enjoy all and singular the above granted and bargained premises, with the appurtenances, without let, suit, trouble, hindrance or denial of the said party of the first part, their heirs or assigns, or of any person or persons whatsoever.

In witness whereof, the said Abram Wildrick and Isaac

30 Wildrick have hereunto set their hands and seals the day and year first above written.

Signed, sealed, and deliv. } ABM. WILDRICK, [L. S.]
 ered in the presence of } ISAAC WILDRICK, [S. S.]

JOHN MOORE.

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

Before me, HENRY MINGLE, one of the commissioners appointed for taking the acknowledgment and proof of

40 deeds, personally appeared John Moore, who declaring

himself conscientiously scrupulous of taking an oath, and being duly affirmed, saith that he was present and saw Abraham Wildrick and Isaac Wildrick, the within named grantors, sign, seal and deliver the within deed as their voluntary act and deed for the uses and purposes therein expressed, and that he subscribed, his name therein as a witness aforesaid before me.

HENRY MINGLE.

April 16th, 1850.

Received April 24th, 1850, and recorded the same day 10
in Warren county Clerk's office, New Jersey, in book of
mortgages, Vol. 7, fol. 544, &c.

J. F. RANDOLPH, *Clerk.*

Exhibit No. 1.

A true and perfect inventory and appraisement of the personal property of Susan Wildrick, late of the county of Warren, deceased, made by William R. Frazier, administrator, and Philip W. Squires and William J. Cook, 20
two disinterested freeholders, this first day of September, A D. 1875:

One bed and bedding,	\$20 00	
Six bed quilts,	12 00	
Five bed blankets,	10 00	
Six sheets and six pair of pillow cases,	6 00	
Wardrobe and stand,	15 00	
Six silver table spoons and six silver tea spoons,	12 00	
Large chest and three trunks,	5 00	
Two bed spreads,	8 00	30
Note of I. & A. Wildrick, dated April 2, 1862,	1,575 00	
Interest for 3 years and 5 mos.,	376 69	
Note do. do. dated April 2, 1866,	336 00	
Interest for 3 years and 5 mos.,	80 36	
Note do. do. dated April 2, 1867,	200 00	
Interest for 3 years and 5 mos.,	47 84	
Note do. do. dated April 2, 1868,	150 00	
Interest for 3 years and 5 mos.,	35 87	
Note of I. & A. Wildrick, dated April 1, 1870,	198 37	
Interest for 3 years and 5 mos.,	57 44	40

	Note of Isaac Wildrick, dated April 1, 1871,	200 00
	Interest for 3 years and 5 mos.,	47 82
	Note of Frederick S. Savercool, dated April 22, 1874,	135 89
	Interest for 4 mos. and 8 days,	3 36
	Note of John S. Ryman, dated April 1, 1874,	75 00
	Interest for 1 year and 5 mos.,	7 43
	Bond of Abram Wildrick and Isaac Wildrick, dated April 10, 1850, and payment due April 10, 1873,	120 00
10	Interest for 2 years and $4\frac{2}{3}$ mos.,	20 06
	Payment due April 10th, 1874,	120 00
	Interest for 1 year and $4\frac{2}{3}$ mos.,	11 66
	Payment due April 10th, 1875,	120 00
	Interest for $3\frac{3}{4}$ mos.,	2 61
	Due on payment of \$100 from April 10, 1875, to August 3, 1875,	37 50
		<hr/>
		\$2,046 90

20 WM. R. FRAZIER, *Administrator.*
 PHILIP W. SQUIRES, } *Appraisers.*
 WILLIAM J. COOK, }

The original inventory and appraisement, of which the foregoing is a true copy, was proved before me by the oath of William Frazier, administrator, on the second day of September, A.D. 1875, and also by the oath of Philip W. Squires, one of the appraisers, on the same date.

GEORGE LOMMASSON, *Surrogate.*

30 STATE OF NEW JERSEY. } ss.
 WARREN COUNTY, }

I, George Lommasson, Surrogate of the county [L. s.] of Warren, and Clerk of the Orphans' Court, do hereby certify the foregoing annexed to be a true copy of the original inventory and appraisement of the estate of Susan Wildrick, deceased, as full and as true as the same remains on the records in the Surrogate's office.

40 Witness my hand and seal of office, the seventh day of October, in the year of our Lord one thousand eight hundred and seventy-nine.

GEORGE LOMMASSON, *Surrogate.*

EXHIBITS FOR DEFENDANT.

Exhibit No. 1.

Rec'd Mar. 15, '77, from Geo. B. Swain, Fifty dollars
on acct. for Wm. Frazier, adms.

ELIZA FRAZIER.

Exhibit No. 2.

No. 1188. Newark, N. J., Mar. 29th, 1878.

THE NATIONAL STATE BANK OF NEWARK,

Pay to the order of Mr. Wm. Frazier, adms., Fifty dollars 10
\$50. SWAIN & JONES.

(Endorsed :

Wm. Frazier, adms.

L. A. Marthis.)

Exhibit No. 3.

Rec'd May 6, '76, from Geo. B. Swain, settlement of
account, for wood and cow pasture, Twenty-six $\frac{15}{100}$ dol-
lars, and cash Seventy-six $\frac{12}{100}$ dollars, amounting to One-
hundred two $\frac{27}{100}$ dollars, on acct. of balance due est. of 20
Susan Wildrick on acct. of dower from A. & I. Wildrick.

WM. R. FRAZIER, Admr.

Exhibit No. 4.

Quit-claim deed, from Isaac Wildrick to George B.
Swain and Isabella his wife, Isaac H. Wildrick, and John
Van Doren and Emma his wife. Dated June 1st, 1874,
and recorded June 10, 1874, in the Clerk's office of War-
ren county, in book 91 of deeds, pages 36, 37 and 38.

Exhibit No. 5.

Mortgage given by Isaac Wildrick and Abram Wild- 30
rick to Edward M. Wildrick, Adelaide Hulshizer, wife of
Henry Hulshizer, and Margie Armstrong, wife of Thomas
H. B. Armstrong, to secure the payment of three notes of
\$345 each, dated May 19, 1868, and recorded April 9,
1869, in the clerk's office of Warren county, in book 19
of mortgages, page 313.

Exhibit No. 6.

Quit-claim deed from William C. Wildrick and Nancy
Wildrick to George B. Swain, dated August 23, 1878, and 40

recorded September 13, 1878, in the clerk's office of Warren county, in book 105 of deeds, pages 604, &c.

Exhibit No. 7.

Warranty deed from George B. Swain and wife, and John Van Doren and wife to Charles B. Thurston, dated October 16, 1875, and recorded October 19, 1875, in the clerk's office of Warren county, in book 94 of deeds, pages 557, &c.

Exhibit No. 8.

10 Deed from Charles B. Thurston and wife to George B. Swain, dated September 28, 1876, and recorded October 21, 1876 in the clerk's office of Warren county, in book 98 of deeds, pages 458, &c.

Exhibit No. 9.

20 Release of dower, made by Susan Wildrick, widow of George Wildrick, in consideration of \$120 paid by Isaac Wildrick and Abram Wildrick, dated April 9, 1850, and recorded April 24, 1850, in the clerk's office of Warren county, in book 32 of deeds, pages 339 and 340.

Exhibit No. 10.

Note of \$345, made by Isaac and Abram Wildrick in favor of Margie Armstrong, wife of Thomas H. B. Armstrong, one-half payable in one year after the death of Susan Wildrick, and one-half in one year thereafter, dated May 19, 1868, and secured by mortgage, (Exhibit 5.)

Exhibit No. 11.

30 Note of \$345, made by Isaac and Abram Wildrick, in favor of Adelaide Hulshizer, wife of Henry Hulshizer, similar to Exhibit No. 10, and same date.

Exhibit No. 12.

Note of \$345, made by Isaac and Abram Wildrick, in favor of Edward M. Wildrick, similar to Exhibit No. 10, and same date.

Exhibit No. 13.

40 Warranty deed from Isaac H. Wildrick to George B. Swain, dated November 25, 1874, and recorded November 27, 1874, in the clerk's office of Warren county, in book 92 of deeds, pages 100, &c.

In Chancery of New Jersey.

ADMINISTRATOR OF
SUSAN WILDRICK, DECEASED,

vs.

GEORGE B. SWAIN.

Opinion.

10

1. The acceptance of the promissory note of a debtor, for a precedent debt, will not operate as a discharge or satisfaction of the debt, unless it is agreed that such shall be its effect.

2. Where a debtor has attempted to discharge a mortgage with his own unsecured paper promise, given to a person of great age and limited education, he should be required to exercise the most scrupulous good faith, and unless he can show that his creditor fully comprehended the legal effect of the acquittance he induced him to give, it should be adjudged to be without legal force.

20

3. A receipt is never conclusive evidence of payment, but is always open to explanation or contradiction by oral evidence.

On final hearing on bill, answer and proofs taken before a Master.

Mr. L. D. TAYLOR, for complainant.

Mr. CARL LENTZ and Mr. JOHN W. TAYLOR, for defendant.

30

VAN FLEET, *V. C.*:

This case presents but a single question. The suit is brought to foreclose a mortgage. The defendant admits a debt of \$350, but the complainant claims a much larger sum. The dispute is confined to the question as to what sum the complainant is entitled to recover.

The mortgage in suit was executed April 10, 1850, by Abram Wildrick and Isaac Wildrick to Susan Wildrick. The mortgagors were the step sons of the mortgagee. The mortgage was given to secure the payment of a

40

bond made by Abram and Isaac to Susan, in the sum of \$2,000, with condition that the obligor should pay the obligee \$120 each and every year during her life. The bond was intended to provide an equivalent for the mortgagee's interest as dowress in the lands mortgaged. Susan died August 3, 1875, at the extraordinary age of 101 years. All the annual payments accruing prior to April 1, 1873, are receipted on the bond. The receipts dated prior to April 1, 1869, are all signed by Susan by
 10 a mark. She could not write. That dated April 1, 1869, and those of subsequent dates, are unsigned. They were all written by Isaac Wildrick, one of the obligors. With one or two exceptions, they admit payment in full to date. That of 1861 may be taken as a fair specimen of the whole. It is in these words: "Rec'd, April 2, 1861, one hundred and twenty dollars, in full to date." It is admitted that the sums stated in the receipts were not wholly paid in cash. What transpired when the receipts were given is thus described by Isaac Wildrick, who, as
 20 already stated, drew all the receipts. "She (Susan) always told me how much money she wanted, and I paid her what she told me, and paid the rest in notes. She was satisfied with the settlements by notes and money; she always said she was satisfied with the settlements." And as to the circumstances under which the notes were accepted, he testified as follows :

30 "Q Did Mrs. Wildrick ever say to you, when you went to settle the interest, and you gave her the notes you have testified to, that she never expected or intended that you should pay her the interest you owed her when you gave her these notes ?

"A She never said to me that she took the notes as pay ; how could I tell what she expected ?

"Q Did she ever say, 'I'll take the notes as pay ?'

"A Yes, sir ; she took the notes as pay, and we settled so every year ; that is what she said.

"Q Did she say every year she took the notes as pay ?

"A I would not say every year ; but she would bring the bond out, and we would settle every year, part in cash and part in notes ; that is the way we settled.

"Q Did she ever say the notes were to be a final settlement, if they were never paid ?

40 "A No such question was ever asked her."

The first receipt was given in 1854, when Mrs. Wildrick was about 80 years of age, and the last in 1872, when she was nearly 98. The course of dealing, as described by Isaac Wildrick, shows that his step mother reposed the utmost confidence in him; she allowed him to draw the receipts, to select the language in which they should be couched, and to transact the whole business in his own way. There was no dealing at arm's length, but Mrs. Wildrick did whatever her step son requested, believing he would not allow her to do anything which might imperil her rights. The relation and character of the parties were such as were likely to inspire a blind confidence on her part. She was the widow of his father, and had a right to rely upon his protection. She was ignorant of the methods of doing such business, and very illiterate. He was a man of affairs, having considerable prominence, both as a business man and a politician. He and his brother were the owners of a large amount of property, and were engaged in enterprises of considerable extent. He had been the recipient of repeated expressions of public confidence, having been advanced by regular gradations, from the office of constable to that of Representative in the Congress of the United States.

The proposition is quite elementary, that the acceptance of the promissory note of a debtor for a precedent debt, will not operate as a discharge or satisfaction of the debt unless it is agreed that such shall be its effect. In *Schanck vs. Arrowsmith*, 1 Stock., 323, Chancellor Williamson declared that the principle was firmly established, that the taking of an additional or other security, of inferior or equal degree would not, *ipso facto*, discharge a lien which attached by reason of an original security. He further said, "If the original security is actually canceled, or the lien created by it generally released, of course no resort can be had to it. It is always a question of intention, sometimes to be ascertained by the legal construction of written instruments and sometimes by the circumstances of the case." The New York adjudications go one step further in protecting the right of the

creditor to his original cause of action. It is there held, that the acceptance by a creditor of a new promise from his debtor to pay a pre-existing debt, affords no defence whatever to a suit on the original cause of action, even if the creditor expressly agrees that the new promise shall operate as a satisfaction of the old. And the reason assigned for refusing to give legal efficacy to the promise of the creditor is, that it has no consideration to support it, being a mere *undum factum*. *Frisler vs. Larned*, 21 Wend., 452; *Cole vs. Sackett*, 1 Hill., 516; *Waydell vs. Luer*, 5 Hill., 449; *S. C. on Error*, 3 Dems., 410; *Rice vs. Dewey*, 54 Barb., 455. A rule, the exact opposite of that just stated, prevails in Massachusetts, and also in Maine. There the law presumes, when a debtor gives his creditor a negotiable promissory note for an antecedent debt, that the creditor accepts it in satisfaction of the original cause of action. 2 *Pars. on Notes*, 150, note A. The rule in force in this State is the one first stated, viz: that a new promise does not discharge the original cause of action, unless it is shown that the parties agreed that such should be its effect. *Freeholders of Middlesex vs. Thomas*, 5 C. E. Gr., 41; *Hutchinson vs. Swartsweller*, 4 Stew., 205. An agreement of that character may be established, either by proof of an express contract or by proof of circumstances which will justify its implication.

The vital question then of this case is, has it been proved that Mrs. Wildrick accepted the notes, which were given for moneys accrued on her bond, with an agreement on her part that her acceptance of them should discharge the lien of her mortgage? The burden of this issue is on the defendant. He asks the Court to believe that this old woman, for a period of over twenty years, fully understanding what she was doing, annually consented to accept mere paper promises in satisfaction of her mortgage, though none of them were ever fulfilled, and though when she accepted the last, the aggregate amount of those previously accepted exceeded the penalty of her bond. It is difficult to believe that any

person, possessing ordinary selfishness, would, for so long a period, pursue a course of such great improvidence; but when it is added that the person who acted thus was a penurious old woman—and that is the character given to her by Isaac Wildrick—he says she was a saving woman, she spent no more than she could help—the story approaches the incredible.

The receipts, under some circumstances, would furnish very cogent evidence that the notes were accepted as satisfaction. But here there is no evidence whatever that the contents of a single one of them were ever made known to Mrs. Wildrick. There is no evidence that they were ever read to her, but that would hardly have been sufficient in a case like the present. In dealing with a person of her great age and limited education in a matter like that under consideration, where a debtor has attempted to discharge a mortgage with his own unsecured paper promise, he should be required to exercise the most scrupulous good faith, and unless he can show that his creditor fully comprehended the legal effect of the acquittance he induced him to give, it should be adjudged to be without legal force. A receipt is never conclusive evidence of payment, but is always open to explanation or contradiction by oral evidence. *Cole vs. Taylor*, 2 Zab., 59; *Crane's adm. vs. Alling*, 3 Green, 423. Chancellor Williamson, in the case already cited, (*Schanck vs. Arrowsmith*,) declared, that in order to determine what effect should be given to a receipt which attempted to discharge a lien without actual payment, the Court ought to scan the relation of the parties, see the character of the debt and the consideration given, and examine the circumstances attending the whole transaction, and unless it appeared that the person giving the receipt understood his rights, and was made fully aware how the receipt would affect them, it ought not to be held that the lien was discharged. And in Massachusetts, where the mere acceptance of the negotiable note of a debtor raises a presumption that the creditor takes it in satisfaction of his pre-existing debt, no less an authority than

Chief Justice Shaw has said, that where this presumption will deprive a creditor of a lien without actual payment, it ought not to be made. *Curtis vs. Hubbard*, 9 Met., 322.

10 When all the facts and circumstances of this case are brought under review, no doubt is left on my mind that Mrs. Wildrick signed the receipts in question without understanding their legal effect, and with no intention to extinguish the lien of her mortgage. She put her mark to them simply because her step son requested her to do so. She trusted him implicitly, and, I have no doubt, believed that he was incapable of contemplating, much less of perpetrating, a fraud against her. Nor do I think that Isaac Wildrick meant that the notes, unless they were paid, should extinguish the mortgage. He doubtless intended to pay them when he made them, and probably the possibility of his being unable to do so never entered his mind. He endorsed full acquittances on the bond, not because he thought he had discharged the debt, nor because he wanted to be released from it without making an honest payment of it, but because 20 that was the method of doing such business with which he was most familiar. In view of the relation and character of the parties, it is impossible to believe that either thought that the notes would extinguish the debt secured by the mortgage, unless they were paid. Can it be doubted, that if at any time during their business intercourse it had been suggested that the proper form of receipt to be given, was, to state that a note had been 30 given for the amount due, which when paid should be in full, that it would have been instantly adopted? I believe the mortgagors would as readily have adopted such a precaution as the mortgagee. I am unwilling to believe that the mortgagors ever desired to obtain an extinguishment of the mortgage, except by fair means. Its execution formed an important part of the original plan of these parties. It was made for the protection of Mrs. Wildrick. The mortgagors doubtless meant that she 40 should have the full benefit of the protection it afforded.

Without clear proof, therefore, of a fraudulent purpose on the part of the mortgagors, it cannot be believed that they intended to induce Mrs. Wildrick year after year, whenever a new right occurred under her mortgage, to release it without payment or compensation, so that as to the past she should be placed in exactly the same unprotected condition that she would have been if at the outset she had taken simply their unsecured promise. And yet this is what the defence insists the mortgagors did. 10

My conclusion is that the notes were not accepted as satisfaction, and consequently that the lien of the mortgage is still in full force.

At the time the mortgage in suit was executed Abram and Isaac Wildrick owned the mortgaged premises, together with other lands, as tenants in common. Abram died intestate in 1871, and subsequently a voluntary partition was made. The mortgaged premises fell to the share of the children of Abram. They, of course, took them subject to the liens created by their ancestor. The mortgaged premises were subsequently conveyed to Charles B. Thurston, and by him to the defendant. Both deeds contain this statement: "This conveyance is made subject to certain encumbrances now liens on said premises." If either grantee had taken title after an inspection of the receipts endorsed on Mrs. Wildrick's bond, and without notice that they did not represent actual payments, the present defendant would undoubtedly be entitled to hold the mortgaged premises free from the lien of the payments so received. *Moore's adm. vs. Vail*, 2 Beas., 295. But nothing of that kind appears. Neither asked to see the bond, nor, so far as appears, made the least effort to ascertain, from the person authorized to speak, what remained due. Under such circumstances the purchaser of the equity of redemption has simply the equity of the mortgagors and nothing more. 2 *Jones on Mort.*, § 918. 20 30

The complainant is entitled to a decree, but with the material at hand, it is impossible to fix the amount. 40

The proof, as it now stands, will perhaps warrant the conclusion that Mrs. Wildrick, at the time of her death, held five notes amounting in the aggregate to over \$2,400, partly representing the debt secured by the mortgage, and partly representing other indebtedness. The notes are not before the Court, nor has any evidence been submitted which will enable the Court to determine what part of each of the annual payments was paid in cash, and how much remains unpaid. This matter must
10 be referred to a Master with directions to take proofs and report.

In Chancery of New Jersey.

Between

SUSAN WILDRICK'S ADMR.,

Complainant,

and

GEORGE B. SWAIN, ET AL.,

Defendants.

10

*On Bill and
Interlocutory
Decree.*

This cause coming on to be heard in the presence of L. De Witt Taylor, of counsel with the complainant, and of Carl Lentz, of counsel with the defendant George B. Swain; and the pleadings and proofs having been read, and the arguments of the respective counsel heard thereon, and it appearing to the Court that the complainant is entitled to relief and to a foreclosure of his mortgage, and a sale of the mortgaged premises to pay his mortgage debt, as prayed for in his said bill, and that in computing the amount due on the complainant's mortgage, only such payments as were made in cash are to be credited thereon, and not those made by notes,

It is thereupon, on this twelfth day of August, in the year of our Lord one thousand eight hundred and eighty-one, ordered, adjudged and decreed accordingly, and it is further ordered and decreed that it be referred to George M. Shipman, Esquire, one of the Masters of this Court, to ascertain and report the amount due to the said complainant for principal and interest upon the mortgage held by him upon the premises mentioned and described in the said bill of complaint upon the principal of this decree, and whether the said mortgaged premises should be sold together or in parcels, and if in parcels,

what order, and that the said Master do make his report thereon with all convenient speed, and all further equity is reserved until the coming in of the said Master's report.

THEODORE RUNYON, *C.*

Respectfully advised,

A. V. VAN FLEET, *V. C.*

10 A true copy,
G. S. DURYEE, *Clerk.*

In Chancery of New Jersey.

Between

SUSAN WILDRICK'S ADMR.,

Complainant,

and

GEORGE B. SWAIN, *et al.*,

Defendants.

On Bill, &c., 10

Notice of Appeal.

The defendant, George B. Swain, hereby appeals from the interlocutory decree made in this Court in the above stated cause, on the twelfth day of August, in the year of our Lord eighteen hundred and eighty-one, and from the whole and every part thereof, as declares the mortgage of the said complainant, in the pleading in the cause mentioned, to be an existing encumbrance upon the mortgaged premises, to the Court of Errors and Appeals in the last resort in all causes. 20

Dated August 19, A.D. 1881.

CARL LENTZ,

Solicitor and of Counsel with Complainant.

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

JOHN W. TAYLOR,

Counsel.

N. J. Court of Errors and Appeals.

	<p style="text-align: center;"><i>Between</i></p> <p style="text-align: center;">GEORGE B. SWAIN,</p>		
10	<i>Appellant,</i>	}	<i>Petition of Appeal.</i>
	<i>and</i>		
	WILLIAM R. FRAZIER, ADMR.,		
	<i>Respondent.</i>		

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

The humble petition of George B. Swain, the appellant in the above-stated cause, respectfully shows that

20 your petitioner finds himself aggrieved by an interlocutory decree, made in the Court of Chancery by his Honor THEODORE RUNYON, Chancellor of New Jersey, bearing date the twelfth day of August, in the year of our Lord one thousand eight hundred and eighty-one, wherein William R. Frazier, administrator of the goods and chattels, rights and credits of Susan Wildrick, deceased, was complainant, and the said George B. Swain and others were defendants, in this respect, to wit—

30 that the said decree adjudges “that the complainant is entitled to relief and to a foreclosure of his mortgage, and a sale of the mortgaged premises to pay his mortgage debt, as prayed for in his said bill, and that in computing the amount due on the complainant’s mortgage, only such payments as were made in cash are to be credited thereon, and not those made by notes.

“It is thereupon, on this twelfth day of August, in the year of our Lord one thousand eight hundred and eighty-one, ordered, adjudged and decreed accordingly, and it is further ordered and decreed that it be referred

40 to George M. Shipman, Esquire, one of the Masters of

this Court, to ascertain and report the amount due to the said complainant, for principal and interest upon the mortgage held by him upon the premises mentioned and described in the said bill of complaint upon the principal of this decree, and whether the said mortgaged premises should be sold together or in parcels, and if in parcels, in what order, and that the said Master do make his report thereon with all convenient speed, and all further equity is reserved until the coming in of the said Master's report." 10

And your petitioner humbly appeals from the said interlocutory decree, and from the whole and every part thereof as aforesaid, upon the ground that the same is erroneous for that, that it orders, adjudges and decrees that the complainant is entitled to relief, and to a foreclosure of his mortgage debts, as prayed for in his said bill, and that in computing the amount due on the complainant's mortgage, only such payments as are made in cash are to be credited therein, and not those made by notes. 20

Your petitioner, therefore, prays that the said interlocutory decree of the said Chancellor may be reversed, set aside, and for nothing holden; and that your petitioner may have such relief in the premises as to this Honorable Court shall seem meet.

N. J. Court of Errors and Appeals.

Between

GEORGE B. SWAIN,

10

Appellant,

and

WILLIAM R. FRAZIER, ADMR., &c.,

Respondent.

*Answer
to Petition of
Appeal.*

20 This respondent, not acknowledging all or any of the matters which in the said petition of appeal are contained to be true, for answer thereunto, nevertheless, says and admits that an interlocutory decree was made and entered by the Court of Chancery in the cause for that purpose mentioned in said petition, as therein stated. But as to the substance and form thereof this respondent prays to refer thereto when the same shall be produced. And this respondent is advised and believes that the said decree is agreeable to equity, and he prays that the same may be affirmed with costs to be adjudged to this respondent.

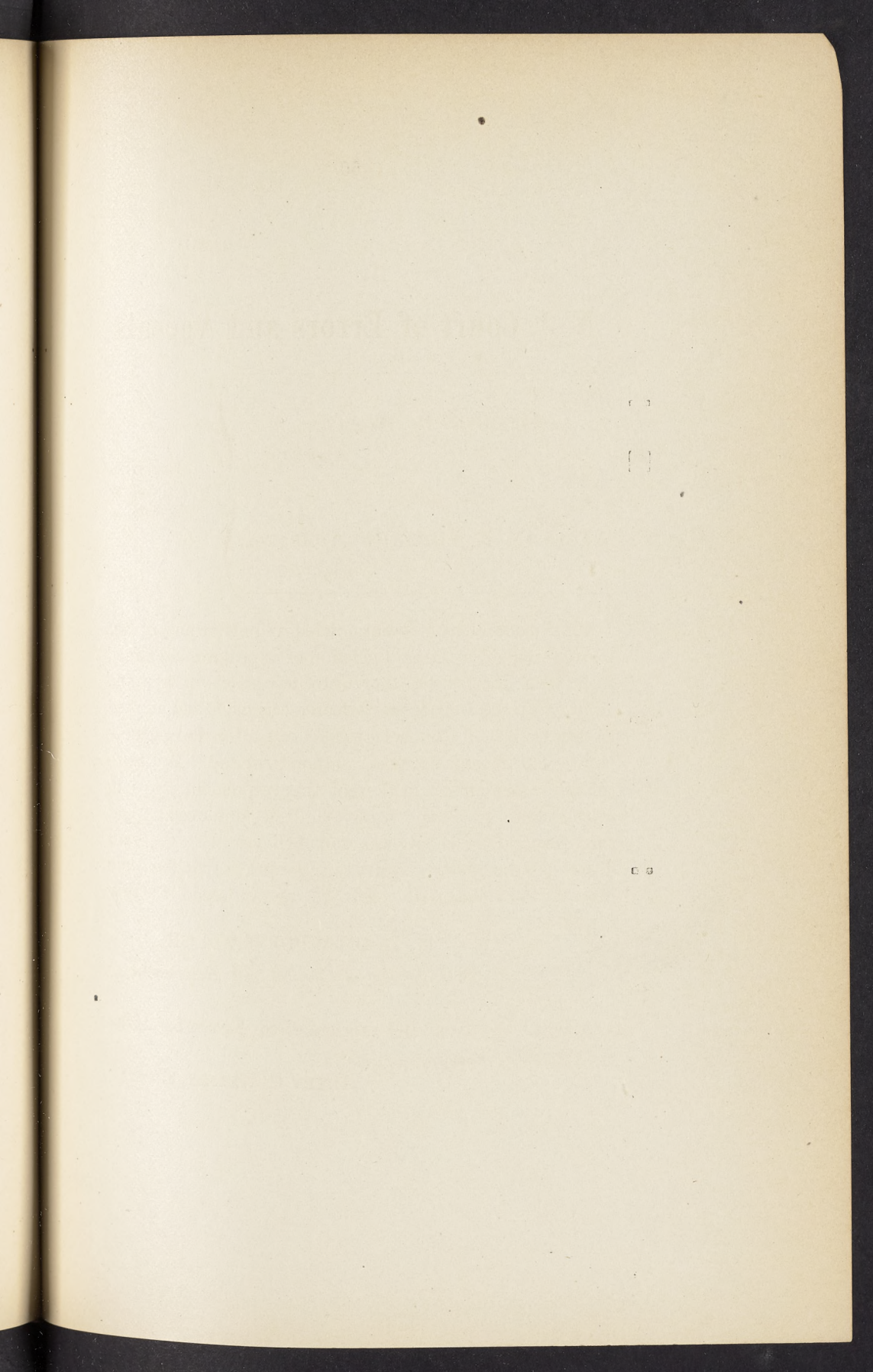
L. DE WITT TAYLOR,

30

Solicitor and of Counsel with Respondent.

A true copy from the original filed November 15th,
A.D. 1881.

HENRY C. KELSEY, *Clerk.*



17