

N. J. Court of Errors and Appeals.

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BETWEEN

JOHN HARPER,

Appellant.

AND

ELLEN HARPER, *et al.*,*Respondents.*

On Appeal from
Chancery.

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Points relied upon by appellant for reversal.

The appellant insists that the decree in this cause should be reversed for the reasons following:

First, because the agreement upon which the bill of 30 complaint is founded, contains a clause to the effect that if the said Ellen Harper shall refuse a deed or mortgage, in case of the sale or mortgage of certain pieces of property mentioned in said agreement as Nos. 403 and 405 Henderson street, Jersey City, and the property known as the Van Vorst property on Henderson street, she should forfeit her right to be paid \$1,750 per year for her support and the support and maintenance of her children, out of the rents which she should collect from this and

other property of the said John Harper, in Jersey City; and the said Ellen Harper, having refused to sign deeds as well as a mortgage, by virtue of which said property had been by John sold and mortgaged, he now asks that said agreement be annuled, for the reason that said refusal was absolute, complete and final on the part of said Ellen Harper, and that the testimony adduced shows this to be so, and that ~~in~~ this regard the said decree of the Chancellor should be set aside and for nothing holden.

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Second, that the said decree should be reversed because the agreement aforesaid contains a clause to the effect that if the said Ellen shall become unable or unwilling to collect said rents, that said John Harper shall have the right to put another person in her place, and that the evidence shows that said Ellen has become unable to attend to the business of collecting these rents, and does not collect the same, and has not collected them and after paying the expenses and her annuity, paid over the residue to said John Harper, and has compelled him to submit to indignities when he has attempted to do business with her, contrary to and in violation of said agreement.

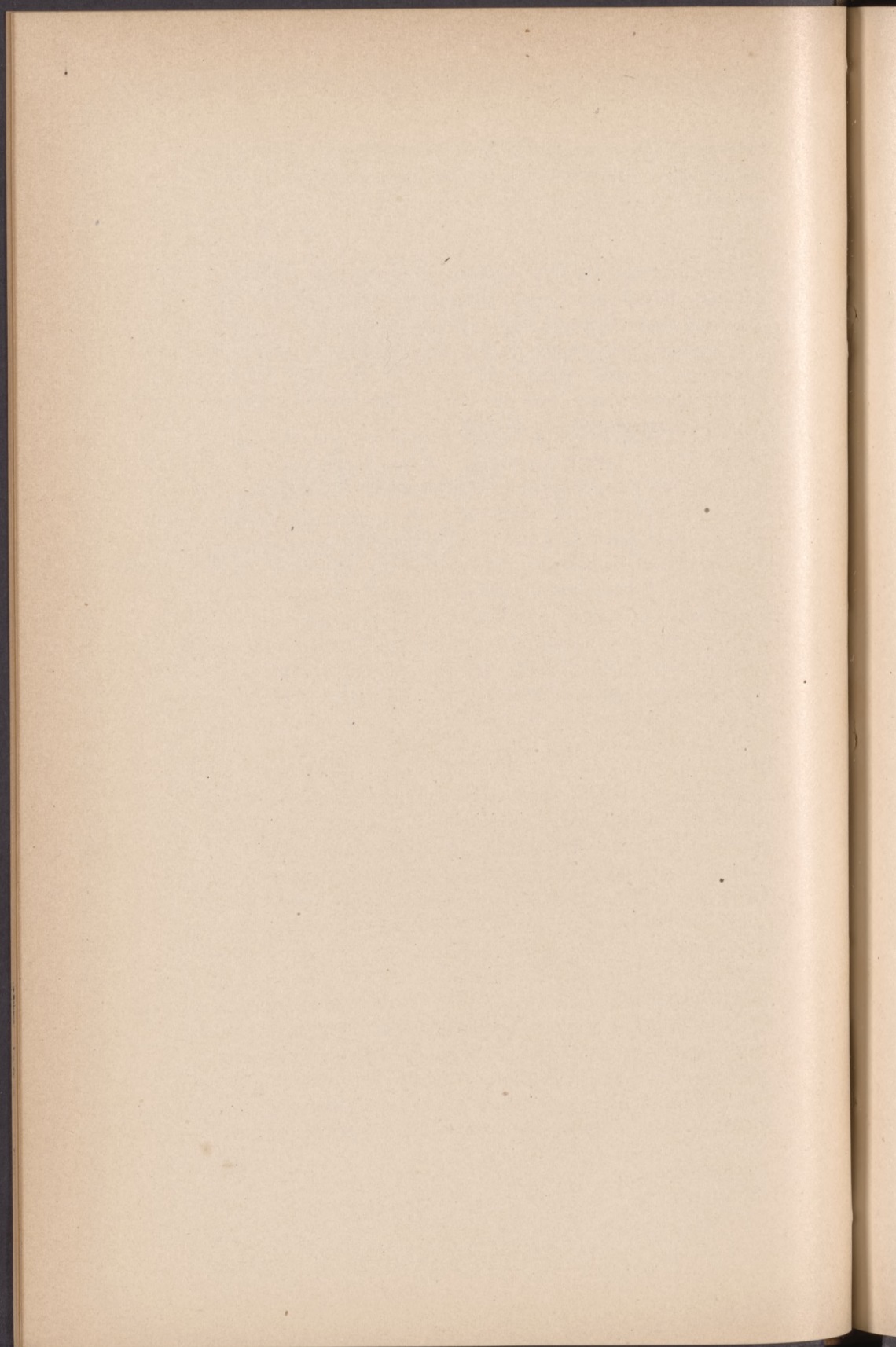
Third, because the Master's report, filed in the cause referred to in the bill of complaint before had in the Court of Chancery between these parties, shows that at the time of filing the bill in this cause said Ellen was indebted to John in the sum of \$147, which she refused to pay over to said John, in direct violation of said agreement.

Fourth, because the Vice-Chancellor adjudges and decrees that while the complainant before him makes out a strong case, he cannot find in his favor, because he was once married to Ellen and had children, and that for that reason, notwithstanding the agreement is in reality between a principal and his agent, he cannot, although the

principal makes a strong case, decide against the agent, for certain other reasons, which have no place in this cause.

Fifth, because the Vice-Chancellor does not rightfully construe the evidence upon these and other points in the case, and that when properly construed, the evidence shows that said respondent has by her absolutely and continued violations of said agreement, made it the duty of the 10 Court, in accordance with the laws of the land, to rescind the same and hold it for naught.

Garret Berry
Atty for Appellant



BILL.

In Chancery of New Jersey.

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To His Honor ALEXANDER T. MCGILL, Jr., Chancellor of the State of New Jersey :

Humbly complaining sheweth unto your Honor your orator, John Harper, of the City of Rahway, County of Union, and State of New Jersey, that he did on the fifteenth day of June, 1883, enter in an agreement, a copy 20 of which said agreement is hereto annexed so as to form a part of this bill, with one Ellen Harper, herein mentioned, of Jersey City, in this State, and Gilbert Collins, Esq., also of Jersey City, in this State, trustee of said Ellen Harper; and that amongst other things the said agreement, as by reference thereto will fully appear, provides that in case of the sale or mortgage by your orator of certain premises described in said agreement as Numbers 403 and 405, located on Henderson street, in the city of Jersey City, or the property known and described in 30 said agreement as the Van Vorst property, on said Henderson street, Jersey City, that she, the said Ellen Harper, will execute a proper deed for barring her claim of inchoate dower in such property so sold, and in case she shall violate this provision, and shall refuse to execute such deed, she shall forfeit her right to the provision made for her by said agreement.

And your orator farther shows that the provision thus

forfeited by the said Ellen Harper in case of her refusal to comply with the above-stated clause in said agreement, is as follows :

“The said John Harper agrees to pay to the said Ellen Harper seventeen hundred and fifty dollars (\$1,750) per year for her life for the support of herself and of the children of the said John and Ellen Harper. And the said Ellen Harper agrees to accept the same in full satisfaction for her claims for such support, and to suitably
10 maintain and educate said children.”

And your orator further shows that on the twenty-third day of May, 1888, your orator presented to the said Ellen Harper a deed for her signature for the sale of the houses and premises known as 403 and 405 Henderson street, the deed being to John D. Ronayne, with an accompanying deed back to John Harper, trustee, for John J. Harper, which said deed so presented to said Ellen Harper she then and there refused to sign, and that she was by
20 your orator presented with a similar deed for her signature of the Van Vorst property mentioned in said agreement, on the fifth day of June, 1888, which deed she also then and there refused to sign.

And your orator farther shows that on the fifteenth day of June, 1888, he called with Judge Rouget, a Commissioner of Deeds, upon the said Ellen Harper, at her residence in Jersey City, for the purpose of getting her signature to a deed for the sale of the Van Vorst property to
30 John D. Ronayne for seven thousand dollars, which said Ellen Harper then and there refused to sign, and that the said Ellen Harper did on the same day refuse to sign a mortgage to the Provident Institution for Savings of Jersey City for three thousand dollars on 403 and 405 Henderson street. And your orator farther shows that on the second day of July, 1888, he presented to the said Ellen Harper a deed for her signature for the sale of the property 403 and 405 Henderson street to Robert T. Howard, at the residence of said Ellen Harper in Jersey City, the

consideration therefor being seventeen thousand dollars, which said Ellen Harper then and there refused to sign. And your orator farther shows that all of said sales above mentioned were bona fide, and that in each case the consideration was good and the price a fair one for the property. And your orator farther shows that said agreement contains a clause as follows :

"It is agreed that the said Ellen Harper shall without charge for the service take the management of the real estate of John Harper in Jersey City, consisting of seven 10 houses, four of which are on the two lots known as Nos. 403 and 405 Henderson street, two of which are numbered 472 and 474 Henderson street, and the other of which is the Van Vorst house on said street. She shall let the property and collect the rents and attend to the repairs, and to the payment of the water rents, taxes and assessments. She shall render a written account monthly of the rents collected and disbursements, and shall pay the amount to the said John Harper, or on his order after deducting the amount expended for repairs, water rents, in- 20 surance, taxes, &c., and after deducting the monthly instalment of said annuity she shall pay twenty-three dollars and fifty cents per month for the floor and premises now occupied by herself and family, of 474 Henderson street, Jersey City, so long as she occupies the same."

And your orator farther shows that the said Ellen Harper has not attended to the repairs of the said premises and the payment of the water rents, taxes, &c., and paid and rendered monthly statements in accordance with said 30 agreement, and after making the proper deductions paid over to your orator balances from time to time due to your orator under said agreement; and that there remains in the hands of said Ellen Harper a large sum of money, to wit, the sum of one hundred and seventy-four dollars and nine cents, which said sum the said Ellen Harper has retained out of the rents collected by her for the year ending July 1st inst., after deducting all allowance claimed by her, as will appear by the report of John Garrick, one

of the Masters of this Court, to whom the matter had been referred by this Court, in another cause pending this Court between said parties, which said report is duly filed in the Clerk's office of said Court at Trenton, which said balance, as well as other balances, although often requested, the said Ellen Harper refuses to pay to your orator. And your orator farther shows that prior to the year ending July 1st inst., large balances were due you. orator from the said Ellen Harper, as reference to said report
10 will show, and that none of the same have been paid to your orator in accordance with said agreement. And your orator farther shows that by said agreement "If the said Ellen Harper is unable or unwilling to properly collect the rents, the said John Harper may select some other person for that service." And your orator farther shows that during the last year the said Ellen Harper has been unable to collect the said rents, owing to the condition of her health, and that she has, during said period, been confined to her bed in consequence of ill health, and
20 that she has intrusted the collection of said rents and repairs to her son George and Mary A. Clark, and that your orator cannot do business with them, and that on all occasions when he has attempted it he has been assailed by all of them, Ellen Harper as well as her children, in violent and abusive terms, so as to make it impossible for your orator to come to any understanding with them, which your orator charges is a violation of said agreement, inasmuch as the same contains a clause that neither your orator nor the said Ellen Harper shall disturb, mo-
30 lest or trouble each other. Your orator therefore charges that the said agreement has been broken on the part of the said Ellen Harper and wholly violated on her part, to the great wrong and injury of your orator. To the end, therefore, that the said Ellen Harper and Gilbert Collins may without oath full, true and perfect answer make to all and singular the matters hereinbefore stated and charged as fully and particularly as if the same were hereinafter repeated and they thereunto distinctly interrogated, and that they may answer and set forth whether

the said Ellen Harper did not refuse to sign deeds and mortgages as charged in said bill of complaint, and whether she has not been unable to collect said rents herself, owing to ill health, as charged in said bill of complaint, and whether she has not disturbed and violently abused your orator, and that said agreement may be decreed to be void and forfeited and set aside and for nothing holden, and that the said Ellen Harper may be decreed to pay your orator the balance found to be due your orator under said agreement, and that she may be 10 restrained from collecting or receiving any further rents under said agreement, may it please your Honor, the premises considered, to grant unto your orator not only the State's writ of injunction, issuing out of and under the seal of this Honorable Court, to be directed to the said Ellen Harper and Gilbert Collins, restraining them and each of them from collecting or receiving any moneys for rent under and by virtue of said agreement, but also the State's writ of subpoena to be directed to them commanding them and each of them by a certain day and 20 under a certain penalty therein to be expressed, appear before your Honor in this Honorable Court, then and there to answer all and singular the said premises, and to stand to abide by and perform such order and decree therein as to your Honor shall seem meet and shall be agreeable to equity and good conscience.

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

GARRET BERRY,

Counsel with Complainant. 30

COPY OF AGREEMENT.

This Indenture, made this fifteenth day of June, in the year of our Lord eighteen hundred and eighty-three, between John Harper of the first part; Ellen Harper, of Jersey City, New Jersey, of the second part, and Gilbert

Collins, of Jersey City, New Jersey, as Trustee for Ellen Harper, of the third part, witnesseth:

The said John Harper agrees to pay to the said Ellen Harper seventeen hundred and fifty dollars (\$1,750.00) per year for her life for the support of herself and of the children of the said John and Ellen Harper; and the said Ellen Harper agrees to accept the same in full satisfaction of her claims for such support and to suitably maintain and educate said children.

- 10 The payment for said sum is provided for as follows: It is agreed that the said Ellen Harper shall, without charge for the service, take the management of the real estate of John Harper, in Jersey City, consisting of seven houses, four of which are on the two lots known as Nos. 403 and 405 Henderson street, two of which are numbered 472 and 474 Henderson street, and the other of which is the Van Vorst house on said street.

- 20 She shall let the property and collect the rents and attend to repairs and to the payment of water rents, taxes and assessments. She shall render a written account monthly of the rents collected and disbursements, and shall pay the amount to the said John Harper or on his order, after deducting the amount expended for repairs, water rents, insurance, taxes, etc., and after deducting the monthly instalment of said annuity. She shall pay twenty-three dollars and fifty cents (\$23.50) per month for the floor and premises now occupied by herself and family at 474 Henderson street, Jersey City, so long as she occupies the same.

- 30 The said John Harper secures the said payment (~~by mortgage of even date herewith to the said trustee~~) on said two houses Nos. 472 and 474 Henderson street.

The said John and Ellen Harper agree for the future to live separate, and each to permit the other to live separate and apart, and not to disturb, molest or trouble each other.

The said Ellen Harper agrees in case of sale or mortgage by the said John Harper of the property known as the Van Vorst property on Henderson street, or of the

property Nos. 403 and 405 Henderson street, or of any part thereof, that she will execute a proper deed for barring her claim of inchoate dower in such property so sold; and in case she shall violate this provision and shall refuse to execute such deed she shall forfeit her right to the provision made for her by this agreement.

If the said Ellen Harper is unable or unwilling to properly collect the rents, the said John Harper may select some other person for that service.

JOHN HARPER. [L. s.] 10
 ELLEN HARPER. [L. s.]
 GILBERT COLLINS. [L. s.]

Sealed and delivered in the presence of

Words "by mortgage of even date herewith to the said trustee," erased before execution.

CHARLES L. CORBIN.

20

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

John Harper being duly sworn on his oath says that he is the complainant in the above bill of complaint, and that all of the matters and things therein stated are true, and that deponent did on the twenty-third day of May, 1888, present to Ellen Harper a deed for her signature for the sale of the premises 403 and 405 Henderson 30 street, as charged in the above bill of complaint; and that on the fifth day of June, 1888, she was presented with a deed for the signature for the Van Vorst property; and that again, on the fifteenth day of June, she was presented with another deed for her signature for the Van Vorst property, and a mortgage of \$3,000 on 403 and 405 Henderson street to the Provident Institution for Savings; and that on the second day of July, 1888, the said Ellen Harper was presented with a deed for her signature of the

premises 403 and 405 Henderson street, as charged in said bill of complaint.

And deponent farther says that on each of these occasions the said Ellen Harper refused to sign said deeds and mortgage, notwithstanding the sales be bona fide and to the persons and for the consideration mentioned in each case in above bill of complaint. And deponent farther says that said consideration in each case was good and the price a fair one, and that in each case and
 10 on each occasion he had with him a person competent under the laws of New Jersey to take acknowledgments of deeds. And deponent farther says that the said Ellen Harper did on each occasion absolutely refuse to sign said deeds and mortgage, and that in presence of witnesses she did violently abuse, molest and disturb deponent in the presence of those persons that were present to take said acknowledgments. And deponent farther says that the said Ellen Harper has been unable through
 20 sickness to perform her duties under said agreement and collect the rents under said agreement, and that those that she had employed, to wit, her son George to do repairs, and daughter Mary Ann to collect said rents, are violent and abusive to deponent. And deponent farther says that the sum of \$174.09 has been retained by said Ellen Harper, after allowing all that she claimed for disbursements, and that \$3,000 would not recompense deponent for the loss he has sustained in consequence of her mismanagement of his affairs under said agreement, and that she
 30 absolutely refuses to pay to deponent any sum or sums of money for rents collected by her under said agreement.

JOHN HARPER.

Sworn and subscribed before me the 16th day of July, 1888.

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

ANSWER

OF DEFENDANT, ELLEN HARPER. 10

—:O:—

In Chancery of New Jersey.

JOHN HARPER,

Complt.

AND

ELLEN HARPER, *et al.*,*Defdts.**On Bills, &c.* 20*Answer.*

The answer of Ellen Harper, defendant, to the bill of complaint of John Harper, complainant: 30

This defendant for answer unto said bill, or to so much and to such parts thereof as she is advised it is necessary or material to make answer unto, answering says:

That she admits that on the fifteenth day of June, A. D. eighteen hundred and eighty-three, the said complainant, this defendant and Gilbert Collins, trustee of this defendant, did enter into an agreement, a copy of which is annexed to said bill of complaint. As to the tenor and

effect of said agreement, this defendant refers to the same when produced and proved, or to the said copy thereof.

And this defendant further answering says, that she admits that in May or June, eighteen hundred and eighty-eight, and probably at or about the dates mentioned in said bill in that regard, it was made known to her that the said complainant requested her to join with him in executing deeds of the property 403 and 405 Henderson street and the Van Vorst property mentioned in said
10 agreement, to one John D. Ronayne. The expressed consideration in each deed was one dollar. She was also told that it was the purpose of the said complainant to procure from the said Ronayne the execution of deeds of said property to the said complainant on certain trusts set forth in certain draft conveyances, shown to the counsel of this defendant. The trusts in these draft conveyances were different. In one of them Margaret Ronayne was a beneficiary, and in both John J. Harper was a beneficiary. They were complicated trusts and not a simple trust for
20 John J. Harper, as seems to be stated in said bill. The documents were submitted by the said complainant to the counsel learned in the law of this defendant, from whom this defendant received all the information she has upon the subject. Upon the advice of such counsel that she was not bound under the said agreement to execute the deed which it was desired she should execute, she declined to execute the same.

She further states that the attendant circumstances were these: She is the wife of the said complainant, having
30 been married to him in A. D. 1854. Prior to the execution of the said agreement, said complainant had left her, claiming to have procured a divorce from her in the Territory of Dakota, and was cohabiting as a husband with a wife with the said Margaret Ronayne. This defendant denied (and still denies) any valid divorce, and was about to file a bill in this Honorable Court against the said complainant for divorce from bed and board, when negotiations were had which resulted in the said agreement. On July 1st, A. D. 1887, this defendant (and

her trustee) had filed a bill in this Honorable Court to secure and establish her rights under said agreement, which were being infringed upon by said complainant, and he had filed a bill in nature of a cross bill attacking the said agreement and also claiming that the rights of this defendant thereunder had been forfeited by refusal to sign deeds. Said controversy had been determined in favor of this defendant, and his bill except for an accounting by this defendant had been dismissed.

The Advisory Master who had heard the cause had in 01 his written opinion read in the cause, decided that this defendant was not bound under said agreement to sign any deed unless on a bona fide sale or mortgage, and also that she was entitled, if requested to sign any paper, to a reasonable time to confer with counsel thereon. The John J. Harper referred to in said bill is the infant son of the said complainant by the said Margaret Ronayne. There were then seven living children of the said complainant and this defendant (one of whom has since died), and this defendant felt it her duty to them not to sign any 20 such deeds as were asked for, as stated in the bill of complaint in this cause, unless she was bound to do so. And she humbly submits that she was not bound to do so.

And this defendant further answering says, that some time in the summer of eighteen hundred and eighty-eight, the said complainant did call upon her with one William J. Rouget, a Justice of the Peace, who may be also a Commissioner of Deeds. This defendant does not remember the exact time, but it was the only occasion of such a call. Upon this occasion this defendant was asked 30 to sign a deed of either the Van Vorst property or 403 and 405 Henderson street, to John D. Ronayne. This defendant supposed that it was one of the deeds above referred to. If such was not the case and the same was a deed upon a bona fide sale for value to said Ronayne, she did not know it. She is illiterate, as is well known to said complainant, and (although requested) no opportunity was given her to consult counsel. She denies that there was any bona fide sale for value to said Ronayne.

She denies that on that occasion or that at any time she refused to sign a mortgage to the Provident Institution for Savings in Jersey City for \$3,000 on 403 and 405 Henderson street, and she states that she was not requested to do so; and she states that the said complainant had not borrowed or arranged to borrow any money from the said Provident Institution for Savings.

And this defendant further answering as to a deed to Robert T. Howard being presented to her for signature 10 on July 2, 1888, says that in August, A. D. 1887, two paper writings purporting to be deeds, were presented to her by said complainant and her signature demanded, to which demand she replied that she would consult counsel, and did so, and returned her answer through counsel. This occurrence was after she had filed¹ her bill in this Honorable Court, and it formed the foundation in part of the bill in the nature of a cross bill filed by the said complainant, as above stated; the said complainant in his proofs claiming that the deeds were to Robert T. Howard, one of the said property 403 and 405 Henderson 20 street, the consideration expressed being eighteen thousand dollars, and the other of the Van Vorst property, the consideration expressed being six thousand five hundred dollars. This defendant attacked the bona fides of the alleged sales to Howard and his pecuniary responsibility, and such bona fide and responsibility were subjects of controversy in the cause which was decided in favor of this defendant. This defendant prays reference to the pleadings, testimony and decree in her said suit and said 30 cross-suit which were tried and decided together; and she prays the same benefit of the said decree as if she had formally pleaded the same. In July, 1888, said complainant did again ask this defendant to sign a deed to said Howard. This defendant did not know the contents of the paper produced. No one accompanied complainant on this occasion. This defendant asked to have the matter submitted to her counsel, but said complainant declined to do so.

And this defendant further answering denies that any of

the so-called sales mentioned in the said bill of complaint were bona fide, or that in either case the consideration was good or the price a fair one for the property.

This defendant further answering denies that she has not attended to the repairs of the premises mentioned in said agreement, or rendered monthly statements in accordance with said agreement, or, after making proper deductions, paid over any balances due to the said complainant under the said agreement, or that any sum remained in her hands July 1st, eighteen hundred and 10 eighty-eight, which she was bound to pay over to said complainant.

She says that while it is true that by the report of John Garrick a certain sum of money was reported to be due from this defendant to the said John Harper, the same was greatly reduced by a decree of this Court, and the amount that was found due was not payable to said John Harper until taxes which he had allowed to accumulate upon the property 472 and 474 Henderson street were paid. Said decree directs the payment of the balance 20 due from this defendant upon the costs of the said Chancery suit, and any future collection over her annuity is decreed to be paid to liquidate said costs and arrears of taxes. This defendant says that the reason she did not pay such water rents and taxes upon the property mentioned in the agreement as she did not pay, is that because shortly after the execution of the said agreement, the said complainant, on his own motion, took from her the collection of the rents of all the said property except 472 and 474 Henderson street, and also assumed to collect the 30 rent of a store in one of those houses. The net rents she received were barely sufficient to pay her annuity, and sometimes entirely insufficient for that purpose. By reason of his failure to keep down the taxes on said 472 and 474 Henderson street, her security had become impaired and she was compelled to file her bill in this Court as aforesaid, one object of which was to enjoin him from collecting the rents of said store, and another object of which was to compel the payment of said arrears of taxes.

As to the contents of said Master's report, as modified by said decree, she refers to the records and files of this Court in said Chancery suits.

And she further states that all the matters brought in controversy by the said bill of complaint in respect to her failure of duty under the said agreement, were in controversy in said Chancery suits, and were decided against the said complainant, and she refers to the said proceedings and decree and prays the same benefits thereof as if she
10 had formally pleaded the same.

And this defendant further answering says, that she denies, as in said bill of complaint charged, that she has been or is unable to collect the said rents; that she denies that the said complainant cannot do business with any agent she has selected to aid her while she has been ill; and she states that the complainant has no occasion to transact any business with any such agent. She denies that the said complainant has been assailed by herself or any agent of hers, or that the said agreement has been
20 broken or violated on her part.

And this defendant submits to this Honorable Court that all and every of the matters in said complainant's bill mentioned and complained of, are matters which may be tried and determined at law, and with respect to which the said complainant is not entitled to any relief in this Court. And this defendant hopes she shall have the same benefit of this defense as if she had demurred to the said complainant's bill.

All which matters and things this defendant is ready to
30 aver, maintain and prove as this Honorable Court shall direct, and humbly prays to be hence dismissed with her reasonable costs and charges in this behalf most wrongfully sustained.

COLLINS & CORBIN,

Solicitors for and of Counsel with said Defendant.

A. true copy.

ALLAN McDERMOTT,

Clk.

ANSWER AND DISCLAIMER

OF DEFENDANT, GILBERT COLLINS. 10

—:O:—

In Chancery of New Jersey.

JOHN HARPER,

Complt.

AND

ELLEN HARPER, *et als.*,*Defdts.*

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} *On Bills, &c.*

The answer and disclaimer of Gilbert Collins, defendant to the bill of complaint of John Harper, complainant: 30

This defendant in answer to the said bill says, that he has not and does not claim, and never had or claimed to have any right or interest in any of the matters in question in this suit, and disclaims all right, title and interest, legal and equitable, in any of the said matters. And he further says that if he had been applied to by the complainant before the filing of the bill, he would have disclaimed all such right, title and interest; and he there-

fore submits that the said bill ought to be dismissed as against him, with costs.

COLLINS & CORBIN,
Solicitors of Def.

A true copy.

ALLAN McDERMOTT,
Clk.

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Replication in usual form.

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TESTIMONY.

— * * —

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In Chancery of New Jersey.

JOHN HARPER

vs.

HELEN HARPER, and GILBERT
COLLINS, Trustee.

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Transcript of shorthand notes of testimony, &c., taken in the above stated case before the Hon. JOHN T. BIRD, Vice Chancellor, at the Vice Chancellor's Chambers in the city of Jersey City, N. J., on Friday, the 14th day of December, 1888, in the presence of

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GARRET BERRY, Esq., Counsel for the Complainant, and

GILBERT COLLINS, Esq., Counsel for the Defendants.

Counsel read Bill and Answer.

EDMUND W. KINGSLAND, Jr., sworn for the complainant.

Direct examination, by Mr. Berry—

Q. You are a resident of Jersey City and an officer of the Provident Institution for Savings in Jersey City?

A. Yes, sir.

Q. Had you money to loan during the last year or two?

A. Yes, sir.

Q. Did Mr. Harper call upon you at any time in the
10 last year concerning the making of a loan from your institution?

A. Yes, sir; I think he called twice.

Q. Where?

A. At the bank, corner of Washington and Plymouth street.

Q. About when?

A. I think the latter part of May and the early part of June.

Q. What did you say to Mr. Harper as to his ability to
20 get money from you?

A. I think I told him if he had the security we had the money.

Q. Do you know the property upon which security was to be given?

Objected to. Admitted.

A. I think he offered two pieces of property.

Q. And you know those properties?

A. Yes, sir.

30 Q. And where they are?

A. I think one piece is on the corner of Henderson and Fourth streets, the Van Vorst property, and I think the other piece was a piece of property on Henderson street, between Third and Fourth.

Q. Do you know the number?

A. 403 and 405, I think.

Mr. Collins—It used to be called Fourth street; it is now Fifth, Henderson and Fifth.

By Mr. Berry—He is right now, it is Fourth.

Mr. Collins—Yes, I am the one that makes the mistake.

Q. The property located as you describe is the property he offered for the loan upon?

A. Yes, sir.

Q. How much?

A. I don't know that he specified the amount. I told him if he had the security we had plenty of money. 01

Q. Is the property such as you would loan \$3,000 upon?

A. Yes, sir; either piece.

Q. That's all.

Cross-examination, by Mr. Collins—

Q. Did he actually apply for a loan, or simply inquire whether you had money to loan in case he applied for it?

A. He asked for a loan. 20

Q. In writing?

A. No, sir.

Q. Was the loan to be on both of these pieces, or on either one according as should be selected?

A. Either one. I don't think he specified that. I told him we had the money if he had the security, which I knew he had.

Q. Do you have a form of application for loans?

A. Yes, sir.

Q. He did not sign any such form? 30

A. Yes, sir.

Q. He never, then, did make a form of application for a loan?

A. No, sir.

Q. You never made any search of title?

A. No, sir.

Q. The only thing that occurred between you was, you said you had money to loan and if he had security you could make the loan?

A. Yes, sir.

Q. And he mentioned what property it was he would offer, if he offered any?

A. Yes, sir: that is it.

Q. That is it. Your bank has a regular printed form made out, with your name printed in?

A. Yes, sir.

Q. And you make loans only on those blanks?

A. Yes, sir.

10 Q. Were any such blanks ever furnished Mr. Harper, or have you any knowledge of any such blanks having been filled out?

A. No, sir.

Q. That's all.

Re-direct examination—

20 Q. Did it make any difference to you whether the blank was furnished by you or procured from other parties, provided it corresponded with your form?

A. Provided it passed through our attorney's hands; I should refer it to the attorney.

Q. It didn't make any difference whether it came from you or not?

A. No, sir.

Re-cross—

30 Q. Can't be had anywhere else, can they—these forms?

A. No, sir; but sometimes they call on our attorney and get them.

Q. From the attorney?

A. Yes, sir.

Further re-direct—

Q. Even if they were your blanks, written, it would

make no difference, would it ?

A. No, sir.

WILLIAM J. ROUGET sworn for the complainant.

Direct examination, by Mr. Berry—

Q. Did you go to Mrs. Harper's residence, in Jersey City, at any time during the month of June, 1888? 10

A. Yes, sir.

Q. For what purpose ?

A. For the purpose of having a deed acknowledged.

Q. Did you hold the proper office to take that acknowledgment?

A. Yes, sir.

Q. What?

A. Commissioner of Deeds.

Q. I show you a paper; what is that? Is that the deed? 20

A. Yes, sir; that appears to be the deed, to the best of my recollection.

Q. Did you see Mrs. Harper?

A. Yes, sir.

Q. What did you do with the deed—make known the contents to her?

A. I took the deed out and told Mrs. Harper what it was, as Mr. Harper directed me to tell her.

Q. After you had explained it to her—you did explain it to her—tell her what it was—a deed? 30

A. I told her it was a deed for the sale of that property corner of Henderson and Fourth street.

Q. Was she requested to sign the deed?

A. Yes, sir; she was.

Q. Did she sign it?

A. No, sir; she did not.

Q. What did she say about it?

A. Well, she said that was a fraud on the face of it, or words to that effect.

Q. Did she read the deed?

A. Well, she looked at it very closely. I don't know whether she read it through or not.

Q. Well, did she say she would sign it or not?

A. She said she would not sign that deed—that particular deed.

Q. Did anything occur between Mrs. Harper and Mr. Harper—what was her manner towards him?

10 Objected to as irrelevant.

The Court—I suppose the only way for the Court to judge will be for the witness to state what passed.

A. Mrs. Harper herself——

Objected to.

20 The Court—In order to determine whether it was an assault or not, I will have to know what took place.

A. Well, Mrs. Harper did not act in any outrageous manner, that I could see; she acted as a lady, Mrs. Harper did. Of course there were one or two others there. Young Mr. Harper did not.

Q. Just state what occurred and then we will get at it.

A. Young Mr. Harper came in the room and acted in a very outrageous manner.

30 Q. State what he did?

Objected to.

The Court—Of course if she concurred in their act she makes it her own. The witness may proceed.

Q. State what was said by each one. You were in the room with the deed talking to Mrs. Harper—you addressed yourself to Mrs. Harper?

A. Yes, sir.

Q. Now, in what way were you interrupted by other people, and what was said and done?

A. Well, Mrs. Harper appeared to me to be very nice, and her daughter appeared—that is, nice also; but the son came in and began to abuse the father at once.

Q. State what he said?

A. Well, he—I don't remember exactly what he said, but he made several threats.

Q. What were they?

10

A. And swore.

By the Court—

Q. You don't remember his language?

A. I don't positively remember just what he said, but I know he acted in a very abusive manner.

Further direct—

20

Q. What did he say when he first came in—what was his first salutation?

A. He says: "You are coming here with some of your dirty business again," or something like that; I don't know really the words he used.

Q. Did Mr. Harper reply to him?

A. I don't think Mr. Harper said anything to him; he kept quiet.

30

Q. What next did he say?

A. Well, I can't remember the exact language, but I know that young Mr. Harper acted in a very abusive manner—in a very threatening manner.

Q. What did he threaten, if anything?

A. Well, he threatened to break his head, or something like that; I don't remember the words he used. I did not think there was going to be any trouble after, and I did not take particular notice of what he said. I know

he acted in a very abusive manner.

Q. So much as to interfere with any business that might be done?

The Court—I will have to judge of that. The witness may state what was said.

Q. Anything said about leaving the house?

A. About ordering Mr. Harper out of the house? I am
10 pretty positive he did order him out.

Q. Did he address himself at all to you?

A. I don't think he did.

Q. That's all.

Cross-examination, by Mr. Collins—

Q. This son you speak of came in after you had asked Mrs. Harper to sign the deed and she had declined?

A. I think at the time he came in I was explaining the
20 deed to Mrs. Harper; I was right beside her, and her daughter was there also—Mrs. Harper's daughter; they were both there.

Q. You went on explaining?

A. I was explaining it at the time.

Q. You finished explaining it?

A. Oh, yes; I made Mrs. Harper thoroughly understand what was in the deed.

Q. You told her it was a deed to John Ronayne?

A. Yes, sir.

30 Q. Of the property on the corner of Fourth and Henderson?

A. Yes, sir.

Q. Do you remember whether or not you mentioned the consideration in it to her?

A. I remember that the consideration was \$7,000.

Q. Do you know whether or not you mentioned it to her?

A. Yes, sir; I am sure I did.

Q. Are you sure simply because you think you must

have done so, or because you vividly remember it?

A. Well, it is in my mind that I did mention the consideration.

Q. Do you say that more because that would be your custom, than from any recollection?

A. Yes, sir; because I opened the deed deliberately—

Q. And you made known the other general contents of it?

A. Yes, sir; I made known it was a deed.

Q. The general contents of the deed throughout? 10

A. Yes, sir.

Q. How do you identify it as the one you had there that day?

A. Well, of course I am not dead positive of it, you know, but it appears to me that that is the deed.

Q. What is it makes you think so—that is not your writing?

A. Well, I remember the name Ronayne.

Q. That might be put in any blank?

A. And I remember the \$7,000—that might be in any 20 blank.

Q. What identifies that particular paper as the one?

A. Well, it is just as I said—to the best of my knowledge that is the paper.

Q. Look at the top, there is the word June. I thought possibly that might be in your hand writing?

A. No, sir.

Q. Then there is nothing that enables you to identify the paper; you put no mark on it?

A. No, sir; of course I can't positively swear that that 30 is the identical paper; to the best of my knowledge it is.

Q. You known Mr. Gilbert Collins?

A. Yes, sir.

Q. What did Mrs. Harper say about him; or if she did not mention a name, about her trustee or her counsel?

A. Well, there was some conversation about Mrs. Harper being allowed to see her counsel, and at first I thought she would make up her mind to see her counsel, but then she came to the conclusion that she would not sign that

deed any how—or at least a deed with that man's name in—under any circumstances, as she considered the whole thing a fraud.

Q. The deed was not left with her?

A. No, sir.

Q. Who took it?

A. Well, I suppose Mr. Harper took it. I did not know anything about what was going to happen—did not know anything about the case. I thought it was an amicable arrangement between the two of them. All I had to do was to go up there and have the deed acknowledged, and go home again.

Q. This abusive expression which you think the son used towards his father, which you think was something like a sentence with breaking his head in it—do you mean that you recollect those words, or that is the class of expression that you faintly remember?

A. I don't know that those were the particular words used, but I do know that several threats were made, and 20 very direct threats—very personal threats. Mr. Harper spoke about having him arrested after, but I advised him not to do it—it was foolish.

Q. Did Mrs. Harper speak about having been already asked before that time, through counsel or otherwise, to sign a deed to John D. Ronayne?

A. No, sir.

Q. Didn't she say this was simply repeating what had already been asked of her?

A. No, sir; did not make any reference to any other 30 deed.

Q. I did not say any other deed—

A. She seemed to understand, or she knew this Ronayne.

Q. And would not sign a deed to him?

A. That is it—would not have anything to do with a deed with his name in, as she said it was a fraud on the face of it.

Q. That's all.

A. That is the way I understood it.

Re-direct examination—

Q. Did Mr. Harper object when she said, or when it was talked of leaving a deed for her counsel to see?

Objected to.

Q. Was there anything said then about leaving the deed for her counsel to see?

A. Well, I don't know of anything that was said about leaving the deed; but Mr. Harper, I believe, mentioned that Mrs. Harper could see her counsel. 10

Q. Concerning the signing of the deed?

A. Yes, sir.

Q. That was his offer?

A. Yes, sir.

Q. With a view of her signing at some other time?

A. That is the way I understood it, to the best of my recollection. 20

Re-cross—

Q. Who spoke about seeing counsel—which one spoke of it, Mrs. Harper or Mr. Harper?

A. Well, I don't recollect positively, but I know Mr. Harper was willing to allow Mrs. Harper to see counsel before she did anything; but then Mrs. Harper came to the conclusion that she would not sign this particular deed anyhow. 30

Q. Don't you remember Mr. Harper using this expression: "I won't fool with Collins any longer; I have lost too much time already"; that Collins had had the deed—been there several weeks.

A. I really don't remember—in fact I never bothered my head about the whole matter, because I did not know when the proceedings were going to be commenced, or anything, and I never tried to recollect anything regarding the case.

Q. Did not Mrs. Harper and her daughter, Mrs. Clark, or one of them, suggest going right down to Mr. Collins then?

A. Not that I remember.

Q. And Mr. Harper made such a remark as: "Judge Rouget was as good a man for such a purpose as acknowledging deeds as Mr. Collins"?

A. I really don't remember any such thing; I was out in the hall a part of the time; I wanted to get away.

10 Q. You didn't hear all the conversation?

A. No, sir; I wanted to get away; I was out in the hallway—

Q. That's all.

WINFIELD S. WEED sworn for the complainant.

Direct examination, by Mr. Berry—

20

Q. You are a resident of Jersey City?

A. Yes, sir.

Q. And you hold the office of Commissioner of Deeds in and for the County of Hudson?

A. Yes, sir.

Q. [Showing witness paper]. Just look at this paper; what is that?

A. A deed.

Q. From whom to whom?

30 A. John Harper and Ellen Harper to Robert T. Howard.

Q. Do you remember seeing that before?

A. I think I do.

Q. What, if anything, did you do with it?

A. Mr. Harper came to my office and asked me if I would go with him to the residence of Mrs. Harper and have her execute this deed?

Q. In Jersey City?

A. In Jersey City.

Q. When?

A. Some time in July, I think so.

Q. What year?

A. This year.

Q. Did you go?

A. Yes, sir.

Q. Where did you go?

A. I went with him to a residence, I think, on Ninth street—it was near Hamilton Park—and he rang the bell and a lady opened the door; he said, “Is your mother in?”

Q. Who said that?

A. Mr. Harper. She says, “I think she is.” He said, “I would like to see her. She said, “Step into the parlor.” We went in. In a little while the lady came in and says, “This is Mrs. Harper.” Says I, “Are you Ellen Harper?” She said she was.

Q. Did you ask that question?

A. I did. I proceeded then as I would with any other deed. I opened it and told her what it was—read it through, word for word. She listened to it attentively until I got through. When I got through she says, “Are you the gentleman that is going to buy the land or house?” I says, “I am a Commissioner of Deeds, and came to get your signature to this—to acknowledge it.” “Well,” she said, “This is another fraud, I guess.” I said, “No, I was merely a Commissioner of Deeds, and came there with Mr. Harper.” With that the young lady commenced to explain something by saying he had been there before, or something, and I did not, of course, know there was to be any trouble; I had never seen Mr. Harper before in my life, and a young man rushed into the room.

Q. Before you go further, what did she say about signing?

A. She hadn't time to say anything; she had refused to sign it and had not time to say anything more.

Q. Did she refuse to sign the deed?

A. She did.

Q. Now, then, go on.

A. I still had the deed in my hand and the young man came into the room, opened the door leading to the hall and went to open the door leading to the street, when the young lady went toward him; he came back in the room; he was very excited; he said, "Get out of here"; I thought that was not very good treatment, going there on business; I turned around to Mr. Harper and I says, "I guess we have made a mistake; you don't want me here
10 to sign deeds; I am going out." The young man made some threats toward Harper—

Q. What did he say?

A. He said, "Get right out of here; you have no business in here; you know you have no business in here." The young lady tried to calm him down, but he would not be calmed, so he commenced to try to talk to Mr. Harper about some insurance—some insurance on the furniture there. I got out toward the hall door and he came again and insisted on Mr. Harper going out; in fact
20 I thought he was going to strike Mr. Harper, and I stood between them; I told Mr. Harper, "I guess we had better leave here; it is not my kind of business."

Q. Did you hear or not any threats that he made; if so, state what?

A. He threatened to throw him in the street.

Q. Was there anything said about going to Mr. Collins and Corbin?

A. Yes, sir; while the row was going on it was a sort of cross-fire; they were quarreling one way and the lady
30 and her daughter were talking the other way. The lady and her daughter said, "Why didn't you go to my counsel. He says, "I will set a day with you and go to your counsel any day; I have been there and will go there again." I advised him to do that; I told him why didn't he set a day and go there.

Q. Well, did they agree to that?

A. No; about that time the excitement ran so high I advised him to get out, and we went out.

Q. That's all.

Cross-examination, by Mr. Collins—

Q. [Showing witness the deed.] Are you able to identify that particular paper in any way—any mark on it?

A. No, sir.

Q. You speak of it as a deed. Of course it is not executed—only a draft?

A. Only a draft.

Q. Is there anything upon it that enables you to know 10 it as the one that you had?

A. I can identify it as the one I had in my hands when I was last examined, the mark is on.

Q. You came before Mr. Lindsley, who took the testimony in this case, and identified it as having been marked, but you cannot tell that the one you had then is the one you had up to the house at Ninth street, by any marks upon it?

A. No, sir.

Q. You do recollect that the deed that you did have, or 20 draft of deed, was one from John and Ellen Harper to Robert T. Howard?

A. Yes, sir.

Q. That you recollect?

A. Yes, sir.

Q. The young man that you say came in, did he make any remark about this particular deed being objectionable?

A. No, sir; he did not object to anything, he objected to everything. He did not give him a chance to say that 30 deed or any other deed.

Q. Did he refer, or anybody in his hearing refer to this being a deed to Robert T. Howard, if you recollect?

A. I read the deed to Mrs. Harper, and she asked if I was Mr. Howard.

Q. This young man, did he?

A. No, sir; he didn't, he was too excited to know what he was doing.

Q. He heard the deed being read?

A. No, sir ; the daughter heard the deed being read.

Q. The young man was not in the room at the time you read it ?

A. Well, about the closing of it, I guess he came in, and he stopped all proceedings.

Q. He was near by—that is, the place he came from was near by ?

A. I could not tell ; he came in one door and rushed through the parlor like a crazy man, in his shirt sleeves, 01 and opened the door leading to the hall, and grabbed the front door and said, “Get out of here.”

Q. The door he opened coming in, was that near where you were standing ?

A. No, sir ; it was the further door from where we were.

Q. How did he learn you were there ; had some one gone out ?

A. No, sir ; he must have known something of us being there, or he heard the reading, or heard something to 20 know we were there.

Q. Do you remember a remark of his with reference to what would be done if Mr. Harper had a bona fide sale of property ?

A. No, sir ; never anything like that at all.

Q. There was a good deal said—all talking at once ?

A. Yes, sir ; much of it may have escaped me ; I didn’t go there for the purpose of getting testimony.

Q. No, sir ; I know you didn’t.

A. I merely went there as Mr. Rouget went—the same 30 way. If I had known he had been there before, I should not have went there ; it was all unbeknownst to me ; what I went to do I had full authority to do.

Q. Take acknowledgments of deeds, yes ?

A. And do it, of course, quite often, the same way ; it is not unusual.

Q. You did not know of any difficulty between these two people before ?

A. No, sir ; I never saw Mr. Harper before in my life ; I have no knowledge of any of his family at all ; don’t

know any of them.

Q. That's all.

JOHN D. RONAYNE, sworn for the complainant.

Direct examination, by Mr. Berry—

Q. Where do you live? 10

A. Rahway.

Q. What is your business?

A. Clerk.

Q. Who for?

A. Pennsylvania Railroad.

Q. Did you make an offer for the property described in that deed to you?

A. I have.

Q. When was it?

A. May 21st—on or about that date. 20

Q. What was the offer?

A. \$7,000.

Q. For what property?

A. The Vandervoort Homestead, corner of Henderson and Fourth street.

Q. What is that offer—how does it compare with its value?

A. I think that it does, yes, sir; I think I would have a bargain if I got it at the price I offered.

Q. Were you ready to carry out the bargain and purchase the property? 30

A. I was, yes, sir, at that time.

Q. You don't know why the agreement was carried out, of your own knowledge?

A. No, sir.

Q. That's all.

Cross-examination, by Mr. Collins—

Q. Are you related to Mr. Harper ?

A. I think so ; yes, sir.

Q. What way ?

A. Brother-in-law.

Q. Is he married to your sister ?

A. Yes, sir ; that is, for all I know.

Q. You live in the same house with him ?

A. No, sir.

Q. You live at Rahway ?

10 A. Yes, sir.

Q. And he lives at Rahway ?

A. I believe he does ; yes, sir.

Q. When was it you say you offered him \$7,000 for this property ?

A. On or about May 21st.

Q. Did you bring the matter up, or he ?

A. He brought the matter up.

Q. Wanted to sell it to you ?

A. Yes, sir.

20 Q. How was the consideration to be paid—cash or part mortgage ?

A. Well, some cash and some part mortgage.

Q. How much was to be cash ?

A. \$1,000.

Q. \$1,000 was to be cash ?

A. Yes, sir.

Q. And the rest on the mortgage ?

A. The rest on a bond and mortgage for ten years, with payment of principal at any time I felt like so doing.

30 Q. So disposed ?

A. Yes, sir.

Q. Did you have the cash ?

A. I did, yes, sir.

Q. What shape ?

A. In money, clean money.

Q. Where did you have it ?

A. Right in the house.

Q. In what place ?

A. Right home, right in the house.

Q. In what receptacle?

A. I didn't keep any stocking or anything like that, I kept it right in a trunk.

Q. What class of money, gold?

A. Some gold and some bills.

Q. How much gold?

A. I could not say, not of my own knowledge now.

Q. About how much?

A. I could not say.

Y. About how much in bills?

10

A. I could not say.

Q. What denomination of bills?

A. Some of one hundred dollars and some fifty, and some twenty, and some ten and fives.

Q. Where did you get the money?

A. I earned the biggest part of it.

Q. In your position under the Pennsylvania?

A. Yes, sir.

Q. What is that position?

A. Night clerk.

20

Q. What salary?

A. \$50 a month.

Q. Are you married?

A. No, sir.

Q. Been married?

A. No, sir.

Q. You board?

A. I do.

Q. How long have you had the place?

A. I will be eight years there next November.

30

Q. What board do you pay?

A. \$20.

Q. A month?

A. Yes, sir.

Q. Ever had a bank account?

A. No, sir; don't believe in banks.

Q. Never had a savings bank account?

A. No, sir; no kind of a bank account at all.

Q. What have you done with that money?

- A. What money?
- Q. The \$1,000.
- A. Got it right home.
- Q. In the trunk?
- A. There yet, I suppose, it was the last I heard of it.
- Q. Just the same?
- A. Yes, sir.
- Q. Some in gold and some in bills?
- A. Some in gold and some in bills.
- 10 Q. You didn't say \$100 bills, that is to say out of your wages you could not have anything that would be in the shape of \$100 bills?
- A. No, I transferred them in the bank.
- Q. You took your savings in small bills and got \$100 bills for them?
- A. Yes, sir.
- Q. Keep your trunk in your bedroom?
- A. No, sir.
- Q. Where?
- 20 A. In my father's bedroom.
- Q. Living home with your people?
- A. Yes, sir.
- Q. Father and mother?
- A. Yes, sir.
- Q. Don't believe in banks?
- A. No, sir.
- Q. Never get no interest on your money?
- A. Don't want none.
- Q. Rather not have it? How much did you have at
- 30 this time, last night?
- A. Well, I had in the neighborhood of \$750.
- Q. You signed no contract to buy this property?
- A. No, sir; only made an agreement for the property.
- Q. Verbal?
- A. Made him an offer for the property, that is all, I sent him a written letter.
- Q. He didn't send you back any written offer?
- A. He did, he sent me back a reply.
- Q. Do you mean writing, a letter?

A. Yes, sir.

Mr. Collins—Well, I would like to see those letters, have you got them?

Complainant's counsel produced letters.

Q. Well, you meet each other every day?

A. No, sir; I guess I ain't seen Mr. Harper—I guess last Tuesday was the first time I saw him since May 21st, except to see him riding past, but didn't have no chance to talk to him—or going out riding, but didn't talk to him at all; I see him going past it may be two or three streets from me when I was going to work; he would be out riding in a little sulky or road wagon, or whatever he calls it; but I had no conversation with him.

Q. The maiden name of the sister to which your refer is Margaret Ronayne?

A. Yes, sir.

Q. That's all.

20

Re-direct examination—

Q. [Showing witness paper.] Is that the letter you referred to?

A. Yes, sir; that is one.

Q. That is your signature?

A. It is; yes, sir.

Q. Have you the letter that Mr. Harper wrote to you in answer to it?

A. I believe I have.

Q. Have you it here?

A. Yes, sir.

Q. Let me see it?

A. [Witness produced the paper.]

Mr. Berry—We will offer the two.

Q. Is your business that of night clerk or day clerk?

A. Night clerk.

Q. What location, whereabouts?

A. Pier 39, over on the North River; Pier 39, Pennsylvania Railroad.

Further re-cross—

Q. Is this letter sent to him addressed to him in your
10 writing?

A. That is my writing; yes, sir.

Mr. Berry—We also offer the two deeds.

Deed to Ronayne, marked Exhibit C No. 1.

Deed to Howard, marked Exhibit C No. 2.

Letter to Harper, marked Exhibit C No. 3.

Letter Harper to Ronayne, marked Exhibit C
No. 4.

Envelope containing said letter, also marked Ex-
20 hibit C No. 4.

LUCIUS D. FOWLER, sworn for the complainant.

Direct examination, by Mr. Berry—

Q. What office, if any, do you hold?

A. Clerk to the Commissioners of Adjustment.

30 Q. Did Mr. Harper appear before your Board in refer-
ence to the taxes on his property in Jersey City?

A. No, sir.

Q. Was he notified to appear?

A. Yes, sir.

Q. Did he see you about them?

A. Yes, sir.

Q. [Showing witness papers.] Is that your notice?

A. Yes, sir.

Q. Both of them?

A. Yes, sir.

Q. And are these your statements of the amounts on the property?

A. Those are the bills after the adjustment.

Q. When was it adjusted?

A. Report is filed on September 12th, 1888, duly advertised and confirmed by the Judges of the Circuit Court, October 17th, 1888.

Q. That's all.

10

Cross-examination, by Mr. Collins—

Q. Then the owner only has sixty days after the 17th of October, A. D. 1888, to pay these arrears without any interest under the law?

A. Yes, sir.

Mr. Berry—We offer these:

Notices dated May 24th, 1888, to John Harper,
marked Exhibits C 5 and 6. 20

Bills dated October 18th, marked Exhibits C 6
and 7.

On being requested witness produced a map.

Q. [Being shown bill marked C 7, taxes on Block 210.]
What is that?

A. Property on Henderson street, commencing 50 feet north of Third street.

Q. Which side of Henderson street? 30

A. West side.

Q. What is the property on the City Map?

A. Block No. 8.

Q. I am speaking now of the number of houses?

A. 403 and 405 Henderson street.

Q. C No. 8 being Block 211, is what?

A. The Vandervoort, corner of Henderson and Fourth—northwest corner of Henderson and Fourth.

Q. That's all.

JOHN HARPER, the complainant, sworn.

Direct examination, by Mr. Berry—

Q. You are the complainant, Mr. Harper?

A. I am, yes.

Q. [Witness is shown two papers and asked what they
10 are.]

A. Trust deeds.

Q. From whom to whom?

A. John Harper and Ellen Harper to John Ronayne.

Q. When dated?

A. June, 1888.

Q. What is the other?

A. June, 1888, John Ronayne to John Harper, trustee.

Q. What did you do with the first deed, if anything?

A. The first deed we presented to Mrs. Ellen Harper,
20 in the office of John Garrick.

Q. When?

A. 23d day of May, 1888; she was asked to sign the
deed.

Q. What property does it describe?

A. 403 and 405 Henderson street.

Q. That deed is for 403 and 405 Henderson street, is it?

A. Yes, sir; no, that is the wrong deed, this is for the
Vandervoort.

Q. It is not the wrong deed?

30 A. It is the wrong property.

Q. Was it offered at all?

A. It was offered, but it was offered at another time.

This is the one.

Q. This is what?

A. This is the deed that was offered Mrs. Harper to
sign on the 23d day of May, in the office of Judge Gar-
rick.

Q. And it is for what property?

A. 403 and 405 Henderson street.

Q. From whom to whom?

A. John and Ellen Harper to Ronayne.

Q. What was said about it; what was said and done; who was present?

A. Charles N. Corbin, yourself, Judge Garrick, I. Mrs. Harper would not sign the deed, but Mr. Corbin——

Q. She was there?

A. Certainly.

Q. State what was done; who offered her the deed?

A. You did.

10

Q. What did she say?

A. She gave the deed to Mr. Corbin.

Q. What did he say?

A. He looked the deed over pretty sharp and said he would have to consult his partner, Mr. Collins.

Q. The deed—were there not deeds?

A. Consult his partner, Mr. Collins, as to whether Mrs. Harper would sign the deed or not.

Q. But you put in his hand another deed, did you not?

A. Not at this time; of course there was another deed 20 you put in his hands—the trust deed, back to myself as trustee.

Q. That deed you have also?

A. Yes, sir; it is here, marked No. 2.

Q. Yes, we will have to have it marked in this case. Both deeds were submitted to Mr. Corbin?

A. Yes, sir.

Q. What was done about it?

A. Mr. Corbin wanted to take the deeds along with him, and I objected to that, and after some little conversation 30 we agreed to leave the deed with Judge Garrick, with the understanding that Mr. Collins or Mr. Corbin, or anybody for Mrs. Harper, might go there and examine the deeds and sign them if they felt so inclined; and Mr. Corbin said he would let you know at any early date whether Mrs. Harper did sign the deed or not.

Q. Did you ever hear from them?

A. I waited for five days, until the 28th of May, and heard nothing of it; and I wrote and sent a registered

letter to Mr. Collins, telling him all the circumstances connected with the deed, and asked him to answer and let me know whether Mrs. Harper had signed it, or would sign it.

Q. Did you receive a reply?

A. Ten days after I received a reply.

Q. [Showing witness paper.] Is that it?

A. That is it, to the effect that she declined to sign the deed.

10

Mr. Berry—I offer that in evidence.

Draft of deeds from John Harper and Ellen Harper to John D. Ronayne, dated May, 1888, marked Exhibit C No. 9.

Also deed from Ronayne to John Harper, trustee, of same date for same property, marked Exhibit C No. 10.

Also letter from Mr. Collins, dated June 11th, 1888, marked Exhibit C No. 11.

20

Q. Mrs. Harper did not sign that deed?

A. No, sir.

Q. Did you present Mrs. Harper any other deed for her signature? If so, when, with whom, and under what circumstances?

A. Well, I will be through with that first deed; there is considerable more about the first deed. I sent a registered letter to Mr. Collins and got an answer back to the effect that she declined to sign the deed.

30

The Court—You have told us that.

Q. Anything else?

A. Well, no; I guess not.

Q. Now, when is the next?

A. The 5th of June, 1888, the second deed was offered to Mrs. Harper on June 5th, 1888.

Q. [Witness shown paper.] What is that?

A. It is a deed for the sale of the Vandervorst, on

Henderson street, John and Ellen Harper to John D. Ronayne.

Q. Dated when?

A. June, 1888.

Q. What did you do with the deed, if anything?

A. I took it to the house of Mrs. Harper, 474 Henderson street; I met her in the entry.

Q. When, what day?

A. June 5th, 1888.

Q. Very well, sir; go on?

10

A. I told her I had a deed for the sale of the Homestead made out, and I asked her if she would accompany me to the office of Collins & Corbin and join in the sale; she said no, she would sign no deeds or mortgages for me at all.

Q. Go on?

A. I told her according to our agreement of June 15th, 1883, that she was under the obligation to sign deeds and mortgages, when a sale or mortgage was made.

Q. Did you go into the house?

20

A. No; it was right in the entry.

Q. The conversation took place in the entry?

A. Yes, sir; I told her she was drawing \$145 a month on the strength of the agreement; that she was by a certain clause in the agreement to sign deeds and mortgages when asked, in case of a sale or mortgage. She said she didn't care what the agreement said, or what I said, or anybody else; she would sign no deeds or mortgages at all. Her daughter, Mrs. Clark, was present. I found I could not do anything with Mrs. Harper. She advised 30 me to go and see Mr. Collins, probably through a reason of her own, so on the 8th of June, three days after, I did go and see Mr. Collins. He directed his lady typewriter to send after Mrs. Harper at once, to have her come down; and told me he would write to me and let me know the results. I showed him the deed, and Mr. Corbin read the deed through, and the accompanying trust deed back. Some two or three days after that Mr. Collins wrote me to the effect that Mrs. Harper declined to sign the deed.

Q. Have you the letter?

A. They are both in one.

Q. The answer is in Exhibit No. 11?

A. Yes, sir. [To Mr. Collins.] I kind of upbraided you for not answering the first letter, and you said you would talk to Mr. Corbin and answer both letters in one.

Q. Have you given us all that took place between you and Mrs. Harper on that day?

A. Well, part of the time she was inclined to be pleasant.
10 ant.

Q. Have you given us all that took place concerning the deed? Did she refuse to sign it?

A. Certainly; she refused point blank to sign the deed, or mortgage; would not sign anything.

Q. The second deed—was that shown to her, too?

A. Certainly it was; I showed them to her and showed them to her counsel.

20 Mr. Berry—I offer in evidence the deed from John and Ellen Harper to John D. Ronayne, dated June, 1888, for the Vandervoort property.

Marked Exhibit C No. 12.

Also deed John D. Ronayne to John Harper, trustee, for the same property.

Marked Exhibit C 13.

Q. Did you see her again about the sale of the property?

30 A. Well, Judge Rouget, that has appeared here, is a real estate agent, and I had the houses 403 and 405 on his books for sale. I went into his office on the 9th of June, 1888, and asked him if he had got a customer, or any offer on them for these four houses. I told him I was very anxious, if I could get a chance, to go out West. He told me he thought I was asking too much for the houses; the asking price was \$20,000. I said it was easier to go down than to come up; if you think we are asking too much, go and see men who make a specialty of dealing in this property, and get an offer, and I will consider it. So with

that understanding I left. I was to call again in a few days. I did call again on the 14th day of June, five days after. The judge told me he had tried to get an offer and could not get any offer; he had seen a man he thought he could sell to——

Objected to.

The Court—Not what passed between this witness and the agent.

10

Q. I asked when did you see Mrs. Harper again in reference to her signing the deed?

A. Well, I am just bringing that about.

Q. Go right on directly to it.

A. I called on the 14th of June again and, he told me he could not get an offer. Mr. —— would not touch the property——

Q. The Vice Chancellor told you he did not want you to——

A. He told me that he thought Mr. —— would buy²⁰ the Vandervoort property on the corner. I told Mr. Rouget I had a letter in my pocket I received that morning, with an offer of \$7,000 I received for the property, and he says you had better hold that; don't close it to-day, wait until to-morrow; I will see Mr. ——, and I think I can get more money. I says if you can do that, that is just what I want, and left again, with the understanding to call next morning, which was the 15th of June. I did call; he did not see Mr. ——

30

The Court—All this is of no account at all.

Q. Well, this is the day now?

A. We are on the point now; I will make it short——

The Court—You are determined to have your own way about it, whether it is lawful or not. You had better do as the Court instructs you. Tell what passed between you and your wife.

Q. On June 15th, what did you do then?

A. We went to the house of Mrs. Harper, 474 Henderson street.

Q. And who did you take with you?

A. William J. Rouget, Commissioner of Deeds.

Q. Have you the deed which he took?

A. Yes, sir.

Q. You have Exhibit, marked what?

A. C No. 1.

10 Q. That is the deed that Rouget was unable to positively identify?

A. Yes, sir.

Q. What have you to say about it?

A. I am positive that is the deed.

Q. That is the deed you gave to Rouget?

A. It is.

Q. Well, now then, what did you and Rouget do about it?

A. Rouget went upstairs and found Mrs. Harper—

20 Q. Did you go to Mrs. Harper's with Rouget?

A. Yes, sir. We found she had moved to Ninth street. He inquired upstairs and found out and told me he knew the house she was living in. Judge Rouget rang the bell and Mary Ann, my daughter, came to the door and opened it. I inquired if Mrs. Harper was in, and she said she was, and we went in the parlor and sat down. Mrs. Harper came in after Mary Ann told her. I told her, after inquiring about her health, there was Judge Rouget, a friend, and she told him to be seated. The judge took
30 the deed out of his pocket; he read it to her; made the contents of the deed known to her, and told her that he was ready to take her acknowledgment and have her sign the deed.

Q. What did she say?

A. She hesitated—seemed to hesitate a little bit, and the judge again told her that it was for the sale of the Vandervoort property, not the house where she used to live on Henderson street. She said she knew very well what property it was, she knew it was the Vandervoort

property, but she said she would not sign a deed or join in the sale at all. I said: "Mrs. Harper, by your agreement of June 15th, 1883, you are obliged to sign this deed when a sale is made"; I says, "in that agreement there is a clause which compels you to sign a deed; it says, 'the said Ellen Harper agrees in case of sale or mortgage of the property known as the Vandervoort property, on Henderson street, No. 403 and 405 Henderson street, or any part thereof, that she will execute a proper deed', etc., 'and in case she shall refuse to sign such deed she shall forfeit her rights to the provision made for her by this agreement.' Now I say this, Mrs. Harper, this is plain, this language you can't very well misunderstand; this is the Vandervoort property; do sign this deed and let us be going away." She again said she would sign no deeds or mortgages for me at all.

Q. Had you a mortgage at that time?

A. I had.

Q. Have you got it here?

A. I have.

20

Q. Just produce it. What is it?

A. That is the mortgage, John Harper and Ellen Harper to the Provident Institution for Saving of Jersey City.

Q. For how much?

A. \$3,000.

Q. Did you make any application for the loan?

A. I did.

Q. When?

A. In the latter part of May, 1888, and the other about 30 the 10th of June, 1888.

Q. Why?

A. To get money to pay my back taxes on the property being adjusted by the Commissioners.

Q. To whom did you apply?

A. Edmund W. Kingsland, Jr.

Q. Holding what position, or connected with what institution?

A. I believe he is Treasurer of the Provident Institu-

tion for Savings of Jersey City; seems to be the managing man now.

Q. Was there anything said or inquired of you at this time about what you were going to do with the money by either Mrs. Harper or those present with her?

A. Well, there was something said sometime after that; we had more conversation before we got up to that part. I told Mrs. Harper, while she knew Judge Rouget for a great many years, as I understood from her previous
10 remarks to him, he was a particular friend, and I says: "Well, if you wish to consult your counsel, Collins & Corbin, and don't wish to sign the deed to-day, and don't wish to have Judge Rouget take your acknowledgment, if you will set a day you will meet me at the office of your counsel, Collins and Corbin, I will meet you there." She says: "I will tell you now, I don't care what you say, or what Collins & Corbin say, or what the agreement says, I won't sign the mortgage for you at all."

Q. Now, what was said about the mortgage further;
20 anything?

A. We now pass over what the boy said when he came in, this young man; that was about the last thing done about the mortgage before we left the house.

Q. Lead up to that?

A. Well, just about that time the young man, George Harper, came rushing in, and says: "What in Hell are you doing here again?" This was the first time I was ever in the house. He says: "Have you some more deeds you want to get signed?" He says: "You are
30 coming here to make trouble;" he says, "you are coming here to make trouble;" he says, "you are coming here for trouble; well," he says, "I will give you all the trouble you want; I will fix you; I will break your damned neck for you, and the first thing you will know I will fire you through the window out into the street, and," he says, "I want you to understand it?"

Q. Did you say anything?

A. I did not say anything to him at all up to that time.

Mr. Collins—I shall object to this.

Q. What was the result—the end of it?

A. I was about to say I did not notice George up to that time at all, and did not speak to him, and did not wish to speak to him; I told him so. “Well,” he says, “God damn you”——

Q. That is not what I asked you?

A. He says: “God damn you, I know it is you; I will 10 speak to you and fix you and break your damn neck for you.” I tried to quiet him down, and said, in a quiet, gentlemanly way: “George, we are not here to make any trouble; we came here for peace and quietness; we came here for the purpose of getting a paper signed, and as soon as we get the business transacted we will go as quietly as possible;” but George became extraordinarily angry, so much so that I said, “You are in the presence of a Justice of the Peace; you are in the presence of Judge Rouget; if you persist in going on in this way I 20 shall order you placed under arrest.” His mother then interfered and induced him to go to some other part of the house, which he did do.

Q. Well, George ordered you out of the house?

A. Yes; after he got so bad I was going to have him placed under arrest; I insisted upon the judge placing him under arrest; then she interfered and induced him to go to some other part of the house.

Q. Now tell us something about the mortgage?

A. After he had gone away I said: “Mrs. Harper, this 30 is too bad; I have got to come, under your agreement, to have you sign deeds and join in sales; when I come, my life is threatened, and, above all,” I said, “by my son, in the presence of a stranger; why can’t we be friends and have peace; why can’t you sign and let us go away.” She says: “No, I will sign no deed or mortgage for you unless you make a new agreement.” At this time Judge Rouget got weary of waiting and got up and walked out toward the entry. I says: “What kind of an agreement do you

want now?" She says: "Ask Mary Ann; she will tell you." "Well," I says, "Mary Ann, what kind of an agreement does your mother want now?" Mary Ann said: "Well, father, I propose making a fair agreement; something that will be fair and legal for both of you." "Well," I says, "what is it?" "Well," she says, "I propose dividing up the houses; you take some and mother take some, and then she will sign deeds and mortgages for you when you want her." "Yes," Mrs. Harper says, 10 "I will sign deeds and mortgages when you want them." I says: "This is an outrage; you have already drawn \$10,000 on your agreement; you know that I am only asking you to do that which your agreement calls for, and you are asking me to make a new agreement; I won't submit, or do anything of the kind." "Well," Mrs. Harper says, "you can please yourself." I then produced the mortgage.

Q. You have it here?

A. Yes, sir; this is the mortgage. I told Mrs. Harper 20 I was going to borrow \$3,000 on the houses No. 403 and 405 Henderson street, on a joint mortgage, and made known to Mrs. Harper that Judge Rouget was present to take her acknowledgment. Mary Ann said: "Father, what is mother to get if this money goes to pay back taxes?" I says: "That is not our business to explain to you what is going to be done with the money; the agreement don't call for that; if Mrs. Harper wishes to know anything about it I will tell her. Mrs. Harper says: "It is no use losing time or wasting breath talking about 30 mortgages or deeds here; if you don't make a new agreement I will sign no mortgages or deeds for you, and that settles it."

Mr. Berry—I offer in evidence a mortgage, John Harper and Ellen Harper, dated June 8, 1888, to the Provident of Savings of Jersey City, and the accompanying bond of same date, same parties and same sum.

Marked Exhibits C No. 14 and 15.

Q. Did you see Mrs. Harper again concerning the signing of deeds?

A. I did, sir.

Q. On what date?

A. The second day of July, 1888.

Q. Had you the deed which you asked her to sign?

A. Yes, sir; Exhibit C No. 2.

Q. What did you do on that day?

A. I went over with Winfield S. Weed, Commissioner of Deeds, to the house of Ellen Harper, on 9th street; I rang the bell, and Mary Ann came and opened the door, and we went in there; saw Mrs. Harper; inquired about her health, and told her I had sold the houses 403 and 405 Henderson street. She asked me how much I was going to get for them; I told her \$17,000.

Q. Is that the deed which Judge Weed had?

A. Yes, sir.

Q. He was at a loss to identify it or seemed to hesitate, although I think he did identify it. What have you to say about it; is it the deed?

20

A. Yes, sir; sure of it: positive of it.

Q. That is the deed that Judge Weed had?

A. Yes, sir.

Q. What was said?

A. Judge Weed took the deed from his pocket; read it over to Mrs. Harper; fully described the property; made known to her the contents of the deed, and told her that he was there to have the deed acknowledged.

Q. What did she say?

A. She said she would sign no deeds at all; she had made up her mind to sign no deeds.

Q. Now, had you any trouble?

A. Of course I reasoned with her all I could; told her she was obliged to sign deeds; told her I had come there twice and was not going to come there any more, and that if she wished to consult Mr. Collins & Corbin she could take any reasonable time she wished for that purpose, and meet me at any day she might appoint in their office. She said she had her mind made up to sign

no deeds or mortgages at all. Just about that time or shortly after, George came rushing in and slammed the entry door open, and slammed the front door open, and ordered me out of the house.

Q. What was his language?

A. Oh, cursing and swearing and telling me to get out.

Q. Just repeat distinctly what he said?

Mr. Collins—I make the same objection.

10

A. Well, as near as I recollect, "God damn your soul, get out of the house; what the hell are you doing here? do you want to get your damned neck broke?"—I don't like to repeat this language—slammed the doors wide open and rushed up to where I was sitting, until Judge Weed interfered, and acted as though he was going to assault me. His action was brutal and beastly and inhuman in the extreme—could not be worse.

Q. Had you sold the property?

20

A. Decidedly.

Q. To whom?

A. Robert P. Howard.

Q. For how much?

A. \$17,000.

Q. The other sales that you have referred to, were they made?

A. Each one of these sales was an honest, bona fide sale, made in good faith, real sale.

30

Mr. Collins—I object to that and ask that it should be stricken out.

The Court—I am disposed to think I am bound to consider the act as a proper act at present. I do not think his confirmation adds any force to it.

Q. You say in your bill that Mrs. Harper owed you. How much and when?

A. On the day that Messrs. Collins & Corbin filed their bill, Mrs. Harper and Mr. Collins, she owed me \$57.34, in July, 1887.

Mr. Collins—I object to that as a matter of record.
I object to the question and ask to have the answer stricken out, on the ground that it can only be proved by writing.

The Court—It is very plain to my mind I have nothing to do with that; we have not it here. Counsel admits that the case in which there has been an adjudication upon that point is upon appeal. Certainly it would very ill become me to pronounce judgment here in such case. You say 10 now that the question put to the witness has reference to transactions between other parties subsequent to the decree in the other case, and these items are not included in that decree.

Mr. Berry—I do not say that. I say they are found by that decree due us. We won't go further with it; let it go. I guess that is all.
Cross examine.

By the Witness—There is more than that. There is another sale to Mr. Ward. 20

Mr. Collins—That is not stated in the bill.

The Witness—Oh, we can't go further then. I could have sold that property.

Cross-examination, by Mr. Collins—

Q. You say that when you were there at Ninth street with Rouget, and he got tired and went out toward the entry, that you then referred to the bond and mortgage 30 to the Provident Institution.

A. I did.

Q. Which you say you had with you. Did you produce it?

A. I did.

Q. Take it out?

A. I did.

Q. And showed it to Mrs. Harper and Mrs. Clark?

A. I did.

Q. Did Judge Rouget also see it?

A. Judge Rouget, I say, was in the entry.

Q. Had he got in the entry?

A. He had.

Q. He did not either see the bond and mortgage, or hear anything about it?

A. I can't say that.

Q. What do you say?

A. I say he ought to see and hear of it; he was close enough to do so.

Q. That is what you think.

A. That is what I think.

Q. Ought both to have seen it and heard you speak about it?

A. I guess I had no chance to do anything—

Q. Answer the question. You suppose he both saw you produce it and heard you speak about it?

A. I do; he was in the entry; I don't know whether he could see it; he was in calling distance; I could call him if she was willing to sign it.

Q. You say when you went with Weed you had sold the property to Robert P. Howard?

A. I do.

Q. Is that the same gentleman who was a witness in this case on the other trial?

A. That is the same gentleman.

Q. Had you made a second sale to him, or are you referring to the old sale?

A. I sold the houses on the 27th of June, 1888.

30 Q. When and where?

A. In Broadway, New York.

Q. Where?

A. No. 66.

Q. Whose office?

A. Robert T. Howard's office, I understand it.

Q. His own office?

A. Yes, sir.

Q. Sign up?

A. I don't take particular notice of people having signs

up; there is a number of offices in the building.

Q. Has he an office all along by himself?

A. You can't find any office in the building with only one in it; you will find sometimes half a dozen or a dozen.

Q. Do you know what name is out on the door?

A. I don't.

Q. Had you a written contract with him?

A. I had.

Q. On this occasion?

A. On that occasion.

10

Q. You have not produced it?

A. No; but I can do so if you wish it; I will produce it very quickly. It is only a mere memorandum on the back of an envelope.

Q. I would like to see it.

Witness produced paper.

Q. This is what you refer to as a pencil memorandum, in your own writing, on the back of the envelope produced, is it?

A. Yes, sir.

Q. That is not signed by any person, is it?

A. No; I read it to him and asked him if he understood so, and he said yes. He asked me to call at his office.

Q. Yes, the letter says so inside.

Mr. Collins—I offer the envelope for identification.
Marked Ex. D No. 1.

30

Q. You had read the written opinion of Advisory Master Pitney, pronounced in the original litigation between you and Ellen Harper, had you not?

A. In reference to the final decree?

Q. No; in reference to his decision of the main issue, at the time of the reference to Judge Garrick—the Vice Chancellor's opinion—the only opinion that he pronounced; his long opinion—you had read that?

A. Yes, sir.

Q. Now, why did you not present the various deeds which you say you presented to your wife for signature—Exhibit C No. 9, 10, 12 and 13—to Mr. Collins, as trustee or counsel for Ellen Harper, instead of going to her direct with them?

A. I did go to you twice, Mr. Collins—I went to you three times.

Q. You went to Mr. Collins with the Exhibits whose numbers I have given, or had them submitted to him.
10 Why did you not submit these other deeds which was afterwards presented by you to Mrs. Harper, to Mr. Collins?

A. I did.

Q. Do you mean to say you submitted to Mr. Collins the deeds which Mr. Rouget and Mr. Weed went with you to get acknowledged?

A. I told you all about the Rouget affair in Judge Garrick's office, the 21st of June, and you told me to make a new agreement.

20 Q. That is not what I asked. I asked if you ever presented to Mr. Collins the other deed, except the four I have just read the numbers of?

A. I did go to your office twice and you were in Connecticut.

Q. When did you do it?

A. The 2d of July and the 5th of July; you were not there; I went there for the purpose of presenting them.

Q. You did not present them?

A. I went there—

30 Q. Won't you answer the question?

A. Well, the contract lasted only a week; I went on the 2d of July and the 5th of July.

Q. Did you present either of these deeds to Mr. Collins or Mr. Corbin?

A. I tried to find you.

Mr. Collins—I ask your Honor to compel the witness to answer.

The Witness—I went to the office to find them and

they were not there.

By the Court—

Q. The question is, did you present the deeds to them?

A. I went for the purpose of doing so.

Q. No; that you may tell your counsel—

A. Well, I did not; I could not find them.

10

Re-direct examination—

Q. Why were not the usual agreements signed for the sale?

Objected to.

The Court—How can that possibly help, since it was not done, unless you can show that Mrs. Harper interfered.

Mr. Berry—It is usual for parties to enter into a written agreement where land is sold. Mr. Harper did not do that, for the reason that he would be obliged to pay commissions and have searches made and all that—

The Court—That cannot alter the rules of evidence at all. I can see no cause for that unless the other party has interfered and is thereby estopped by some act or step prevented the writing in such a way as to estop them from taking advantage of the rules of law. There was no written agreement in this case. That being so, as the case stands, neither party was bound, and that must remain so, unless the other party to the litigation has interfered, and by such interference is estopped from setting up the legal objections which are here set up.

Mr. Berry—I am sorry to say, then, that we are in a different Court from the one in which we tried the other cause. This was all gone into.

Q. Are you divorced from Ellen Harper?

Objected to as not being capable of proof by parole.

The Court—If you produce the record I do not know that I will stand upon the order of it.

Q. Have you got a record?

A. Yes, sir.

10

The Court—The only thing that can be done is to produce the record and then ask him if he is the person named in the record.

Q. Have you a record?

A. Yes, sir. [Produced.]

Q. You are the person named there?

A. I am.

Q. Ellen Harper is the respondent?

20 A. Yes, sir.

Mr. Berry—We offer it in evidence.

Objected to as incompetent.

Recess.

30

Mr. Berry—I offer this record simply to show that when this agreement was made the parties were not man and wife.

By the Court—What is the date?

Mr. Berry—November 23d, 1882.

The Court—I think I shall have to allow it.

Marked Ex. C No. 16.

Mr. Berry—I will offer in evidence the envelope marked D No. 1 for identification.

Marked Ex. C No. 17.

Also offered the letter from Mr. Howard, the

purchaser spoken of, to Mr. Harper, of June 26th, '88, being the one contained in the envelope. There is no year.

Marked Ex. C No. 18.

Q. What year did you receive that?

A. This year.

Q. And the post mark shows that.

I will also offer the letter from Mr. Howard of June 22nd, '82, to Mr. Harper. 10

Marked C No. 19.

Also copy of letter of June 25th, '88, from Mr. Harper to Mr. Howard, in answer to the other letter.

Objected to.

Mr. Berry—Mr. Howard is out of the State. We expected him here to-day. His wife is very ill. We have telegraphed him to come; that he could be sworn at any time and go back. If we cannot get that letter we would like to offer this. 20

The Court—We will see whether he comes or not.

Mr. Berry—Until then you will not permit it?

The Court—No; I do not think it is proper.

Re-cross examination—

Q. [Witness having his attention called to Ex. C 10, is asked]: Who is Margaret Ronayne, for whose benefit, in part, the trust in that deed was to be named? 30

A. A lady that lives in Rahway.

Q. Who is she?

A. Margaret Ronayne.

Q. What relation does she bear to yourself?

Mr. Berry—The Court will permit me to make a statement. At the time this question was asked

10 in the previous suit, Mr. Harper refused to answer, for the reason that he had seen an agreement drawn by Mr. Corbin, and in which he had explained to the gentleman that he was a divorced man, and an agreement was drawn upon that theory. He was then told for the first time and in the course of the suit that came out, that he was not divorced, and he thought that it would be improper to answer the question. I have not talked with him about it, as to whether he wants to insist upon that or not. It has nothing to do with the case.

The Court—There is a grantee named in this deed who, by a proper construction of the deed, is supposed to have some interest in it. Certainly it is right to know who that person is, by every rule of law. That is proper in a controversy of this kind.

20 Mr. Berry—Suppose the witness should say that under the advice and information he got from Collins & Corbin, he was not a divorced man and his answer would tend to criminate himself. He was excused from answering before. If he wishes to take that position now, I suppose under the law he would be entitled to refuse to answer. He does not wish to state what his relations are, as I understand. I have said what I have to say here openly. There is no use of any consultation about it.

30 The Court—I do not see how there can be any difficulty, after the developments that are before me. Here the proof is beyond controversy that these parties to this litigation were once married. Now you introduced yourself proceedings in divorce which show a divorce from the bonds of matrimony. I do not see how that fact, being so—

Mr. Berry—A re-marriage, if one has been contracted, would criminate him.

Mr. Collins—I am perfectly satisfied if he declines to answer on the ground put by his counsel. The next question will be, who John J. Harper was?

The Court—The witness has not claimed any privilege.

Mr. Berry—If he wishes to do it he can do it now.

Do you desire to claim the same protection—

The Court—Counsel has no right to interfere on behalf of the witness. What does the witness say?

The Witness—I understood Mr. Collins to say that he would be satisfied if I would make the same answer as I did before.

The Court—He said that to the Court.

The Witness—I can answer in this way, if I may.

I would like to say in consequence of what has taken place since I was advised by Collins & Corbin in May, '83, it might possibly tend to criminate me, and I decline on this ground, if the Judge will permit me, to answer it.

The Court—Well, proceed, Mr. Collins.

Q. Who is the John J. Harper that is referred to in a trust deed?

A. My little son.

Q. Not by Ellen Harper?

A. No, sir.

Q. Age now, how old?

A. Five year old the seventh of next April.

30

Mr. Berry—I will offer in evidence the original contract, John Harper to Ellen Harper and Gilbert Collins, dated June 15th, '83.

Marked Exhibit C No. 20.

Complainant rests, reserving right to call the proposed witness Howard.

Mr. Collins—I submit that there is no case established here; but in order that the Court may have the facts, I shall call one or two witnesses, and then present our case.

MARY A. HARPER-CLARK, sworn for the defendants.

10 *Direct examination*, by Mr. Collins—

Q. You are the daughter of the parties John and Ellen Harper?

A. Yes, sir.

Q. And reside in Pennsylvania?

A. Yes, sir.

Q. You came on to be a witness at this trial?

A. Yes, sir.

Q. During the time that your father and mother were 20 in litigation in this Court, and the trial was in progress before the Advisory Master, and for some little time after, were you visiting your mother?

A. I came on about this business and then my mother was sick and my sister died, and I remained during her sickness, until the death of my sister.

Q. When did you return home?

A. I remained until August last.

Q. During the time referred to here about the submission of papers for signature, you were with her?

30 A. I was.

Q. Are you the lady that has been spoken of by several witnesses as being present on certain occasions?

A. Yes, sir.

Q. Were you present when Mr. Harper called with William J. Rouget?

A. I was.

Q. That call was at your mother's present residence in Ninth street?

A. Yes, sir.

Q. She had moved from the apartments in 474 Henderson street?

A. Yes, sir.

Q. Shortly before?

A. About that time; we had not completed moving.

Q. Had you been made aware of the request by your father to have your mother sign deeds for the expressed consideration of one dollar, to John D. Ronayne, of the Vandervoort property and 403 and 405 Henderson street, with the assertion that certain trust deeds were to be executed by Ronayne? Had you been informed of that and heard the opinion of counsel on it?

A. Well, I knew the opinion of counsel on it. I don't think I was informed of it by my father.

Q. No, I did not say by your father. Had you been made aware of such fact? that such deeds had been requested?

A. Yes, sir; I knew.

Q. When Mr. Harper called with Mr. Rouget and requested a deed to be signed to John D. Ronayne, was any statement made by any one to your mother, or in her presence, that this deed was on a professed sale to Ronayne for \$7,000, or any other sum?

Mr. Berry—I object to that. The attention of the witness should be called to the matter and she should be asked to state what took place.

The Court—I think, Mr. Berry, it is not out of the rule. The fact appears that this deed was presented. That has been shown abundantly. Now the question is whether anything was said about it; that is upon a particular branch of the interview. It is proper to call the attention of the witness to that. Not to put the words in her mouth—that is not the case—but to state what was said about it, if anything.

A. Well, I have no recollection whatsoever of \$7,000 being mentioned; but I have a faint recollection of reading

the deed, or looking over Mr. Rouget's shoulder, and I think it was mentioned there as one dollar. I remember having looked at it, and I am pretty certain that I read that.

Q. You knew that a deed on one dollar consideration had been theretofore requested?

A. Yes, sir.

Q. Was any such sum as \$7,000, or any other sum, unless it was one dollar, mentioned?

10 A. Not that I know of.

Q. Was it stated the property had been sold to Mr. Ronayne for his own benefit?

A. No, sir.

Q. What was said by the different persons in that interview about the signing of the deed that was produced?

A. Well, I don't remember all that was said, but I remember something on this order. I wondered at the papa, a shrewd, sharp business man like he, wanting to deed property to these poor, penniless people, and made
20 some remark to that effect, and papa said, "You know I am not a fool," and I think I understood from what he said that it was to be deeded immediately back to him.

Q. I want to know what was said by your father, or Rouget, to your mother, and what she said in regard to her signing the deed which was produced?

A. Mr. Rouget took out the deed, or papa may have handed it to him, and began to read the contents; and after having heard the first part of it we recognized it as having heard it before—a deed that was spoken of in Mr.
30 Garrick's office; and mamma said that she could not sign anything without first consulting Collins & Corbin, or Mr. Collins; that Mr. Collins was trustee, and she would not sign without having seen him; and papa said he had lost a good deal of time with Collins about a previous deed, or some deed, and did not propose losing any more; and Mr. Rouget was quite as good a man as Mr. Collins, and that she could do business with him just as well as with Mr. Collins. We did not object to that, that he was a very good man, &c., but as you handled the case we would

not act without consulting you, and we stated that.

Were you present in Judge Garrick's office when this deed had been produced?

A. I was.

Q. Did you suppose that this one which was produced when Rouget was present was the same one?

A. I supposed it was.

Mr. Berry—What she supposed, is that evidence?*

The Court—It seems to me that unless there is a 10 fact upon which that is based it can have no value at all. She says the deed sounded very much like one they had previously heard. We all know very well that the formal parts of a great many deeds are very similar. She states one fact that is of value, in which she says she looked over Mr. Rouget's shoulder, and she recollects she saw in this deed that he was reading, one dollar, and that she has no recollection whatever of seeing or hearing anything like 20 \$7,000.

Mr. Collins—Well, I will withdraw the question.

Q. When this was said by your mother, what was then said by anyone?

A. When mamma proposed seeing you?

Q. Yes.

A. Why, papa objected, saying Mr. Rouget was quite as good a man; she could settle the business with him.

Q. She say she still insisted on seeing Mr. Collins. 30 Then what?

A. Well, we did not speak to the main point entirely; we spoke of other things; we spoke of witnesses who had perjured themselves for papa, and papa—

Q. You went to discussing the trial?

A. Yes, sir; we did not speak to the main point.

Q. When she did insist upon seeing Mr. Collins, did Mr. Harper assent to that or not?

A. No.

Q. And went away, taking the deed with him ?

A. Yes, sir.

Q. Did she refuse absolutely to sign the deed ?

Objected to.

Q. Did she refuse to sign the deed ?

A. Absolutely ?

10

The Court—Suppose you let the witness state what she recollects passed on that subject, and then, after we have the benefit of her recollection, this question can be put as you put it.

Mr. Collins—I submit to the ruling of the Court and won't press the question.

Q. You say that she said she wished to consult Collins & Corbin, and he demurred, and she still insisted—

20

Mr. Berry—I don't think she said it.

Q. What then took place in regard to signing or not signing the deed ?

A. I would say first, in the beginning, whenever my father, in my presence, wanted my mother to sign a deed, she was always careful to say that she would not sign without having first consulted Mr. Collins & Corbin, and if they told her to sign them she would sign. Mamma always feared papa was laying traps for her, and she was very careful to say she would sign if Mr. Collins recommended

30 her to do that, on every occasion when I was present.

Q. Did she on this occasion refuse to sign the deed ?

A. Until she had seen you.

Q. Did she refuse it any further than that ?

A. No, sir; and then she proposed dressing and going down to your office, and papa said, "No, there is no occasion for that," and then he got off on something else.

Q. It has been said that George, your brother George, came into the room and was violent. I don't care to go into that subject, regarding it as immaterial, but was any-

thing said by George to Mr. Harper with regard to the signing of the deed?

A. Yes; George said that any time he came there with a genuine deed that it would be signed. I remember that distinctly. And although George used abusive language, he was always careful about those points.

Q. Was your mother asked to execute a bond and mortgage, then and there produced by your father?

A. No, sir; I have not the least recollection of any.

Q. Were you present at any interview when your father 10 and the witness Weed, who testified to it, again came to the Ninth street house.

A. I was.

Q. Did you know Judge Weed then?

A. No, sir.

Q. What took place on that occasion?

A. Well, papa came with Mr. Weed and I don't—I can't give this word for word, but as I remember it he asked mamma if she was willing to sign some deed, or something on that order, and I think the judge took the 20 deeds out of his pocket—at any rate he sat down and read them. We waited patiently until the end, and then we informed him that we could not sign without having consulted Mr. Collins.

Q. We could not sign?

A. Mamma would not sign.

Mr. Berry—Take it right, “we.”

Mr. Collins—I am asking with reference to what she means to say.

30

Q. Your mother, you mean?

A. Certainly.

Q. You said “we.”

A. Well, you will excuse me.

Q. Who informed him this?

A. Who informed who?

Q. Who informed Mr. Harper that your mother would not sign without consulting Mr. Collins?

A. Mrs. Harper did.

Q. Was the name mentioned of the person, Robert P. Howard?

A. Yes, sir.

Q. What was said then, when your mother said that she would not sign without consulting Mr. Collins?

A. Well, I don't know that, at that particular point George came in; however, there was a great deal of outside business, but mamma was always careful to say she would not sign without seeing you; and then they got off on other talk.

Q. Was the deed left or taken away?

A. Taken away.

Q. Did George say anything about the signing of deeds on that occasion?

A. Why, he spoke of it being a fraud, or fraudulent business, and said any time that papa came there with a genuine deed to be signed, it would be signed.

20

By the Court—

Q. Was this on the occasion when Judge Weed was there, as well as when Rouget was?

A. Yes, sir; he said it several times on each occasion.

Further direct—

30 Q. Were you present when your father called, before the Rouget time—you remember your father testified that on the 5th of June he called and you recommended him to see Mr. Collins?

A. Yes, sir.

Q. On that occasion he said that your mother said that she would sign no deeds or mortgages for him at all. Did she make any such statement?

A. She did not.

Q. Did she ever make any such statement in your hearing?

A. Never.

Q. He says that on one occasion you and she talked with him and suggested on the part of your mother, either by you or your mother, that a new agreement should be made up, instead of the one of June 15th, 1883, and that she then said, in substance: "If you don't make a new agreement I will sign no deeds or mortgages for you; that settles it." Did she make any such statement as that?

A. No, sir.

Q. In substance, or anything like that?

10

A. No, sir.

Q. What was talked about with reference to a new agreement, if anything.

A. Why, mamma said she wished the business was settled one way or the other, so that she could have what she wanted to have without having so much fuss and trouble about it; and I think papa said: "What do you want me to do?" I am not certain about those words, but something that meant that. I said: "Papa, I will tell you what you ought to do; suppose you deed mamma a couple 20 of houses, and then you can wash your hands right of her, and you could have the rest to yourself." Papa got a little excited and came back to the room and said: "During these five years you have collected \$10,000 out of the estate, and now you want the rest of it"—something of that sort. Mamma did not make the proposal; only wanted to get what she was to have without having so much fuss and trouble about it. It was I who made that proposal.

Q. On the occasion when he called there with Judge 30 Weed he said he had told her he sold the property for \$17,000. Did he tell her any such thing?

A. I did not hear it.

Q. That's all.

Cross-examination, by Mr. Berry—

Q. You say you came on to attend this cause, Mrs.

Clark ?

A. Yes, sir.

Q. When did you leave Jersey City ?

A. August 5th, 1888.

Q. How long had you been here then ?

A. I came on December 22d, I think, 1887.

Q. You came here and staid until August, 1888 ?

A. Yes, sir.

Q. And returned here when ?

10 A. I arrived this morning, 12.13.

Q. The last year past, what has been your mother's health ?

A. Well, owing to this trouble and the severe weather during the whole of February, mamma was prostrated with grief and a severe cold.

Q. And confined to her bed how long ?

A. I cannot say for a certainty how long, but six weeks.

Q. After that, able to do any business ?

A. Well, she was not able to go out, for it was very cold
20 in March and April, and I did most of the outside work, or attended to it.

Q. How long was she confined to her house ?

A. I think she was taken sick on the 9th of February.

I don't remember when she left the house.

Q. About how long ?

A. Perhaps two months.

Q. Before she was out at all ?

A. Perhaps.

Q. After that was she able to do business ?

30 A. She was able to see that it was done.

Q. Who did she employ to do it ?

A. She did not employ anybody.

Q. Who did it ?

A. I did.

Q. Did she instruct you to do it ?

A. She did.

Q. Then she did employ you ?

A. It is according to how you understand the term.

Q. She asked you to do it ?

A. No; I was doing it when she was taken sick, and I continued to do it.

Q. You did it with her consent?

A. As I have said.

Q. Didn't even request you to do it?

A. No, sir.

Q. You did it as a matter of right?

A. As a matter of duty.

Q. Were you assisted by anybody?

A. No, sir.

10

Mr. Collins—This is not cross-examination.

The Court—Part of it was right and proper, but I think this branch of it is new testimony, and he will be bound by the answer.

The Witness—Well, now, in the management of affairs, of course I employed persons to shovel snow.

Q. Who collected the rents?

20

A. I did.

Q. Who made out the returns?

A. I did for several months.

Q. What part did George take?

A. In what?

Q. In the matter of the business?

A. In that particular business, no part; in making up the past accounts he took up an active part.

Q. And he was assisted by you in making up the account?

30

A. I did not say so.

Q. Did you have anything to do with making up the accounts?

A. What accounts?

Q. Oh, don't get smart, now.

Mr. Collins—I submit that is unwarranted.

The Witness—I don't know what accounts you mean.

Q. In this case ?

Mr. Collins—Since the former suit ?

Q. At any time ?

A. When my mother was ill I made out the monthly reports to my father.

Q. Were you assisted in that in any way ?

A. No, sir.

10 Q. By any one ?

A. No, sir.

Q. You always made them out ?

A. No, sir.

Q. Who did it then ?

A. I don't know.

Q. You don't know ?

A. When I was there and my mother was ill, I made out the account; when I was not there—

Q. You don't know anything about who made them out ?

20 A. No, sir.

Q. Do you mean to say you don't know who made out the other accounts ?

A. Yes, sir.

Q. You do ?

A. Yes, sir; if I saw the accounts I might probably recognize the handwriting, but I cannot tell for a certainty who made them out.

Q. You don't know whether George made out any or not ?

30 A. No, sir.

Q. Or the other son ?

A. Yes, sir; I believe he did not.

Q. Swear to that ?

A. Yes, sir.

By Mr. Collins—

Q. You believe what ?

A. I believe Dan never made out any of the accounts.

Further cross—

Q. The other one, George?

A. He may have; I presume he did.

Q. Well, don't you know it?

A. No, sir; I don't know for a certainty. I have a recollection of having read, during the making up of past 10 accounts for the past four years, I remember having seen George's handwriting, but remember nothing distinctly about that.

Q. George, you say, was careful about these points? I didn't hear what; the wind blew then. What points do you refer to?

A. Well, George inherited a very violent temper from his father.

Q. That is not what I asked.

A. I have to explain that.

20

Q. No, you don't; never mind the temper. I asked you why you said George was careful about these points. The wind blew so I did not hear all your answer. What points do you refer to?

A. Considering the violence of his temper, he was always careful to say nothing that would criminate him. We talked it over, and although George was heated he was careful to say nothing to criminate him.

Q. You told me—or Mr. Collins—as I understood it, that he was always careful to insist upon certain points 30 concerning the deeds; upon your being ready to sign all proper deeds.

A. Yes, sir.

Q. How did he come to insist upon that?

A. Well, I suppose we have often talked it over, about what plans and plots papa could get up to entrap mamma, and advised each other to be always careful in such—

Q. Advised each other?

A. My brother George, my mother and I were always

determined to tell papa that we could not sign—or, rather, mamma would not sign without having first consulted Mr. Collins.

Q. And were particular to have that said on all occasions?

A. Yes, sir.

Q. You heard Judge Rouget's testimony?

A. Yes, sir.

Q. He stated that he called attention to the fact that
10 the consideration was \$7,000. You say he did not. Is that so?

A. I beg pardon.

Q. You say you saw in the deed one dollar?

A. Yes, sir.

Q. Did Judge Rouget say the consideration of the deed was \$7,000?

A. Not that I heard.

Q. He could have said it and you not have heard it?

A. He might have said many things and I not heard it.

20 Q. He also said that your mother refused to sign that deed under any circumstances, because it was a fraud. Did you hear that?

A. I heard what Judge Rouget said. He did not say all that took place. I think Judge Rouget forgot most all that took place that day, I think he tried to tell the truth.

Q. He has further stated that your mother refused to sign that particular deed anyhow, over and over again, because it was a fraud. Didn't she say that?

30 A. She may have used that expression, but did not refuse point blank to sign that deed.

Q. What do you call point blank?

A. Why, absolutely saying, "I won't sign that deed."

Q. If she did say as Judge Rouget says she said, "I won't sign that deed anyhow, because it is a fraud," that would not be a point blank refusal?

A. If Judge Rouget says that he was mistaken. My mother never said that.

Q. Judge Rouget did not tell the truth on that point?

A. I don't say so.

Q. Well, is it true that he did not say it?

A. That he did not say it?

Q. Did not say those words—that Mrs. Harper said she would not sign that deed, because it was a fraud on the face of it.

Objected to as misleading.

Q. Did Judge Rouget say that here?

10

A. I think he did.

Q. Was it true?

A. Was what true?

Q. What he said?

A. That my mother would not sign the deed because it was a fraud on the face of it?

Q. Yes?

A. No; I don't think that was true.

Q. Your mother did not say so?

A. No, sir; she did not say that she would not sign that 20 deed.

Q. But you think that you and she and George all said: "We won't sign until we see Collins," because you had agreed at all times, on all occasions, to say that?

A. Whenever we talked it over. We knew the man we had to deal with.

Q. I suppose he knows you, too?

A. Well, he is my father. And mamma was always careful to say that she could not sign, or would not sign, without having first consulted Mr. Collins, her trustee. 30

Q. And that is the reason you think she said it on that occasion?

A. Well, I remember distinctly; she always said it when I was present.

Q. Now, the same conversation was had with the other gentleman who went there to take an acknowledgment, that is, Mr. Weed; he says that she refused absolutely to sign the deed; and he says further that he was willing to go with Mrs. Harper to Mr. Collins & Corbin. Is that

true?

A. That he was willing to go?

Q. That Mr. Harper was willing to go with Mrs. Harper to the office of Collins & Corbin.

A. I don't remember with certainty about that, but don't believe it is true, because my mother——

Q. Notwithstanding Mr. Weed has sworn to it, you don't believe it is true?

A. No, sir.

10 Q. Did your sister Josephine used to do writing sometimes for your mother?

A. Yes, sir.

Re-direct examination—

Q. Is your mother an illiterate woman?

A. Yes, sir.

Q. Just barely write her name?

20 A. Yes, sir.

Q. Would she be able at all to understand one of these deeds unassisted?

A. No, sir.

Q. That's all.

ELLEN HARPER, sworn for the defendants.

30

Direct examination, by Mr. Collins—

Q. You are one of the defendants, Mrs. Harper?

A. Yes, sir.

Q. You were married to John Harper in 1854?

A. Yes, sir.

By Mr. Collins—I want now to recall Mr. Harper to ask him some further questions.

JOHN HARPER, the complainant, recalled.

Further cross-examination, by Mr. Collins—

Q. How many times have you been in Dakota Territory?

A. Twice.

Q. When did you go first?

10

A. The forepart of May, 1882.

Q. How long did you stay?

A. I don't remember exactly how long.

Q. About?

A. Oh, probably in the neighborhood of going on four months; nearly four months.

Q. All the time there?

A. All the time there.

Q. When did you go the second time?

A. November, 1883—1882.

20

Q. How long were you there then?

A. I don't remember exactly.

Q. About?

A. Oh, it might be probably a couple of weeks—three weeks.

Q. And have never been there since?

A. That is not my fault; I have been trying to get there.

Q. You have never been there since?

A. No.

30

Q. That is all.

By Mr. Berry—

Q. What did you go there for?

A. I went there to see what kind of country it was.

Q. When there, what did you do in the way of business.

A. Bought a horse.

Q. Anything else?

A. Well, I rode around the country there every day, within, probably twenty miles from the town where I stopped, to see what kind of a country it was.

Q. Where did you stop?

A. City of ———, Minnehaha County.

Q. What else in the way of business did you do?

A. I was about to purchase a piece of property.

10 Q. What kind of property?

A. Consisting of about 300 acres of ground. I intended to establish a summer resort and combine it with stock raising.

Q. Did you enter into the arrangement?

A. Not by contract, exactly—a verbal agreement.

Q. After going as far as you could, what did you do then?

A. Came back to Jersey City to settle up my business.

Q. And in doing so——

20 A. Did sell it up—sold my store.

Q. You were anxious to sell this property here?

A. Yes, sir.

Q. And for that purpose did you see Messrs. Collins & Corbin.

A. I did.

Q. And the result was the agreement?

A. Yes, sir.

Q. And that has been spoken of—the agreement—in this case?

30 A. Yes, sir; and at that time the relations between myself and Mr. Collins were of the most confidential nature, and I executed my will at that very time——

Objected to.

Q. Were you asked by Mr. Collins whether you could convey your property here?

A. I was.

Q. What did he say upon that point?

Objected to.

A. He suggested this agreement.

Objected to.

The Court—Mr. Collins has made no inquiries about what he did in Dakota, nor what he did in that time in New Jersey. If counsel says he regards it important, and that he overlooked it, I 10 would allow him, even after the case is rested, to ask the question. Go on, Mr. Berry.

Mr. Berry—I want to ask him whether the agreement was arranged—whether his desire to convey his property here and go West and invest it.

Mr. Collins—I object to that.

Mr. Berry—Mr. Harper went to Dakota and entered into an arrangement to buy this land. He comes back and goes to Mr. Collins' office. Mr. Collins tells him that he thinks there would be 20 some question as to his being able to give good title unless he lived in Dakota; his divorce there would be good. And Mr. Harper says that he induced him to sign this agreement, and when it was signed it was stipulated that he should have a right to sell this property that he wanted to sell. I simply want to ask Mr. Harper if that is the fact?

The Court—That is in the agreement.

Mr. Berry—Not in the way we put it.

30

The Court—I think the agreement is as plain as the English language can make it.

Mr. Berry—I will ask this question, and then the Court may overrule it.

Q. Why did you sign this agreement, principally? What was the principal—

Objected to as irrelevant.

The Court—The objection is sustained. The question is overruled.

Q. Was it for the purpose of being able to dispose of your property here and invest it in Dakota, where you had arranged to purchase?

A. It was.

Objected to.

10

The Court—I make the same ruling.

ELLEN HARPER resumed the stand.

Direct examination continued, by Mr. Collins—

Q. How many children did you bear John Harper?

20 A. Eleven.

Q. How many were living at the date of this agreement, 1833?

A. Seven.

Q. Has one since died, Josephine?

A. Yes, sir.

Q. It was intimated there were twelve instead of eleven; I think it is twelve, too?

A. It is eleven; I did.

Q. I guess eleven is right. Now, Mr. Harper, it appears, was away from New Jersey for a time, in the early summer—late spring or early summer—of 1882, and he says he was in Dakota. Did you know where he had gone?

A. No, sir.

Q. Did he ever ask you to go to Dakota with him?

A. No, sir.

Q. Did you know that he had taken, or attempted to take, a residence any where else than in New Jersey?

A. No, sir.

Q. When he returned that summer or autumn, did he come to the same house where you and he had previously been living?

A. Yes, sir.

Q. Did you receive any notice of a divorce suit?

A. Never, to my knowledge.

Q. In Dakota?

A. Never.

Q. At the time of this agreement, made June 15, 1883, had you employed Collins & Corbin to bring a suit for separation and alimony against your husband?

A. Yes, sir.

Q. And the papers had been prepared?

A. Yes, sir; I told them of it.

Q. And the papers had been prepared?

A. Yes, sir; I guess so.

Q. Well, you know you signed some affidavits, don't you?

A. Yes, sir; I did.

Q. And then this agreement was entered into? Had you then learned, about that time, that just before the agreement, that he claimed to have a divorce—just before the agreement of June, 1883?

A. I can't remember about the time; my memory is poor about the time.

Q. But, before you entered into this agreement, you heard he claimed to have a divorce from you—out in Dakota?

A. He said so, but I didn't believe him.

Q. Did you deny the validity of any such divorce? 30

A. Yes, sir; could not get no divorce off of me.

Q. Did you ever, after the agreement of June 15th, 1883, assume the collection of the rents of 403 and 405 Henderson street, or the Vandervoort property?

A. No, sir.

Q. Why not?

A. He would not allow me.

Q. Did he collect these rents?

A. He had an agent for to collect for 403 and 405, and

he collected the Vandervoort house himself.

Q. Did he also collect the store, and 472 or 4 Henderson street?

A. He collected that, too.

Q. Which was it—472 or 474?

A. 474.

Q. He also collected the rent of the store until you got the injunction in the Chancery suit?

A. Yes, sir.

10

Mr. Berry—I ask the Court whether this is competent testimony?

The Court—It seems to me within the perview of the bill; that which goes to answer the charge, I think, may be shown.

Mr. Collins—That is about as far as I want to go.

Q. In the other Chancery suit between your husband and yourself, and the cross-suit, it was set up that you
20 had forfeited your rights by refusing to sign deeds. What particular person was principally set up in the testimony in that case?

Objected to.

30

The Court—The question presented this morning was somewhat different from this. There it was apparent that the record itself was the principal matter upon which counsel intended to rely, hence, it must be produced in order to show that there was a divorce suit. The record being produced, then the only remaining question was, in order to get it before the Court in this case, as to the identity of the parties therein named with either of the parties to this suit. Now, the object of this inquiry seems to be, not for the purpose of opening a way for the introduction of that record, but for the purpose of showing what was the subject matter of inquiry. If there is

anything else than that, why, clearly, the question would be incompetent. If it is for that purpose it is competent as it now stands, without without the record itself; and the record never need be produced in order to make it competent. If it turns out otherwise, of course, then the objections will be good, and you may renew it.

Mr. Berry—We wanted to show by the Master's report there was a certain amount due, and it was overruled. I am willing to admit that the 10 Robert T. Howard in the former suit is the Robert T. Howard in this.

The Court—The witness would have to swear to the same thing if the record was to be produced; that would leave the present question unsettled.

Q. It was claimed that you had refused to sign some deeds, and there was one deed that the principal testimony was over, that you hadn't signed?

A. Yes, sir.

20

Q. To whom was it?

A. That was to Howard, was it not?

Q. Yes, that is what I wanted to know.

Mr. Berry—Is that a proper question? It is trying the case over, it seems to me; would not the best evidence of that be the record?

Mr. Collins—It is not the fact, but only the witness's knowledge of the fact.

The Court—It seems to me the distinction is quite 30 plain; and for the purpose of this suit at this stage of the controversy, the object sought to be attained may be attained in this way without the the slightest prejudice to anybody.

Q. Robert T. Howard?

A. Robert T. Howard.

Q. You were present during the trial and heard the testimony?

A. Yes, sir.

Q. Was the Advisory Master's opinion sent to you and read to you—Mr. Pitney's opinion in this case?

A. Yes, sir.

Q. Now, Mrs. Harper, at or about the time of that trial, was any advice given you by your counsel, with respect to your proper course of action if any deeds were presented to you for your signature?

10 Objected to.

The Court—I think that is entirely proper.

Q. [Question repeated.]

A. I forget the words now.

Q. Was any such advice given?

A. Yes, sir; it was.

Q. Who was your counsel?

A. Mr. Collins.

20 Q. Any other person—has he got a partner.

A. Yes, sir; Mr. Corbin.

Q. Did both those gentlemen talk to you?

A. Both of them talked to me about it.

Q. What were you advised to do in case any deeds should be presented to you? What were you told to say to Mr. Harper?

A. I would have to consult my—I said Mr. Collins was my guardian, and I would have to consult him about it to see if it was lawful.

30 Q. By guardian, do you mean the agreement that he had signed—this paper—the agreement of June, 1883?

A. Yes, sir; that agreement of 1883.

Q. Now, it appears that some papers, some deeds, had been produced and submitted to Messrs. Collins & Corbin, some papers and deeds, which Mr. Harper wished to have made for \$1 consideration in each case, to John D. Ronayne, with the ascertain that Ronayne would execute deeds back to Mr. Harper, in trust, for Margaret Ronayne, or John J. Harper, or both. Were you informed by Col-

lins & Corbin that such deeds had been requested?

A. Yes, sir.

Q. Were you also informed by them that in their judgment you were not bound to sign them?

A. Yes, sir; I was.

Q. Now, it is said that on June 5th, 1888, Mr. Harper came to see you, no one being with him, and that he met you and Mrs. Clark; that he had some deed he wanted signed, and Mrs. Clark persuaded him to go to Mr. Collins. Do you remember that occasion? 10

A. We did that.

Q. That was in 474 Henderson street, in the hallway? That was before he came there with Rouget?

A. I remember him being in the entry talking to my daughter and I, but I don't remember what he said.

Q. Did you say to him then, or at any other time, that you would sign no deeds or mortgages for him at all?

A. Oh, no.

Q. Some similar conversations at other times are stated by him. Did you ever state that to him? 20

A. I don't remember I did.

Q. It appears on one occasion your daughter suggested a new agreement, by which you should have some of the property, absolutely for yourself, and he the rest of it? He says on that occasion you told him if he did not make a new agreement you would sign no deeds or mortgages for him, and that settled it. Did you ever tell him that?

A. I forget, now.

Q. What did you tell him when he asked for deeds—if he came and asked for a deed to be signed, what did you 30 tell him?

A. I would tell him that I had to see Mr. Collins & Corbin.

Q. Then why do you forget whether you ever told him that you would sign no deeds or mortgages at all, and that settled it?

Objected to as cross-examination of his own witness.

Mr. Collins—The Court sees the witness is old and feeble; mind not entirely clear.

The Court—I am willing the question should stand.

Q. What makes you say, if you always referred him to your counsel, that you forget whether you told him you would not sign any deeds or mortgages unless he made a new agreement?

A. Well, I have got such a poor memory; I can remember two or three words.

Q. Did you ever tell him if he would not make a different agreement, or a new agreement, that you would not sign any deeds or mortgages?

A. I don't remember saying that.

Q. Do you remember his coming there with Judge Rouget?

A. Yes, sir; I do. I remember that well.

Q. And requesting you to sign a deed to John D. Ronayne.

20 A. Yes, sir; I remember that.

Q. Was there anything said to you on that occasion, by any one, about \$7,000?

A. The judge, he read the deeds to me, and I understood him to say one dollar, to John Ronayne; sell the property for one dollar, that is what I understood him.

Q. Were you informed by anybody that it had been sold to John D. Ronayne for \$7,000?

A. No, sir.

Q. Had you any such idea?

30 A. No.

Q. What did you suppose that was they wished to decide at that time?

A. They wished me to sign a deed to John Ronayne for \$1—sell the property for \$1.

Q. What did you say?

A. I told the judge I was almost blind; I could not see anything, I said; perhaps Harper had got up a plan, may be, to sign, so that I might hang myself; I had to go and see Mr. Collins and Corbin, they were my guardians, be-

fore I could sign anything; before I could sign anything I would have their advice onto it..

Q. Was something said by him about going down right away?

A. I don't remember; I was always ready to go if they wanted to go.

Q. Did they leave the deed with you, or take it away?

A. Oh, he took away the deed; he took it away.

Q. He says that after Judge Rouget stepped out into the entry, that he took the bond and mortgage out of his pocket and asked you to sign it. Is that true?

A. No, sir; there is no truth in it. I didn't see nothing but the deeds with Rouget.

Q. Do you remember his coming to your house with the man who testified to-day named Mr. Weed?

A. Yes, sir; I seen that gentleman.

Q. Did you know him then?

A. No, sir; I didn't know him then; first time I ever seen him, to my knowledge.

Q. What did he ask of you that time?

20

A. Oh, I suppose to sign.

Q. A deed to Robert T. Howard?

A. Yes, sir; I believe that was the deed; that was the name, I guess.

Q. Did you recognize that as the name of this man to whom the other deed—

A. Oh, yes; I remember that well.

Q. The other deed has been requested?

A. Indeed, yes; I remember him well.

Q. He says he told you that he had sold it over—he had made another sale of it then, recently, to Howard, for \$17,000. Did he tell you any such thing?

A. He might do; I don't remember; he might do.

Q. You don't remember it?

A. I don't remember it; no.

Q. What did you tell him, or Mr. Weed, about signing?

A. Oh, I told him they would have to see Collins & Corbin; they are my guardians; and that I would have to see them. I wanted to go down right away. "Oh," he

says, "I won't go to them fellows on Washington street." Harper says: "I don't want to go down to them fellows on Washington street." That was Mr. Collins and Mr. Corbin.

Q. Since the decision in the former case, what has been your answer to any requests to sign deeds?

A. I could not sign no deeds, not until such time as I seen you and have it done according to law; and if you said it is all right, I am satisfied.

10 Q. What did you tell Harper to do, if he had any such deeds that he wanted you to sign?

A. Well, I wanted him to go down to you.

Q. Did you refuse to sign?

A. I would not sign no deeds until I seen you, to see whether it was lawful.

Q. Except in that way, did you refuse, except in asking to have them submitted to Collins & Corbin?

A. I wanted it always submitted to you.

20 Mr. Collins—I call upon you to produce a letter from Mr. Corbin.

Mr. Berry—I have not got it; I will send it to you.

Cross-examination, by Mr. Berry—

Q. You knew perfectly well that your husband had obtained a divorce in Dakota in 1882?

A. No, no, sir; nothing about it; he could not get any.

30 Q. You stated to your counsel he told you?

A. Nothing against me to get a divorce.

Q. You have stated that he told you?

A. Oh, he said; I never believed anything he would say; I never believed a word the man would speak.

Q. Well, he had told you at that time; had he or had not he?

A. Oh, he said he had got a divorce, but I would not believe him.

Q. That was before the agreement was signed, was it?

A. I suppose so.

Q. Did you ever state to Charles Whitehouse, or tell Charles Whitehouse that Mr. Harper had got a divorce about this time—1882 or 3?

A. Not as I remember, sir; I don't remember.

Q. You know him well?

A. I have seen him—seen him.

Q. He was attentive to one of your daughters? Was not he?

A. I have never seen it. 10

Q. Perhaps you didn't see it; but I ask you whether he did or did not?

A. I could not say that.

Q. Did you ever tell him, at that time, that Mr. Harper had got a divorce from you?

A. I don't remember saying that to him.

Q. Did you ever talk it over with him, or the daughter that he was paying attention to?

A. Very little talk I had with him.

Q. Do you say you did not? 20

A. Not as I know of.

Q. Now, do you mean to say that you may have done so?

A. Well, I know, in the first place, the man could not get one.

Q. Could not?

A. Oh no, no; could not say a word about me, you know; not a word; nobody in this world can say a word about my character.

Q. He did not serve a notice upon you? 30

A. If he got one it was a fraud; it was no good.

Q. Do you know a man by the name of George Racht; that is the way he spells his name; ever know a man of that name?

A. Not to my knowledge.

Q. He swears he served a paper on you in 1882; did you receive any paper?

A. Not as I know of.

Q. Well, do you know or not?

A. No; I never had no paper; not as I know of.

Q. Do you know a gentleman by the name of Ruggles?

A. No, sir.

Q. You don't?

A. Where do you get them names from?

Q. What?

A. Where do you get them names from; I don't know them people?

Q. The gentleman is in the room here. [Indicating.]

10 Do you know that gentleman yonder?

A. I can't see; what is his name?

Q. Ruggles. Did Mr. Harper ever say, in your presence, to Mr. Ruggles, that he had obtained a divorce from you, and that all matters concerning the children were to be attended to, hereafter, by you?

A. I don't remember anything about it.

Q. That was in February of '83, before the agreement was signed. Do you?

A. I don't remember nothing about it.

20 Q. Are you willing to swear, now, that you did not know, when you signed the agreement, that Mr. Harper had obtained a divorce from you?

Mr. Collins—She has already sworn she did know; he claimed it.

A. Certainly; how would I know?

Q. You did not know it, notwithstanding he had told you?

30 A. I remember him saying that he had got one, but I didn't take no stock in what he said, because he never told no truth.

Q. You knew it but would not believe it?

A. I would not believe anything of that; I must see anything he must do before I would believe; he was never known to tell the truth in his life, scarcely.

Q. That is all.

Mr. Collins—Note on the testimony a notice under

the rules that I will produce on the hearing of this case the entire Chancery record in the suit of Ellen Harper and Trustee against John Harper, and the cross suit of John Harper against Ellen Harper and her Trustee, and all proceedings therein; the opinion of the Advisory Master; the decree in the cause; the Master's report and order thereon, and final decree; also the stenographer's notes of the oral evidence taken before the Vice-Chancellor. I give that notice under 10 the rule. As to the production of them, I leave it to your Honor whether I shall send to Trenton and have the package sent on here.

The Court—That is the only thing to do in case counsel on the other side insists on it.

Q. Are these four young ladies, here in the room, your daughters?

A. Yes, sir.

Q. And you have, besides them, two sons, Daniel and 20 George?

A. Yes, sir.

By agreement of counsel witnesses for the complainant in rebuttal were then called:

FRANK RUGGLES, sworn for the complainant in rebuttal.

30

Direct examination, by Mr. Berry—

Q. Did you ever go to Mr. Harper's home, or Mrs. Harper's, to see about the marriage of Emma to a friend named Mr. Whitehouse?

A. I went there to see Mr. Harper.

Q. Give the date please?

A. I think it was in February or March, I should think, of 1883; about that time, either February or

March,

Q. Did you go in the presence of Mrs. Harper?

A. Yes, sir; I inquired for Mr. Harper. There was a man standing in the room; he says: "He is in that little office here;" showed me the door; presently Mrs. Harper came in; I told Mr. Harper what I was there for; Mr. Harper says: "As far as the children are concerned," he says, "Mrs. Harper has control of those; whatever she does I have nothing to say against it;" that he was about
10 making a contract, or agreement; had either consummated it or was about doing so, transferring some property to her; that they were now two.

Q. What did Mrs. Harper say, if anything?

A. Mrs. Harper said nothing, but nodded her head; that was all.

Q. That was all?

A. That was all that transpired then.

Q. Did Mr. Harper call Mrs. Harper in the office?

A. I believe he did.

20 Q. Have you given us all that occurred on that point? That is all we ask you to do; just what was said on the matter—said about divorce.

A. Mr. Harper told me he had a divorce, and that his wife had the custody of the children, and whatever she said he should not object to.

Q. What did Mrs. Harper say about it?

A. I don't think Mrs. Harper ever made any reply whatever. I don't remember that she did.

Q. Anything said about turning the store over to her?

30 A. Yes, sir; he said he was about transferring some property, or had, I don't remember which.

The Court—The agreement shows what was done.

Q. That is all.

Mr. Collins—I have no questions.

Not cross-examined.

CHARLES WHITEHOUSE, sworn for the complainant, in rebuttal.

Direct examination, by Mr. Berry—

Q. In 1882 and 1883, did you know the Harper family in Jersey City?

A. Not in 1882; it was in 1883. 10

Q. Did you ever have any conversation with Mrs. Harper and Emma, the daughter, as to a divorce obtained by Mr. Harper, or claimed to have been obtained?

A. Well, I did with Emma a little at the hospital, with her aunt, Mrs. Hart.

Q. With Mrs. Harper; whether you communicated with Mrs. Harper. Did you have any conversation with her, or in her presence?

A. Yes, sir; with the daughter in her presence.

Q. With the daughter, in her presence? 20

A. No.

Q. How, then?

A. She was alone in the store.

Q. Mrs. Harper?

A. Yes, sir.

Q. Just state what was said?

A. I stopped in there and says: "How do you do?" and she passed the time of day. I says: "Is the family home;" she says, "No; the girls is out."

Q. Who did you inquire for? 30

A. Not for anybody; just the girls.

Q. Were you acquainted with them?

A. Yes, sir.

Q. Had been for some time?

A. Well, about two or three months.

Q. Go on.

A. And she brought up something about my paying attention to Emma. And I made the remark I heard there was a little trouble between them, and I guessed it didn't

amount to much.

Q. Between who?

A. Mr. Harper and Mrs. Harper. And she said: "Yes;" she says, "He claims he has got a divorce."

Q. When was this?

A. I says: "I have heard all about it;" turned it off in that way.

Q. When was this?

A. I don't remember the date. It was in 1883; some 10 time in the spring.

Q. More than once?

A. No; only once; just when I happened in there.

Q. Did she give any further information concerning the point, or anything further. Did you not discuss it at any further length than that?

A. No; not there that day.

Q. Well, at any other time?

A. No; let me see—she did one night in the presence of Mr. Harper.

20 Q. Where was that?

A. In the back room of the store.

Q. You were present?

A. Yes, sir.

Q. What was said then?

A. Well, she said there had been enough trouble, and she said she didn't want to have any more trouble about it; since I had had trouble with the daughter, she didn't want to have any trouble that way, and didn't want to have none with Mr. Harper.

30 Q. Well, was anything said about the divorce? That is what I want to know?

A. Well, I don't remember whether she did that day or not.

Q. Well, at any other time?

A. That is the only time that I ever had any conversation with Mrs. Harper.

Q. How was it talked about in the family when you were present—a subject of conversation generally? Whether it was in Mrs. Harper's presence the discussion

happened or not?

A. No, sir.

Q. When Mrs. Harper was present——

A. Mrs. Harper never was present when I was there, only two or three times—both times I have told you—and the other time there never was a mention of it.

Q. You have given us all that you know about it?

A. All that—of Mrs. Harper?

Q. Yes, sir. That's all.

10

Mr. Collins—I have no questions.

Not cross-examined.

The further examination of witnesses, &c., in this matter adjourned until the 5th day of January, 1889.

20

30

In Chancery of New Jersey.

10

BETWEEN

JOHN HARPER,

Complt.

AND

ELLEN HARPER,

Def't.

20

By Mr. Berry—If the Court please, Mr. Howard is here, at some inconvenience to himself, and we would like to swear him at once. He could not get here the other day, owing to the sickness of his wife. He is the gentleman to whom the property was sold.

30

By Mr. Collins—This is part of your affirmative case?

By Mr. Berry—Yes, sir.

ROBERT T. HOWARD, sworn for complainant.

Direct examination, by Mr. Berry—

Q. Where do you live?

A. No. 35 East Twenty-third street.

Q. New York city?

A. Yes, sir.

Q. Did you make an offer to Mr. Harper for certain property situate in the city of Jersey City, and if so, when, and what was the offer?

A. I made him two offers. The other is passed over long ago. I made him another offer last June.

Q. Last June?

A. Yes, sir; and that is the one I suppose I have come 10 here to tell you about.

Q. What was the offer? Is this a memorandum of it? Just look and see.

By Mr. Collins—Well, that's Mr. Harper's handwriting. I object to it.

By Mr. Berry—Well, if he saw it I suppose it will be competent.

By Mr. Collins—I object to it. It would not be competent.

20

Q. Did you see it?

A. I guess I can remember about it without that paper.

Q. Just state when you saw him, and what offer you made him, and what for?

A. I made him an offer in June. I wrote him asking him if he could give me a clear title, because he could not before. I wrote to him again in June making him a proposition—or not a proposition, exactly, but asking him at first if he could give me a clear title, and he replied that 30 he could.

Q. [Handing witness a paper.] Do you recognize that as your letter?

A. Yes, sir; that's my handwriting.

Mr. Berry—I offer that in evidence. It is a letter from Mr. Howard to Mr. John Harper, dated June 22d, 1888, and already marked as an Exhibit.

Q. Now, in reply to that letter, did you receive one from Mr. Harper?

A. Yes, sir; he replied to it, stating that he could give me a clear title.

Q. Have you got that letter?

A. I think I have. [Same produced.]

Q. What is the date of it?

A. June 25th.

Q. 1888?

10 A. Yes, sir.

Q. And from whom?

A. From Mr. Harper to me.

Q. That is from John Harper, the complainant, to you.

A. Yes, sir.

Mr. Berry—We offer that in evidence.

20 Marked Exhibit C 21.

By Mr. Collins—

Q. Let me see the envelope?

A. I haven't the envelope. I had it in one belonging to me.

30 Q. I saw you take it out of one?

A. Yes, sir; it was in an envelope, but it was a fresh one. There is the envelope I took it out of. [Producing it.]

Q. That is not the envelope this belongs to?

A. No, sir; that belongs to another letter I got. I took this letter out of a trunk where I think I had some others, and stuck it in my pocket, and I put it in that envelope a moment ago. That's the only thing I have in reply to my letter. My other interviews with him were personal.

Further direct—

Q. [Handing witness a paper.] What is that?

A. Well, this refers to it.

Q. Refers to the same matter?

A. Yes, sir; I was to see him in answer to it and make him a proposition.

Q. This is a letter from you to Mr. Harper?

A. Yes, sir. 10

Q. Dated when?

A. June 26th?

Q. Now, in consequence of this correspondence, did you see Mr. Harper?

A. Mr. Harper came to see me.

Q. What was done in regard to the proposition to purchase the property?

A. I made him an offer.

Q. How much?

A. For the portion of the property this letter covers. 20

Q. Well, what property was that?

A. There were two pieces I don't remember the numbers of them.

Q. On what street?

A. On Front street; there is a saloon in one of them, I think.

Q. "Liquor Store," they call it. How much was the offer?

A. \$17,000 cash.

Q. Was that the same property that you had made an offer for before?

A. Yes, sir; but it did not include all of it.

Q. Were you ready to fulfill your offer?

A. Were I?

Q. Yes?

A. I was at that time; yes, sir.

Q. Why was it broken off—or was it broken off?

A. Well, Mr. Harper went back on the state of the case. He came to me and said he could not give a clear title.

He said he had been hampered again and was sorry that he had troubled me about it. He had felt sure when he wrote me that he could give a clear title, but as it was, he said he would have to stop the whole matter. He said he was blocked in it, now. So I considered the whole thing off. I also wrote him a letter after that, putting it in writing and declaring the thing off. Have you got it, Mr. Harper?

10 Mr. Collins—I object to the contents of any letter unless it is produced.

Q. That's all.

By Mr. Collins—I move that be stricken out.
By the Court—That will be stricken out.

Cross-examined, by Mr. Collins—

20

Q. The letter which you say you received from John Harper, which is here dated June 25th, 1888, when did you receive that letter?

A. Why, it must have been the next day. I certainly received it after the date of it.

Q. Why do you say that?

A. I remember very well receiving it, and it is dated June 25th.

Q. You produced it without an envelope. Did it come
30 by mail?

A. It came by mail.

Q. Where is the envelope?

A. I don't know.

Q. You don't know?

A. No, sir; I take letters out of envelopes and invariably destroy them.

Q. Do you testify that you received that letter by mail or otherwise in June, 1888, positively?

A. As far as I can remember, I do; yes, sir.

Q. As far as you can remember; what do you mean by that?

A. That is as positively as I can give it to you.

Q. You cannot state that you received that in June, 1888, positively?

A. I paid no attention to it; I just stuck it away. I have got other letters of Mr. Harper's.

Q. You cannot state positively that you received that in June, 1888?

A. To the best of my knowledge, I did; yes, sir. 10

Q. Are you the Robert Trumble Howard who testified in the former litigation between Mr. and Mrs. Harper?

A. Yes, sir.

Q. Before Advisory Master Pitney?

A. I don't know who it was, but this is not the gentleman [referring to the Vice-Chancellor].

Q. Was it before a Master in Chancery in the adjoining Court room in this building, or down stairs?

A. I was here and testified before; yes, sir.

Q. Did you not on that occasion, when asked where 20 you could have procured the portion of the money not accounted for, with which to pay for the property, that you then said you were prepared to pay, testify as follows: "Probably I might have borrowed the rest for that purpose?" Did you so testify?

A. Yes, sir; I think there was a gentleman at that time who was sitting here, told you I could have borrowed it on bond and mortgage.

By Mr. Berry—Are we trying the old case, or the 30 new one?

By the Court—I understood the witness to say that he made this offer in cash.

By the Witness—I understand that I was summoned on this present case?

By Mr. Berry—This is a new offer I have been examining him about, and now Mr. Collins asks him as to his testimony relating to the offer made before. That is all passed and we don't care

about it.

By Mr. Collins—I am examining him as to his faculties on previous occasions, not about this transaction. He has admitted under oath as to his pecuniary responsibility—that he was unable to pay cash for the property on a former occasion. I desire to show that that condition continued.

By the Court—First show the difference in time.

10 In order to save discussion I will say that it seems to me that it might reasonably come in with some weight in the case if the difference in time is not too great.

Q. Your former testimony, as appears from the book of evidence, was given February 9th, 1888. Is that about the time?

A. Yes, sir.

Q. Now, this offer was in June. And you testified then that you had made an offer for this property, which you
20 say included then more than the other?

A. My first offer included all, I believe.

Q. And you testified that you had made such an offer to purchase it in the latter part of July, 1887, didn't you?

A. Yes, sir.

30 By Mr. Collins—Now, here is a man who in July, 1887, makes an offer to buy the property, and he testifies in February as to his resources. Now, in June he makes another offer, and we have a right to probe him as to his financial resources, and to show whether they were better or worse at that time.

Testimony admitted.

Q. On the former hearing you stated that some of your money was in the bank. Were you then asked to name the banks?

A. I cannot remember all my testimony at that time.

Q. Were you asked to name the banks ?

A. I don't know whether I was or not.

Q. And did not you name the Commercial Bank, of Columbus, Ohio ?

A. I might have named that bank; yes, sir.

Q. Did you or not ?

A. I might.

Q. Do you know whether you did or not ?

A. I don't remember; I kept no notes at all of the case.

Q. Were you asked how much there was in that bank, 10 and did you reply: "I don't suppose there was a great deal there at that time; probably a couple of thousand dollars." Did you so testify ?

A. I don't remember, sir.

Q. Were you asked if you had any money in any New York bank, and did not you reply "No, sir" ?

A. I think that may have been true. If I remember rightly I told you that if I had any ready money at that time I let my wife have it.

Q. Yes, you so testified. Were you asked if you kept 20 a bank account at that time in a bank in New York, and did not you say, "No, sir" ?

A. I don't think I kept any bank account in New York. I think that's right.

Q. Were you asked if you kept a bank account anywhere else ?

A. I don't remember whether you asked me or not.

Q. Did you keep a bank account anywhere else ?

A. I had an account with one or two brokers.

Q. Bank account, I said ?

30

A. No, sir; no bank account.

Q. When asked to give an account of your assets, were you able to name anything else than some money in the Columbus Bank, not to exceed \$2,000, and a claim that you had against the Peter's Dash Company or Buggy Company, which was not to exceed \$2,000 ?

A. I could not have certainly said that I had a claim against the Columbus Buggy Company, or the Peter's Dash Company, because I did not. They are my rela-

tives.

Q. Didn't you testify, when asked where your money was, as follows: "It was scattered around at different places—scattered around at various places; some of it was in the Columbus Buggy Company and the Peter's Dash Company"?

A. I don't know whether I said that or not.

Q. Don't remember?

A. No, sir.

10 Q. Do you now say that you had any money in either of those companies?

A. I meant to say that I could get all the money I wanted from those companies.

Q. Is not this the testimony given by you: "Q. What was the assets in the Peter's Dash Company and in the Buggy Company—was it stock in the company, or money?

A. That would have been cash. Q. In what shape was it?" To that you gave no answer—no responsive answer?

20

By Mr. Berry—Well, what did he say?

By Mr. Collins—He said: "If he had given me a clear deed of the property I would have produced the cash.

By the Witness—Yes, and I would, and I will now if he will give me a clear deed to the property—I will produce the cash.

By Mr. Collins—I ask to strike that out as not responsive.

30

By the Court—Yes.

By the Witness—Well, my time is very important—very important.

By the Court—Well, if you will answer responsively you will soon get through.

Q. I will continue reading from the testimony: "Q. By loan? A. Not exactly by loan. Q. What would it have been? A. Some portion of it would have been what I am entitled to. Q. For what? A. They are relatives of

mine; I have been connected with them all my life. Q. How would you be entitled to it? A. In my business connection. Q. In what way—stockholder, creditor, or what? A. Creditor.” Did you so testify?

A. I don't remember saying that, exactly.

Q. You don't remember saying that?

A. No, sir.

Q. [Reading.] “Q. For what? A. Money and such things I had placed at their disposal. Q. What do you mean by such things? A. Money. Q. Money you had 10 placed at their disposal—do you mean loaned to them? A. Yes, sir. Q. How much? A. Oh, I could not tell you how much, exactly. Q. A thousand dollars? A. More than that. Q. \$2,000? A. I could not tell you the exact amount. Q. Not so much as \$2,000? A. I could not tell you the exact amount, but somewhere near there. Q. In which company? A. Whichever one they used it in. Q. You don't know which concern had it—the two concerns were managed by your relatives? A. I don't know which concern they placed it in.” Did you so testify as I have read?

A. It seems to me there is some of it that I remember, but I don't remember it all.

Q. What do you remember?

A. My interest with the Columbus Buggy Company. I have no interest in it now.

Q. You have none now?

A. No, sir.

Q. Do you remember that you stated that that interest was somewhere near about \$2,000? 30

A. No, sir; I do not remember it.

Q. Was it less than that?

A. I don't remember at all.

Q. Was the interest less than that?

A. I don't remember what the interest was.

Q. You don't?

A. No, sir.

Q. Is it not true that the only proof that you gave of any assets that you had, on the former trial, was the

money in the Columbus Bank and what you had there in one of those two companies—the Peter's Dash Company and the Buggy Company—and what you gave to your wife from your earnings?

A. That may have been so at the time; yes, sir.

Q. Did you not testify as follows: "Q. Tell us the names of the people in Wall street that have money of yours? A. Nobody in Wall street has any money of mine. Q. What? A. Nobody. Q. You made a mistake
10 in making that statement? A. No one down there had a dollar of my money." Had you stated, prior to those questions that I have just read to you, that there was money of yours in Wall street?

A. I could have raised money in Wall street; yes, sir.

Q. Had you stated, before those questions that I have just read, that you had money in Wall street?

By Mr. Berry—How can he tell that?

20 A. I don't know whether I did or did not.

Q. Did you have any money in Wall street?

A. Well, I think I told you at that time that I might have had some with some broker that I was doing business with.

Q. Did you have money of your own in Wall street?

A. Well, I have had money, more or less, of mine in Wall street for the last ten years.

Q. But that time?

A. I certainly must have had some.

30 Q. Did you state then: "That no one in Wall street had a dollar of yours"?

A. I don't remember that, sir.

Q. I will read you a few more questions and answers. Was this testimony given by you: "Q. Where was the money you got—the \$15,000? A. Hey? Q. You say there was a little in Columbus and a little in the Peter's Dash Company? A. I could have raised the money. Q. Where was your money? A. I would have raised the money. Q. I would like to have you tell me where it

was? A. Must I answer all these questions? Q. His Honor will pass on the question. A. It's only a waste of time. Q. Where was the money? A. What ready money I had I placed in my wife's hands, and what she did with it I don't know. Q. Where did she keep it? A. That I don't know. Q. Did she use it for household expenses? A. Every week she paid her expenses; I don't know what she did with it. Q. You don't know what she did with it? A. No, sir. Q. What is the name of the cashier and president of the Commercial Bank, of Columbus? A. 10 Sessions is its president, F. C. Q. What's the cashier's name? A. J. Jeffray, of the Commercial Bank, Columbus." Did you so testify?

A. I might have said those names. Those names are proper.

Q. Well, I mean the whole of what I have read?

A. Yes, sir; that's right. It still runs the same way, so it must be right.

Q. Were you asked, with reference to the money your wife had, the following questions, and did you return the 20 following answers: "Q. How much do you suppose she had? A. I didn't have to ask her. Q. Over \$1,000 did she have? A. Yes, sir. Q. Over \$2,000? A. I don't know. Q. That will do." Did you so testify?

A. I think I did; yes, sir.

Q. Were you able to give any other, or to give any statement of any assets of yours when you testified last time, than what you said was at the Columbus Bank, and what you said was in the Peter's Dash Company and the Buggy Company, and what you said your wife had? 30

A. I think I told you then I could have raised it.

Q. When you were asked to state what money you had yourself, or resources, did you give any other, or were you able to give any other than those I have just stated?

By Mr. Berry—Wait a minute. I object to this, because he is asking him whether he could have given any other resources at that time.

By the Court—I don't see how it is very material.

By Mr. Collins—Well, I will put it in this shape, then.

Q. Were you asked to state what your resources were, on the former trial.

By the Court—If your object is to test his recollection, I will admit it.

Q. Well, what is your answer?

A. Were I asked that question?

10

Q. Yes.

A. I think I was.

Q. Did you state anything further than the money in the bank at Columbus, the credit with either the Peter's Dash Company or the Buggy Company, and the money in your wife's hands, when you answered the question?

A. I think not. I started to, but the judge who sat here at that time said it was not necessary that I might
20 have raised it on a bond and mortgage. I think it is the gentleman on your right.

Q. This is my partner sitting on my right—Mr. Corbin.

A. I thought he was the gentleman that was here—an old gentleman.

Q. He is not as old as I am.

A. Well, I may be mistaken. I thought he was the gentleman. He said that didn't matter, it was immaterial—but I might have raised it on bond and mortgage.

Q. Did you state anything further than the items I have
30 mentioned to you?

A. I don't know that I did. I don't remember.

Q. Was not the question asked, "Was it true you had the money?" A. Do you suppose I would have started it if I hadn't the money? Q. I think perhaps you might. Was it true you had the money? A. I don't think I can answer that. You might as well ask me if I had five dollars in my pocket. By the Court—Answer the question, Mr. Howard. The question is whether you had the money, at the time, to buy this property? A. Yes, sir.

Q. In what shape was it? A. The money was cash. By Mr. Berry—Is not this going too far? By the Witness—I came here—I wasn't compelled to at all—I came to accommodate Mr. Harper, and he assured me, and so did his lawyer, that I would not be detained but a few minutes. I have some other business in New York which is very important to me, and I would like to get away now, and will come again afterwards. Q. What shape was it? A. I told you cash. Q. In what shape were your means? A. It was in cash. Q. Where? In the 10 bank? A. It was in cash. Q. In the bank? A. Yes, sir. Q. What bank? A. [A pause.] By the Court—Answer the question if you can. By the Witness—It would take a little while to have brought the cash together; it was in no particular bank. Q. What bank? A. It was scattered around at different places—various places. Some in the Columbus Buggy Company and Peter's Dash Company. Q. Name the banks. You said some of it was in banks. Name the banks? A. The Commercial Bank, the Columbus, Ohio.” 20

By Mr. Berry—Is the gentleman now reading the other case? He is asking no questions, but simply reading the testimony.

By the Court—I understand that he is putting his whole question in one. Proceed.

Q. [Reading.] Q. Commercial Bank, Columbus, Ohio? How much in that bank? A. I don't suppose there was a great deal there at that time—probably a couple a 30 thousand dollars. Q. In whose name was it—in your own name? A. Do you want me to answer all these questions? By the Court—Yes, sir. A. Yes, sir. Q. In your own name? Yes, sir. Q. How long had that deposit been there? A. I don't remember. I could not tell you that, exactly. I had money around at various places in Wall street, and I had money with friends of mine, and I could have produced the cash. Q. Of your own money? A. Would that have mattered, whether by my own

money or not? Q. I am asking you the question." Did you so testify? Were those questions asked you?

A. Yes, sir; I could produce the money.

Q. Now, the question I am asking you now is, were those questions asked, and did you answer them, as I have read?

A. Well, I don't remember all the questions you asked me, of course; I don't remember.

Q. Did you testify substantially as I have read it?

10 A. I suppose a portion of that must be true; yes, sir.

Q. But substantially, I say; not a portion?

A. I don't remember at all.

Q. You don't remember?

A. No, sir.

Q. Were you asked at the beginning—

A. You asked me about the money, and I told you I had the money.

Q. Were you asked in what shape the money was in—the price that you were to give—and did not you say, "In 20 cash"? Is that true?

A. Of course it was in cash, and it would have been. I would have produced the money in cash.

Q. I will read it to you again, if you want to quibble with me. Did you state this? My question was: "Q. I thought perhaps you might." That was my question after you had said: "Do you suppose I would have started it without the money?" Then I asked you: "Was it true you had the money?" and you said: "I don't think I can answer that; you might as well ask me if I have five dollars in my pocket." Then the Court said: "Answer the 30 question, Mr. Howard; the question is whether you had the money, at the time, to buy this property?" You answered: "Yes, sir." Then the question was asked: "In what shape was it?" and you answered: "Money, or cash." Did you so testify?

A. I don't remember it, sir.

Q. You don't remember?

A. No, sir.

Q. Then you were asked: "In what shape was it? A.

I told you it was a cash offer. Q. In what shape were your means? A. It was in cash. Q. Where—in bank? A. In cash. Q. In bank? A. Yes, sir. Q. What bank? A. It would take a little while to have brought that cash together; it is not in any particular bank.” Did you testify to that?

A. I might have testified that way. I don't remember, sir.

Q. What is your age?

A. My age?

10

Q. Yes.

A. 38—39. I was born in '49; the first day of September.

Q. What is your business?

A. Well, I am dealing in the street.

Q. Have you any office?

A. I make my office at 66 Broadway.

Q. What is 66 Broadway?

A. A broker's office.

Q. Whose office?

20

A. Well, there are several offices there. Brooks & Whitely, Wilcox & Baird, S. F. Simonson and Mr. Cunningham.

Q. You have no office there?

A. I made that my office, at 66 Broadway, in Room 58, now.

Q. Whose office is that?

A. Mr. Cunningham's.

Q. How much of an office do you make of it?

A. Well, I use it very freely—as I like.

30

Q. Pay any rent?

A. No, sir.

Q. You simply go into a friend's office?

A. I have that license; I have that right.

Q. You have no personal, individual place of business?

A. No, sir.

Q. Your name is not up?

A. No, sir.

Q. You have no cards printed from that place?

- A. No, sir.
 Q. No letter heads issued from that place?
 A. No, sir.
 Q. How do you get your mail?
 A. It comes to 25 East Twenty-third street.
 Q. To your house?
 A. Yes, sir.
 Q. Do you have any salaried position?
 A. Yes; I draw a salary from the Western Union Telegraph Company. When I work I am in their employ.
 Q. How much is your salary?
 10 A. \$1,200 a year.
 Q. When you work?
 A. Yes, sir; my name stands on their roll.
 Q. As an operator?
 A. Yes, sir; telegraph operator.
 Q. And when you go there and take your desk, then you get paid?
 A. Yes, sir.
 20 Q. You are not a broker in any exchange?
 A. No, sir.
 Q. What sort of brokerage business is it you conduct?
 A. Has that got anything to do with this case?

The Court—I think it is proper.

- A. Well, I speculate.
 Q. You are not a broker?
 A. I speculate.
 30 Q. You are not a broker?
 A. No, sir; but I have executed orders; I have taken orders.
 Q. But your main thing is in speculating yourself?
 A. No, sir; I take an order when I can get it.
 Q. Have you had some orders from Mr. Harper?
 A. Never in the world. I never had a business transaction with him in my life.
 Q. You get orders and give them to brokers?
 A. Yes, sir; and get paid for it.

Q. Are you what is known in common parlance as a curb-stone broker?

A. No, sir.

Q. What is that?

A. They deal in stock privileges.

Q. Haven't you done that?

A. Yes, sir; for myself, but not to trade in. I have one in my pocket that I bought a few days ago.

Q. I don't want to see it.

A. Well, I thought I would tell you.

10

Re-direct examination—

Q. What property was this you were speaking of?

A. 403 and 405 Henderson street?

Q. Did you examine the property?

A. Yes, sir; I have been over there.

Q. Were you ready to purchase at the time you made this last offer? How were your means then? 20

A. Well, when I first made him the offer, I proposed—

Q. [By Mr. Collins.] Do you mean in 1887?

A. No, sir; I mean recently—in June. I proposed at first a cash offer, and then after thinking it over he came and talked with me, and I asked him if it made any difference if I only produced a portion of the cash. I have forgotten whether he wrote to me at that time or came to see me; no, he wrote to me and he said it didn't make any difference; that I could pay a third cash and he would take a mortgage for a year for the balance. Just 30 at that time I don't believe I replied to the letter, and in a short time he came to see me and said he could not give me a clear title for the property.

Further re-direct—

Q. When you first made the offer it was a cash offer?

A. Yes, sir.

Q. Had you then the means of getting the cash?

A. I could have produced the cash; yes, sir.

Re-cross—

Q. From where would you have produced it?

A. I could have produced it, and I should think that would be sufficient.

10 Q. Do you decline to state?

A. Yes, sir; I do.

Q. That is all.

A. Can I make an answer now?

Q. I am not asking you any question now.

By Mr. Berry—

Q. You may answer it to me. State whether you are now able to carry out the contract.

20

Mr. Collins—I object to that.

The Court—I think that is no part of the issue—
what he is able to do now.

Q. That is all.

30 Mr. Collins—I now read in evidence—I think that is the language of the rule, but I won't take the time to read it—the bill of complaint of Ellen Harper and Gilbert Collins, her trustee, against John Harper, filed in this Court July 1st, 1887, and the cross-bill of John Harper against Ellen Harper and her trustee, filed August 13, 1887, and all the files in those two suits, together with the decree and enrollment, the Master's report and order thereon, and the opinion of the Advisory Master, in short, the entire files and record in the two suits, which were tried together.

I also offer in evidence the stenographer's

notes of the testimony in that double case, that the Court may see what was the subject of controversy, and what points were controverted and tried; and I now desire, for the purpose of contradiction, to prove the statements of Robert P. Howard, as given in that former case. I suppose it will be necessary to prove these notes, unless brother Berry is willing to have the stenographer's notes, of which we each have a full copy, go in, and I shall have to ask your Honor 10 for time until I can produce the stenographer, or I will go on the stand myself and testify to what he said. The simplest way is to put it in without the production of the stenographer. I want to prove what Mr. Howard said on a former trial, and strictly speaking I suppose I ought to call Mr. Baker, the stenographer; but if Mr. Berry is willing to let the copy go in without calling him, that will save time.

Mr. Berry—I will admit that these notes were taken 20 by Mr. Baker; but I certainly object to your putting in the record of another case, when the issue in this case is entirely foreign to that case. It seems to me this is an attempt to influence this Court upon this issue, by the production of another case which in many of its material points is entirely dissimilar to this, and has no relevancy to the issue here.

Mr. Collins—My offer is of the entire record, for the purpose of showing what is being contro-30 verted. If it is true that there was nothing adjudged there, which is *res adjudicata*, which your Honor will recollect, I plead in this case, why your Honor will not look at it. If Mr. Berry is right in his contention that it does not at all affect the issue here, then it does not hurt him; but I assert that it does affect several of the issues here.

The Court—The last point raised by Mr. Collins

was, Mr. Berry, whether or not you consent to take the record of the testimony as it appears?
 Mr. Berry—I make no technical objection to that.
 Mr. Collins—Well, that is all I ask, and it is very courteous of you.

10 Mr. Collins then called Mr. Charles L. Corbin to take the stand as witness, but it appearing that Mr. Corbin was engaged in the adjoining room in the matter before Judge Knapp, Mr. Collins asked the indulgence of the Court for a few minutes' delay, until Mr. Corbin should be disengaged.

WILLIAM WARD, a witness produced on the part of the complainant, having been duly sworn, saith:

20 *Direct examination*, by Mr. Berry—

Q. Are you a tenant of a part of this property?

A. Yes, sir.

Q. The part that Mrs. Harper has charge of?

A. The part that Mr. Harper has charge of.

Q. Mr.?

A. Yes, sir.

Q. Do you know anything of the part Mrs. Harper has charge of?

30 A. No, sir.

Q. Do you know anything about the repairs that he gives to that part which she has charge of and rents?

A. No, sir.

Q. Does Mrs. Harper give any attention to the repairs on the property that you live on?

A. Very little, sir. She has been there at one time, about fifteen months ago—

Objected to as not rebuttal, and witness withdrawn.

CHARLES L. CORBIN, sworn for the defendants.

Direct examination, by Mr. Collins—

Q. You are one of the solicitors for the defendant in this case?

A. I am.

10

Q. And were one of the solicitors for Ellen Harper and her trustee, in her former litigation?

A. I was.

Q. Who was the original solicitor for John Harper in that litigation?

A. Mr. James Chapman, who appeared for him in some preliminary motions.

Q. He also filed some affidavits for him, didn't he?

A. Yes, sir; he did.

Q. They are here in the case. James Chapman appeared here as solicitor of record, did he not?

A. Yes, sir; I believe he did.

Q. Was it called to your attention that some demand with reference to the conveyance of lands, had been made by Mr. Harper, either with or without Mr. Chapman, in the absence of her own solicitors, when she was without counsel, and if so, when, and what did you thereupon do?

A. I attended in the Chambers on some motion in the case, the particulars of which I don't now recall, but the date, as near as I can fix it, was in August, 1887. When we left the Court-room, Mr. Chapman, Mr. Harper and myself went up the street together, and there was some discussion of the case, and among other things mention was made of the provisions in the agreement—that it would be void unless Mrs. Harper should execute any deeds of release or sale. I then stated to Mr. Chapman and Mr. Harper that if any sale was made to bring the matter to the attention of Collins & Corbin, and we would look into it, and if proper she should sign the deed. I

30

think it was shortly after that that I learned, or was told, of some application to Mrs. Harper which had not previously come to my knowledge. I thereupon addressed this letter to Mr. Chapman, and caused it to be served upon him and his admission of service to be procured.

Q. And that is written upon the back of it?

A. Yes, sir.

Mr. Collins—I offer this letter in evidence.

10

Same marked Exhibit D 100.

Q. Was this letter sent on the day it bears date?

A. Yes, sir.

Q. And this was shortly after the conversation you have spoken of?

A. Yes, sir.

Q. The letter reads: "August 13, 1887.. Mr. James Chapman—Dear sir: I learn from Mrs. Harper," &c. [Counsel read same.] Is that your signature?

20

A. Yes, sir.

Cross-examined, by Mr. Berry—

Q. I show the witness a letter to Mr. Collins. Was your attention ever called to it?

A. I don't think I have seen it before.

Q. There is the receipt for it? [Showing witness a registered letter receipt.]

30 A. I don't recall having seen it; I may have seen it.

Defendant rests.

JOHN HARPER, the complainant herein, recalled.

Further direct examination, by Mr. Berry—

Q. Have you a receipt for the letter to Mr. Collins

there ?

A. Yes, sir; I have.

Q. Dated May 28th, 1888 ?

A. Yes, sir.

Q. This is for a registered letter ?

A. Yes, sir.

Mr. Berry—Do you admit the receipt of that letter,
Mr. Collins ?

Mr. Collins—Well, I can't tell what it was from 10
that receipt. If you will let me see a copy of
that letter I will tell you whether I remember re-
ceiving said letter or not.

[Mr. Berry hands Mr. Collins a copy of said letter.]

Mr. Collins—I will admit receiving a registered
letter from Mr. Harper about the time mentioned
there, and as near as I can recollect the copy
now produced is of the general tenor of that let- 20
ter. I haven't the correspondence here. If I
thought you had wanted that letter I could have
got it.

Mr. Berry—Well, I offer both the letter and the re-
ceipt.

Same marked C 22 and C 23.

Q. Have you a receipt for a registered letter sent to
Mrs. Harper ?

A. I have, sir.

30

Q. What date ?

A. April 8th, 1888.

Q. Is this a copy of the letter you sent. [Handing wit-
ness a paper.]

A. Yes, sir.

Q. Have you replies to either of those letters ?

A. Mrs. Harper never replied to them.

Q. My question is whether you ever received a reply ?

A. I got a reply from Mr. Collins, but Mrs. Harper paid

no attention to my letter.

Mr. Berry shows Mr. Harper a receipt for a registered letter and the letters stated to have been sent her.

10 It is admitted that Mrs. Harper received a letter at the time mentioned there, and substantially of the purport of the copy. Said receipt and copy were offered in evidence and marked C 24 and C 25.

Q. There was something said about the \$7,000 not being mentioned in the deed?

A. There was something said about the contracts of June 5th.

Q. My question is concerning the \$7,000. Mrs. Clark said she looked over your shoulder and saw one dollar written there. If she said anything about that in your
20 presence—about the \$7,000—just state it?

A. During the time that we were talking about the deed in Mrs. Harper's house, on the 15th of June, 1888, Mary Ann said to her mother: "Where is this young man going to get \$7,000 to pay for this property?" And her mother answered and said to Mary Ann, that if Mr. Harper felt so inclined he could raise the money for him—the money would be coming from him. George Harper read a part of the deed, sufficient to cover the consideration.

Q. In the presence of the others?

30 A. Yes, sir; in the presence of Mary Ann, her mother, myself and Mr. Rouget, and then he said: "Are you selling this property for \$7,000?" I said, "Yes." And he said: "I will get you a party to give you \$7,000 in cash at once." I said: "The property is sold." There was no talk of one dollar whatever, it was all about \$7,000, and it was well known to Mrs. Harper and Mary Ann and all present, that the property was sold to John D. Ronayne for the sum of \$7,000.

Q. I now call attention to a point in rebuttal of what

Mrs. Harper said about signing deeds if Messrs. Collins & Corbin said so, and her refusal upon that point. You heard what she said about it. Now, what have you to say about it?

A. Has this reference to the old case?

Q. No, sir; to this case.

A. I understood him to say that he left the Chancellor's Chambers and walked up the street with Mr. Chapman and I.

Q. No, no; I am calling your attention to what Mrs. 10 Harper said. She has been sworn in this case?

A. Yes, sir.

Q. Concerning her willingness to go to see Messrs. Collins & Corbin, &c.

A. On each occasion I went and insisted on her going to see Messrs. Collins & Corbin. I tried to get her to go there on that or on a future day, but she absolutely refused to sign any deeds or mortgages for me at all, unless I made a new agreement, or signed the agreement made in July, '87, which left the mortgage clause and deed 20 clause out.

Q. That was as to deeds?

A. Yes, sir.

Q. What was said about the mortgage of Mrs. Harper, or any of the others in the presence of Mrs. Harper—\$3,000?

A. Do you mean on the 15th of June?

Q. Any time?

A. Well, on the 15th of June I made the contents mortgage well known to her, and she knew it was 103 and 105 30 Henderson street, for \$3,000; and I made her acquainted with the proceedings in Jersey City. She refused to sign the mortgage; but she afterwards admitted—

Q. When?

A. December 6th.

Q. Well, what did she say about it?

A. She said she thought it was on the house No. 474. I said: "I am sorry about that; I don't see how you could think that, because I made the contents of it known to

you, and if I could have got that money and paid my taxes, I could have saved 5 per cent. I believe the tax commissioners charge 10 per cent. interest, and I believe I could have got that loan of \$3,000 on property of that value for 5 per cent."

Q. At that time did you make known the contents of the mortgage to her?

A. I did.

10

Cross-examination, by Mr. Collins—

Q. The letters 22 and 25, which you wrote to me and your wife, refer to exhibits?

A. The letter states that.

Q. Exhibit C 9 and C 10; do they not?

A. The letter states that, certainly.

Q. The letter simply states the deeds offered at Garrick's: I want to identify them.

20

The Witness—There was something more, Mr. Beron the 15th of June, in relation to signing contracts. Mr. Collins wished to know why I didn't sign the contracts; I can tell him the reason why.

Q. I don't ask it.

30 *Re-direct—*

Q. State if anything was said to you by Mrs. Harper, concerning the making of a written contract, before the deed was made?

A. When I went there that day and found she would not sign any deeds, I requested Mary Ann to go up stairs and get me a copy of the rent return—Judge Garrick was making the account—so she went up stairs to write me a copy out, and while she was gone I told Mrs. Harper

that I had signed a contract to sell the houses in Henderson street, and that I had been asked by two other parties to sign similar contracts, and I said: "Now, Mrs. Harper, when Mr. Collins was my counsel he told me not to sign contracts, or I should be saddled with commissions if I could not give title, and Garret Berry, my counsel, tells me I can be sued for specific performance and damages, and it would place me in a very bad predicament. Now, will you sign the deed in case I sign contracts and make sales?" She said: "I will not;" and she 10 got herself worked into a passion, and told me not to dare make contracts with anybody; that she would sign no deeds or mortgages for me under any consideration until I made an agreement with her that would give her her share of the houses.

Mr. Collins—That is not in rebuttal.

Q. Well, that is all.

20

Further cross—

Q. Do you say you told your wife that you had signed

A. I did; I told her I had signed a contract.

Q. What did you refer to?

A. I referred to a contract I had signed with Frank Stevens, Real Estate Dealer, on Montgomery street, and you, yourself, became her security for the amount of the mortgage. 30

Q. You don't mean a contract to sell—you mean an authority to an agent to sell?

A. Well, it was a contract for the purpose of laying me liable for commissions if a sale was made.

Q. You hadn't made a contract with a purchaser; your contract was with an agent?

A. Yes, sir; but I had been asked by others to sign contracts, and have refused.

Q. Then you refer to a contract made with a real estate

agent, authorizing him to sell your property for you?

A. Yes, sir.

Q. Now, did you not go to Mr. Collins, and say to him that Mr. Frank Stevens, the real estate dealer, could make a sale of your property, and that he wanted written authority, so as to be sure of his commissions, and that you were unwilling to give it; and did not I then go with you to Frank Stevens and personally become liable, in writing, for Mr. Stevens's commission, if Mrs. Harper
10 should decline to sign a deed, on a bona fide sale, effected by Mr. Stevens, of that property?

A. That was for one particular person, away back in February; this that I am now speaking of was later.

Q. But is that not true?

A. Frank Stevens would not take you for his commission, he told me.

Q. Would not take me?

A. No, sir; he said he would not hold you, but that he would hold me.

20 Q. He didn't want to hold me?

A. He said he would not take you for his commissions, but that he would hold me.

Q. You don't mean to say that he doubted my financial responsibility?

A. I don't know anything about that; but he said he would not take you but would take me.

Q. Is it not true that I did that thing, and signed it in writing in Mr. Stevens's office?

A. But it didn't do me any good.

30 Q. That is not the question; did not I do it?

A. For one particular customer, you did.

Q. Did I name any one person?

A. It was in reference to one sale; a lady who was looking at the house.

Q. Did I limit myself in the sale of that property to any customer?

A. I understood that you did, to that one customer and no more.

Q. I mean in the writing I signed; did not I bind my-

self to pay his commissions if Mrs. Harper refused to sign the deed ?.

A. That had reference to one customer ?

Q. If he sold it for \$18,000 ?

A. That had reference to one customer.

Q. Did I put the name of any customer in the paper ?

A. I don't say so; but I say I had a customer at that time, and furthermore, Mrs. Harper took the property out of the hands of Frank Stevens altogether, when he had a customer.

10

Mr. Collins—That is not an answer to my question.

I ask to have that stricken out—the last part of the answer.

The Court—Strike in out.

By Mr. Berry—

Q. Did you afterwards speak to Mrs. Harper about that ?

20

A. Yes, sir; I talked the matter over with her on the 24th of August—all about it.

Q. Now, I will ask you if Mrs. Harper said anything upon this point ?

A. Yes, sir; she said so—she did say something on this point.

By Mr. Collins—

Q. You don't mean to say that your wife went to see Frank Stevens on the 24th of August ?

30

A. I mean we talked the matter over then.

Q. Oh, yes; referring to something she had done a year before. She has not been to Frank Stevens since this litigation has been pending—since 1887.

By Mr. Berry—

Q. What did she say regarding Frank Stevens, or any

other agent, in August of this year, or last year?

Objected to as not rebuttal.

Objection overruled.

A. On this occasion that I am now referring to, it was the 24th of August, 1888. I was discussing the agreement with a view to coming to some settlement, and she asked me what I proposed to do; and I told her I proposed to
 10 know whether at this late day she would carry out her part of the agreement in good faith, and sign deeds when property was sold, or sign mortgages? She said that if I didn't give her what she wanted and would make a new agreement with her, she not only would refuse to sign deeds, but refused, as far as lie in her power, to give me any chance to sell. I then said to her: "You did on one occasion go to a real estate office and have the property taken off the agent's book, to prevent me from making a sale." "Well," she said, "you know what you can do if
 20 you wish to have me sign deeds and mortgages; you can make a new agreement, and that will end it.

Re-cross-examination, by Mr. Collins—

Q. Upon what occasion do you refer to of her having gone to Frank Stevens, and also to other agents? When was it she had done that, as you told her?

A. Well, Frank Stevens told me so himself.

30 Q. Never mind. When was it you say she went there, in 1886 or 1887, or when? When was it you say she went to Frank Stevens?

A. I don't know; but I will tell you what his clerk told me, if you will allow me to.

Q. I don't want that; I want to know when you had information that she was there?

A. She was going around there all the time.

Q. Did you testify, in the former trial, that Mrs. Harper had been to Frank Stevens?

A. Yes, sir.

Q. Now, is that what you referred to in your talk at that time?

A. No, sir.

Q. It was not?

A. No, sir; certainly not. At the same interview I also told Mrs. Harper—

Q. One moment; just answer my question. At what period was it that you claim she had been to Frank Stevens? 10

A. Well, in 1888. Frank Stevens told me that he knew all about the case—

Q. Why don't you refrain from volunteering testimony? I want you to answer my questions, and don't want you to tell me anything else. Now I asked you the date; at what period was it you say that she had been there?

A. Some time last spring. I cannot give you the date, but about the time Mr. Pitney was down, or along that time.

Q. About the time Mr. Pitney was here? 20

A. Yes, sir; some time last spring or summer.

Q. You used Mr. Pitney's name, didn't you?

A. Yes, sir.

Q. What was it you said?

A. I said it was about the time that Mr. Pitney was trying the case.

Q. That is all.

Complainant rests.

30

Mr. Collins—Where does Mr. Ward's testimony stand?

The Court—Well, if that branch of the case is opened it will have to be opened to the other side as well. I understood at the close of our last hearing that the complainant's case was closed with the exception of the witness you produced this morning from New York. I know

you remarked to have two or three witnesses that you would like to examine, and I said if you insisted upon it I would stay.

Mr. Berry—I put my offer upon the ground that we had reserved three witnesses whom we hadn't time to examine that day, but I don't care enough about Mr. Ward's testimony to make any fuss about it at all.

10

The Court—Oh, well; if it is in that shape, strike it out.

ELLEN HARPER, sworn for the defendants.

Direct examination, by Mr. Collins—

20 Q. Mr. Harper says he was talking with you along in August, and accused you of having gone to Frank Stevens, real estate agent, to get him to take the property off his books; and he says that at that time, although he does not say he told you so, he had been informed that you had been there, referring to some time in the spring of 1888. Had you been in Frank Stevens's office at any time during the present year, or at any time, in fact, since the former litigation had been begun?

A. No, sir.

30 Q. Mr. Harper says that you told him that unless he would sign a different kind of a contract, and such a one as you wanted, you would never sign any deed; and that you told him to sign no contracts, for you would sign no deeds unless he would make a contract with you, such as you wished. Did you ever state to him last summer—I think he said it was in August—anything of that kind?

A. Well, any time he wanted me to sign deeds I always referred him to Mr. Collins. I said that I was blind and could not see.

Q. Did you tell him last August, or any other time last year, that you would not sign deeds, and for him not to

get contracts to sell his property, or sign contracts with other people, because you would not sign any contract or deed unless he gave you such an agreement as you wanted?

A I remember telling him that I would have to go down to Mr. Collins, who was my lawyer, before I signed anything.

Q. Well, you testified to that before?

A. Yes, sir.

Q. Well, now he says you told him that you would not sign any deeds anyhow, unless he gave you a certain contract. Did you tell him that?

A. If it is lawful—I will sign when it is lawful.

Q. Well, did you ever tell him what I have asked you—that you would not sign deeds anyway?

A. I don't remember.

Q. Well, you would remember it if you told him so, would not you?

A. No; I don't remember ever telling him that.

Q. Well, you would remember it if you told him so?

A. I should think so; I would try to anyhow. 20

Q. You say whenever any demand was made upon you you told him you would see Messrs. Collins & Corbin?

A. Yes, sir; I would not sign anything myself. The man wants to put me out of the way. I see what he is up to.

Cross-examined, by Mr. Bettry—

Q. Do you remember a conversation had in which your 30 daughter, Mrs. Clark, told Mr. Harper that what she meant by a new agreement was for you to take some of the houses and me to take some of the houses. Do you remember that conversation?

A. It may have passed.

Q. It may have been?

A. Yes, sir.

Q. And if he would do that then you would make a new agreement?

A. I would not make any agreement unless I saw Collins & Corbin.

Q. Well, but your daughter says so.

A. Oh, my daughter?

Q. Yes, she swears to it.

A. That is all right; she may swear to it.

Q. Well, was that a fact that you said you would make a new agreement if you could take some of the houses he would take some?

10 A. I could not make any until I had seen Collins & Corbin.

Q. That is about the only thing you can remember. How old are your children?

A. Oh, there they are.

Q. Well, they are all of age except one, are they not?

A. My memory is poor.

Q. Don't you know whether they are all of age or not?

A. Yes, sir; they are all of age except one.

Q. And she will be at her next birthday?

20 A. I could not say.

Q. She will be twenty-one on her next birthday, won't she?

A. No, sir.

Q. Will she be twenty then?

A. Yes, sir.

Q. You don't know the ages of the children?

A. No, sir.

Q. That is all.

30

MARY A. CLARK, sworn for the defendants.

Direct examination, by Mr. Collins—

Q. Did your father, since the last hearing, ask you to recall to your memory certain facts that he said had occurred at the interview of June 5th, I think?

A. Well, immediately after the adjournment papa re-

mind me of some things that had taken place during the interview, and he claimed that I had testified——

Q. One moment—he claimed that that was at the June 5th interview?

A. I think so; it was about that time, the 5th or 15th, or thereabouts; I am not certain.

Q. You heard your father's testimony this morning in respect to a conversation in which you took part and George took part, in which George said he could find a person to take the property. Your father's version of it¹⁰ is that \$7,000 was mentioned as the consideration of the deed, and that George said he could find a person to take it that price. Now, state to the Vice-Chancellor what your recollection is as it has been recalled, upon the subject of that conversation?

A. Well, I don't remember at all of having heard any sum mentioned; but I remember that the property was to be sold to Ronayne, or one of them was, and I knew they were very poor people; and I remember saying: "How can those poor, beggarly people obtain any money to buy²⁰ the property," or something to that effect.

Q. What did George say?

A. George at that time—during that interview—several times said he would raise the money, or anyhow, could raise it in thirty days; and that if papa was sincere and wanted to sell the property, he gave him an open offer for it, and he would have the money for him in cash in thirty days; but I don't remember the amount of money.

Q. You told me you felt it to be your duty to say there was something said at some time which looked as if Mr. 30 Harper was claiming a sale?

A. Yes, sir; I felt conscientious about it, after my father reminded me of some things that I had not remembered before.

Q. And you told me before the trial occurred that you desired to make that statement?

A. Yes, sir; I called upon you the next day after the former hearing, but you were not in.

Q. You don't remember any amount being mentioned?

A. No, sir.

Q. But are not prepared to say that no amount was mentioned?

A. No, sir.

Q. Now, that being so, what is your view, after your recollection being refreshed, about, at some times, your father having spoken about selling it to a man? What is your present recollection as to that—whether it was the same time Mr. Rouget was there with the deed?

10 A. Well, I am perfectly certain——

Mr. Berry—If this is simply for the purpose of letting the witness explain her own testimony, I object to it. But if it is contradiction to something we have said, I have no objection to it.

The Court—This is in rebuttal.

Witness—It is for the purpose of relieving my conscience.

Mr. Berry—Oh, yes; to relieve your conscience.

20 Well, go on.

Q. Was that the same day that Mr. Rouget was there or not?

A. I can't say precisely, but I think it was.

Q. Now, in view of this, could you have stated that the deed you saw had only one dollar in it?

A. Yes, sir.

Q. What do you say about that?

A. Either on that occasion or on the occasion Mr.
30 Rouget was present, I remember having read the one dollar in the deed. But there is one occasion I remember, because it is impressed upon my memory—the name of John J. Harper, Jr., was mentioned.

[The balance of this witness's answer was ordered to be erased from the record as irrelevant.]

Q. On some occasion you say you saw a deed in which the consideration was one dollar?

A. Yes, sir.

Q. So, if this was the only time when Rouget was there, that you looked at the deed, then that deed had a one dollar in it. But if you had seen one at another time, it may be that you are incorrect in thinking the Rouget deed only stated one dollar?

A. Yes, sir; exactly. *And if it wasn't on the day when Mr. Rouget was there, then it was about ten days previous when my father was in the hall.

Q. You mean to assert positively that at some time you 10 saw a deed with one dollar in it?

A. Yes, sir.

Q. That is all.

Not cross-examined.

Rest all.

EXHIBITS.

10

EXHIBIT C No. 1.

Third Sale; No. 3.

Dated June, 1888.

John Harper and Ellen Harper to John D. Ronayne.

Deed—drawn in the ordinary way.

20

EXHIBIT C No. 2.

Fourth Sale; No. 4.

Dated July, 1888.

John Harper and Ellen Harper to Robert T. Howard.

Deed—drawn in the ordinary.

30

PART OF EXHIBIT C No. 7.

Taxes adjusted and confirmed, October 18, 1888.

On houses 403 and 405 Henderson Street.

Amount, \$926.44.

PART OF EXHIBIT C No. 8.

Taxes adjusted and confirmed, October 18, 1888.

Amount, \$480.82.

Van Vorst House, Henderson street.

EXHIBIT C No. 9.

First sale; No. 1.

Dated May 1888.

John Harper and Ellen Harper to John D. Ronayne.

Deed, etc.

10

EXHIBIT C No. 10.

First sale; No. 2.

Dated May, 1888.

John D. Ronayne to John Harper, Trustee, etc.

Deed, etc.

20

EXHIBIT C No. 11.

COLLINS & CORBIN,

GILBERT COLLINS, CHARLES L. CORBIN, WILLIAM H. CORBIN.

LAW OFFICES,

No. 251 WASAINGTON STREET, JERSEY CITY, N. J.

30

JUNE 11, 1888.

JOHN HARPER ESQ.

DEAR SIR.

Agreeably to your request, I made known to your wife that you wished her to unite with her in a deed, without pecuniary consideration to

John P. Ronayne, of the Van Vorst Homestead & 403 & 405 Henderson Street, with a view to having Mr. Ronayne re-convey to you in trust for John J. Harper, with power of sale in you & with remainder to you should he die within his minority. I gave her the legal opinion that this was not such a sale, as she is obliged to join in under her agreement with you & she therefore declines to execute the deed.

Yours

GILBERT COLLINS

10

EXHIBIT C No. 12,

Second sale; No. 1.

Dated June, 1888.

John Harper and Helen Harper to John D. Ronayne.

Deed, etc.

20

EXHIBIT C No. 13.

Second sale; No. 2.

Dated June, 1888.

John D. Ronayne to John Harper, Trustee, etc.

Deed, etc.

30 John D. Ronayne.

Covenant, etc.

* * * in trust nevertheless upon the following trusts: to apply the rents and revenues of said premises towards the Support, Education and Maintenance of the said John J. Harper during his minority, and to convey said lands and premises to the said John J. Harper in fee simple upon his arriving at the age of Forty years (40 yrs) and in case the said John J. Harper shall die before the making of such conveyance, then to apply the

said rents and revenues to his own use; provided that the said party of the second part may use such portion of said rents and revenues as he may think proper for the improvement of said lands and premises and the erection of buildings thereon, and that he may in his discretion Mortgage convey and pledge said lands and premises in fee simple as security for the purpose, raising money to improve said lands, and to erect buildings thereon, provided also that it shall and may be lawful for the said party of the second part at any time or times during the 10 continuance of said trusts, in his discretion to make sale of and to convey the whole or any part or parts of said lands and premises with the appurtenances and the Inheritance thereof to any person or persons whatsoever and for such price or prices as to the said party of the second part shall seem proper, and upon the payment of the moneys arising from such sale or sales to the party of the second part such purchaser, or purchasers shall not be obliged to see to the application of the purchase moneys nor be answerable or accountable for any loss, misapplication or 20 non-application of the same or any part thereof—and said moneys arising from said sale or sales shall be invested by said party of the second part, either in the purchase of other Real Estate or in such other manner as he shall deem proper upon the same trusts and to and for the same ends, interests and purposes, and under and subject to the same powers, provisos and limitations as are in and by these presents limited Expressed and declared of and concerning the said lands and premises hereby conveyed or as near thereto as the deaths of persons and other con- 30 tingencies will admit of, Subject to a Lease expiring May 1st, Eighteen Ninety-One.

* * provided also that it shall and may be lawful for the said party of the second part at any time during the continuance of said trusts to convey said lands and premises in fee simple to said John J. Harper, or to some other person in trust for the use and benefit of said John J. Harper under the same trusts herein mentioned or in case of the death of the said John J. Harper to

apply the same to his own use.

EXHIBIT C No. 14.

Dated June, 1888.

John Harper and Ellen Harper to The Provident Institution for Savings in Jersey City.

Mortgage, \$3,000.

EXHIBIT C No. 15.

Dated June, 1888.

Bond to accompany the above mortgage.

20 Bond, \$3,000.

Mortgage and bond drawn in the ordinary way.

EXHIBIT C No. 16.

Part of exemplified copy of the record.

30

page 159

EXHIBIT C No. 17.

June 27th, 1888, Mr. R. T. Howard, of New York, offers \$17,000 for houses 403 and 405 Henderson street, Jersey City; \$5,000 in cash when the deed is passed, and \$12,000 in mortgage, payable in one year, with six per cent. interest per annum, if title is perfect, he mortgage to have the usual tax and other clauses.

EXHIBIT C No. 19.

NEW YORK June 22nd 88

MR. JOHN HARPER

Dr Sir

How about the title to property Nos. 403 and 405 Henderson st. now?

Can you yet give a clear title to it? 10

I am prepared to make you a cash offer for this property if everything is clear.

Please write to me at my address, or if you are in the city call and see me.

Very truly

R. T. HOWARD,

Room 117 Consolidated Exchange, 62 Broadway.

20

EXHIBIT C No. 21.

RAHWAY June 25th 1888

R. T. HOWARD, Esq.

Yours of the 22nd just rec'd and in answer would say 30 I can give you a clear title. Please write to me at once and state your offer. If it makes any difference to you it need not be more than one-third in cash, as I will take a mortgage payable in one year. At present I am making some repairs, but as soon as I am in the city I will call and see you. Hoping you are enjoying good health, I remain very respectfully,

JOHN HARPER,

Rahway, New Jersey.

EXHIBIT D No. 100.

STENOGRAPHIC LETTER.

COLLINS & CORBIN,
GILBERT COLLINS, CHARLES L. CORBIN, WILLIAM H. CORBIN

10 LAW OFFICES,
No. 251 WASHINGTON STREET, JERSEY CITY, N. J.

Aug. 13, 1887.

MR. JAMES CHAPMAN,

DEAR SIR:—I learn from Mrs. Harper that Mr. Harper has some deeds he wishes Mrs. Harper to sign. I am surprised that you should sanction Mr. Harper's action in going to her personally with these deeds without consulting us her counsel. Of course the application was not
20 made in good faith; if it had been you would have come to us. I have already stated to you and Mr. Harper that if a sale is made there will be no difficulty in having a fulfilment by Mrs. Harper of her contract, but that application should be made to us. Of course she will not sign any papers until we have examined them and approved them, nor ought she to do so. If Mr. Harper has made a bona fide sale of the lots mentioned in the agreement bring the deeds to us and explain the matter and we will
30 procure her signature and acknowledgment if she ought to give it.

Yours truly,

COLLINS & CORBIN,
per C. L. C.

Service of a true copy of within acknowledged August
13, 1887.

JAMES CHAPMAN,
Sol'r Mr. Harper.

OPINION.

10

OCTOBER TERM, 1888.

JOHN HARPER

v.

ELLEN HARPER.

20

A husband who had resided a long time in New Jersey, went to Dakota, and there procured a divorce. When he desired to convey some of his lands in this State, he discovered that there was some doubt as to his ability to give a perfect title unless his former wife, Ellen, should join in the deed. This led to an agreement that he should pay her \$1,750 a year for the support and maintenance of her-³⁰ self and five of their children, and that she should join in the execution of any deeds or mortgages, in case he desired to sell or mortgage either of the three certain lots. He presented certain deeds and requested her to join in the execution of them, but she refused to do so until she could consult her counsel. *Held*, that this is not such an absolute refusal as to bring the case within the clause in the agreement that she shall forfeit all right to the provisions made for her under said agreement.

GARRET BERRY, for complainant.
 GILBERT COLLINS, for defendant.
 BIRD, V. C.

This suit was instituted for the purpose of having declared void the agreement entered into by and between the complainant, of the first part, and the defendant, of the second part, and Gilbert Collins, as the trustee of Ellen, of the third part. By the terms of the agreement
 10 John agreed to pay to Ellen \$1,750 per year, for her life, for the support of herself and of the children of the said John and Ellen, and said Ellen agreed to accept the same in full satisfaction of her claim for said support, and to suitably maintain and educate said children. To secure the payment of said moneys, Ellen was to take the management of the real estate of John in Jersey City consisting of several houses, all identified, and to let the property and to collect the rents, attend to repairs, and payment of water rents, taxes, or assessments; to account
 20 monthly and to pay whatever bills remained after deducting the amount due to her, charging herself \$23.50 per month for the premises occupied by her so long as she continued in possession thereof. The payments to Ellen were secured by pledge of two of the houses and lots above mentioned in and by said agreement.

They thereby, also, agreed in the future of their lives to live separate and apart, and not, in any manner, to trouble each other. And Ellen, also, agreed in case John desired to sell or to mortgage three of said properties, or
 30 any part of them, that she would execute a proper deed barring her claim of inchoate dower in such property so sold; "and in case she shall violate this provision and shall refuse to execute such deed, she shall forfeit her right to the provision made by her in this agreement."

John declares, by his bill, that Ellen has so far refused to join with him in the execution of conveyances as to bring herself within the clause of the agreement above quoted; and insists that, having done so, it is the duty of a Court of Equity to enforce the forfeiture. The allega-

tion is that upon two occasions he had entered into an agreement for the sale of two of the properties which were provided for in said agreement, and, in order to carry out the agreement on his part, prepared deeds of conveyance of said parcels so agreed to be sold, and exhibited them to Ellen with the request that she would join in the execution of them, and that she refused so to do. It is, also, alleged that she refused, under similar circumstances, to join with him in the execution of a mortgage. It is insisted that this conduct, on her part, makes the clause 10 operative in a Court of Equity and deprives her of all claim to the annuity or any part thereof.

The answer of the defendant practically denies the refusal in the sense contemplated by the bill, as being absolute, and insists that so far as the refusal was made it was because the sales were only pretended and not bona fide sales, and that Ellen, being aged and very infirm and unacquainted with business, she desired to consult with her counsel before signing any such paper or papers, and also insists that she made known that desire at the time 20 of the refusal, and that it was urged by her before and at the time; and that it was expected that her counsel should be consulted respecting it; and that it never was her intention to absolutely refuse, under all circumstances, to join in the execution of conveyances of said property to bona fide purchasers. It is likewise insisted that both of said alleged sales and said mortgage were not honest, bona fide transactions, but were conceived with the view simply of discharging the said real estate from any lien or claim of said Ellen, whatever it might be. 30

It is also alleged that this question of forfeiture, which is the only object of this suit, is *res judicata*.

It is also alleged that while the Court frequently declares against a forfeiture, it never lends its aid to enforce one.

I am not prepared to say that the insistment that this question is *res judicata* can be sustained. Were I without doubt on this hand, it would be my duty, considering the public welfare, so to declare. There is no wiser provision

of the law than that one full and fair hearing shall suffice. But in this case, I find from the very carefully prepared opinion of the learned Advisory Master who heard the cause, that in his judgment, while there was some effort at raising the issue now presented, the allegations of the cross bill were wholly insufficient for any such purpose, and with this brief statement the consideration of it was dismissed. But more than this, there are some facts now presented which were not then before the Court; and
 10 although they be of the same nature, they are not all the same transactions. At all events, I am not content to rest the decision of a question so momentous, to all parties, on this ground.

Nor am I willing to let the case rest on the question of forfeiture. It very forcibly impresses me that no Court will resort to this arm of the law, for or against either party, until it becomes absolutely necessary so to do. It was urged that Courts of Equity never enforce penalties. Clearly, the Courts have expressed themselves very strong-
 20 ly, indeed, in this direction. "However equity may afford a clause *nomine paenae*, it has never yet assisted in taking advantage of a penalty;" *Doneraile v. Chartres Ridge*, 134; *Hele v. Hele*, 2 Ch. Ca. 88; *Smith v. Allen*, Sax. 51; (21 Amer. Dec. 33); *Hall v. Dalaplain*, 5 Wisc. 206, (68 Amer. Dec. 57); *Helme v. Philadelphia Life Ins. Co.*, 61 Penn. St. 10 & (100 Amer. Dec. 621). Nor can I say what a Court of Equity might not be called upon to do in order to enforce a fair agreement between parties, understandingly made. Therefore, whatever may be the possibilities of this or
 30 any other case on the subject of forfeiture, I cannot see that this case has reached any such extremity as to make it the plain duty of this Court to solemnly decide whether or not such penalty, as we have here, should be enforced. And that I think will appear as we look into the case more fully. (1) It will be noticed that the argument is one between parties who had been husband and wife, if they were not so still, at the making of the agreement. If they were not standing in that relation to each other, they were still under the most solemn obligation known

to the law to each other and to the children, the offspring of their marriage.

It is true, the husband had made a formal, if not a legal and successful attempt to separate himself from his wife; but happily there is no law which recognizes the right of a father to divorce himself from his children during their minority!

It is admitted that this agreement was entered into not only to enable John to make title to his lands, but also to provide Ellen with the means by which to maintain and 10 educate their infant children. In such case the heart of a judge need not be very keenly alive to the wants or necessities of a party, to pause a long while before he would take away the supply thus provided. It may be admitted that John made out a strong case as between one business man and another, in an ordinary deal; but not so where the agreement rests, as in this case, upon the most sacred and binding family ties and highest moral obligations.

(2) Mrs. Harper is now aged and very much enfeebled, 20 both in body and mind, even beyond her years. She is in the mental and physical condition, which renders her an object of pity whenever she attempts to give a narration of any of the transactions most near and dear to her. I am quite certain when what has been said above is considered, and when it is further considered that the husband attempted to sever the holy bond after the eleven children had been born and nurtured by them, five of whom had been carried to the grave, and when it is further considered that he sought to effect that separation not 30 within the jurisdiction where all of the domestic ties had been formed, and where the daily walk of each had for half a century been open to the inspection of all, but in the far away territory of Dakota, all will coincide with me in saying that before the Court cuts off this annuity, it must be made to appear that the mother's conduct has been perverse and obstinate in the very extreme. I call attention to the fact that I do not make the observation by way of criticising John's conduct, but simply to show

an element in the case which can not be kept out, and which is thereby his own seeking, and not by Ellen's. If in his passion or extremity, in seeking to abandon one burden or responsibility, he so managed as to really take on two, he cannot charge it to the misjudgment of the Court. One of these burdens was an annuity for the support of Ellen as well as his children by her, and I can find nothing, whatever, to justify me in cutting off the supply that affords her bodily nourishment in her declining years.

(3) But while the facts to be gathered from the testimony show that Ellen would not sign the deed nor the mortgage at the time they were presented to her for her signature, the refusal was not such as to afford any excuse for a Court of conscience to declare that she thereby had forfeited her living. There is a strong denial of any such refusal. And on this point I am very clear that the complainant has not shown such determination in the refusal as obliges the Court to pronounce whether in such case Equity will enforce a forfeiture. While the evidence on behalf of John is to the effect that her refusal was without limitation as to time or qualification as to other circumstances, on the part of Ellen, it shows that she wanted to consult her counsel.

(4) It seems to me that John did not deal with Ellen quite fairly. He knew the weakness of her mind. He also knew that she was very sensitive on all subjects which bore any relation to their previous marital rights. He likewise knew the fact that Mr. Collins was her trustee, and that Messrs. Collins & Corbin were her counsel and advisers in all matters pertaining to this business.

But besides this, John had been distinctly informed by Mr. Corbin that, if, at any time, he desired Ellen to execute any deeds, if he would bring them to Collins & Corbin, they would examine them, and if they were all right and proper for her to sign they would see that she executed them. Therefore, it is that I say, with all of this information, and this plain notification from Collins & Corbin, in cannot be said that he treated Ellen, in her

ignorance and infirmity, fairly.

Therefore, it seems to me that in no sense has there been a forfeiture; and hence, the Court is not required to say whether in any case it will undertake to enforce a forfeiture or not. I will advise that the bill be dismissed with costs.

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DECREE.

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In Chancery of New Jersey.

BETWEEN

JOHN HARPER,

Complt.

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AND

ELLEN HARPER, *et al.*,

Defts.

On Bill, &c.

This cause coming regularly on to be heard on pleadings and oral proofs before Honorable John T. Bird, Vice-Chancellor, in presence of Garret Berry, Esquire, solicitor for and of counsel with the complainant, and of Collins & Corbin, solicitors for and of counsel with the defendants, and said pleadings having been read and the testimony having been taken and considered, and said counsel having been heard and the Court being of opinion that the complainant has failed to establish the case made by his bill.

It is on this nineteenth day of February, A. D. eighteen hundred and eighty-nine, on motion in behalf of both of

said defendants by his Honor Alexander T. McGill, Chancellor of the State of New Jersey, ordered, adjudged and decreed, and the said Chancellor does by virtue of the power and authority of this Court, hereby order, adjudge and decree that the complainant's bill in above stated cause be and the same hereby is dismissed with costs.

Respectfully advised,

JOHN T. BIRD,

V. C.

ALEX. T. MCGILL,

C.

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A true copy.

ALLAN McDERMOTT,

Clk.

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NOTICE OF APPEAL.

10 *In Chancery of New Jersey.*

	BETWEEN	
	JOHN HARPER,	
		<i>Complt.</i>
20	AND	
	ELLEN HARPER, <i>et al.</i> ,	
		<i>Defts.</i>

} *On Bill, &c.*

30 The complainant hereby appeals from the final decree made in this Court in above stated cause on the nineteenth day of February, A. D. eighteen hundred and eighty-nine, and from the whole and every part thereof, to the Court of Errors and Appeals in the last resort in all causes.

GARRET BERRY,
Solicitor of and Counsel for Complt.

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

GARRET BERRY,
Of Counsel with Complainant.

PETITION OF APPEAL.

—:O:—

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

The humble petition of John Harper respectfully shows that your petitioner finds himself aggrieved by the final decree made in the Court of Chancery by his Honor Alexander T. McGill, Jr., Chancellor of New Jersey, bearing date the nineteenth day of February, in the year eighteen hundred and eighty-nine, wherein your petitioner was complainant and the said Ellen Harper and Gilbert Collins were defendants, in this respect, to wit, that said decree adjudges that the complainant's bill in said cause be dismissed with costs, upon the ground that the same is erroneous, for that the said Chancellor should have decreed that said agreement attacked in said bill of complaint of complainant should have been declared void, and the relief prayed for in said bill of complaint should have been granted, and that said decree should have been 30
in favor of said complainant and against said defendants.

Your petitioner therefore prays that the said decree of the 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.

GARRET BERRY,

Solicitor for and of Counsel with Appellant.

Answer to Petition of Appeal.

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¹⁰ **N. I. Court of Errors and Appeals.**

BETWEEN JOHN HARPER, <i>Appellant,</i> <i>and</i> ELLEN HARPER and GILBERT COLLINS, <i>Respondents.</i>	} <i>On Appeal from</i> <i>Chancery.</i>
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The answer of Ellen Harper and Gilbert Collins to the petition of appeal of John Harper, above named.

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These respondents not acknowledging all or any of the matters which in the said petition of appeal are contained, to be true, for answer thereto nevertheless say and admit that a decree was on the nineteenth day of February inst. made and entered in 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 these respondents.

* COLLINS & CORBIN,

Solicitors for and of Counsels with Respondents.

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TERRITORY OF DAKOTA }
COUNTY OF MINNEHAHA } ss

IN THE DISTRICT COURT
4TH JUDICIAL DISTRICT

JOHN HARPER *Plff*

vs.

ELLEN HARPER *Deft*

Judgment

This cause having been brought on to be heard this 22d day of November 1882 upon the complaint taken herein as confessed by the plaintiff she having failed to answer or demur to said complaint, and the plaintiff having waved a jury herein and having also waived the finding of fact herein by the court and having duly submitted his proofs it appears there from that all the material allegations of the complaint are sustained by testimony free from all legal exceptions as to its competency and sufficiently and it also appearing to the court that the defendant was duly served with process and all and singular the law premises being by the court here seen heard understood and fully considered Wherefore it is ordered adjudged and decreed that the court by virtue of the power and authority therein vested and in pursuance of the statute in such case made and provided does order adjudge and decree that the marriage between said Plaintiff and Defendant the said plaintiff being John Harper and the said Defendant being Ellen Harper is hereby dissolved accordingly and the said parties are and each of them is freed and absolutely released from the bonds of matrimony and all the obligations thereof

Done in open court this 23d day of November A. D. 1882

J. P. KIDDER

Judge



