

Blunt's Det.

In the Court of Errors and Appeals  
OF NEW JERSEY.

ALEXANDER WHYTE,  
Appellant,

vs.

WILLIAM H. ARTHUR *et al.*,  
Respondents.

} Appellant's Points.

I.—So far as the decree adjudges that the injunction in the original suit should be perpetual, it is erroneous, for the reason that no replication having been filed in that suit, no issue was taken on the answer, and no testimony was taken in that suit, nor was it ever noticed for argument or argued or brought before the Chancellor for argument.

II.—The conveyance of James Whyte and wife to the respondents Arthur and Westcott, of the farm described in the complaint, and the assignment of the mortgage on the same by Emma Whyte to the said respondents, were acts in fraud of the rights of the appellant, and should be declared void, and re-conveyance ordered.

1. The farm was purchased with the money of the appellant, and was therefore equitably his, and was held in trust for him by James Whyte.

He swears to this, page 27, fols. 101 to 106; fol. 118, p. 39; fol. 145, p. 43; fols. 160 and 161.

2. Alexander Whyte swears to the same thing (pages 59 and 50, fols. 224 to 228; pp. 61 and 62, fol. 231; question 22, fols. 232 to 234; fols. 237 to 239.)

3. As to the mortgage it was without consideration—fraudulently obtained by James of his father—it was unintentionally given to James' wife, Emma Whyte.

See James' account of it, p. 28, fols. 106 to 113.

See appellant's account of it, pp. 60 and 61, fols. 228 to 231.

See Emma Whyte's account of it, p. 74, fols. 281 to 283.

If the account given by them is not true, why did they not call Mr. Mills who was present? It is alleged by the respondents that the farm did not really belong to the appellant, and was not purchased by his funds, and to show this they produce an account fabricated by James Whyte, as he says.

Exhibit M 3, page 115.

This paper is in no sense evidence against the appellant. It is not shown that it was ever presented to him, or that he had any knowledge of it.

And the witness by whom they attempt to prove it, swears that it was false and fabricated.

The evidence of James Whyte going to show that this account was false and a fabrication, will be found on page 44, fol. 166; question 47, p. 45, fol. 171; do. 169; do. 167, p. 46, fol. 172; p. 47, fols. 176 and 177 to 180; p. 48, fols. 181 and 182; p. 52, fol. 197; p. 53, fols. 200 and 203; p. 54, fol. 203, quest. 148.

In this testimony James Whyte must be considered the witness of the respondents—is not a cross-examination as to any testimony given by him on the other side—but a new subject to invalidate his evidence.

III.—No answer having been filed by the defendant's, James Whyte and wife, the bill was, by order, entered on the 1st day of April, 1863, taken as confessed by them.

IV.—The transfer of the farm and mortgage to the respondents, Arthur and Westcott, was void.

1. For duress, James Whyte was under arrest, not legally, but in reality. (See James' Statement, pp. 33, 121, &c.)

It has been held, that where a bond and warranty of attorney was executed by a party while in close custody, and without legal advice, it is void for *duress*.

Evans *vs.* Begleys.

2d Wend., 243.

Vide also Thompson *vs.* Lockwood, 15 J. R., 256.

Vide also Strong *vs.* Grannis, 26 Barb., 122.

“Where there is an arrest for improper purposes without a just cause, or where there is an arrest for a just cause but without lawful authority, or where there is an arrest for a just cause and under lawful authority for unlawful purposes, it may be construed a *duress*.”

3 N. H., 508, 6th Mass., 506.

Where one induces another to enter into a contract and part with his property, either by duress of imprisonment or duress *per minas*, the transaction is void, and no title passes.

Forshay *vs.* Ferguson, 5th Hill, 154, and cases cited.

Westcott tries hard in his testimony to establish the fact that James was not under arrest, and alleges futile reasons for what was done.

P. 88, fol. 336, Quest. 16.

Now, James having agreed to give up the farm and money, and they being satisfied that was all they could get, why this extreme caution for fear he would destroy any evidence of property?

They took all the usual means of taking him in custody, and evidently intended to keep him so, and he so understood it.

Answer to Question 23.

“ “ 15, p. 88, fol. 335.

“ “ 25 and 26, pp. 89 and 90.

V.—But Arthur and Westcott were fully paid all the indebtedness of James to them without resorting to the land or the bond and mortgage.

1. After more than a year's time for examination they could make out but \$763 90 claim, and for that amount issued a summons October 1, 1861.

They are concluded by this summons for the amount stated to be claimed in the suit commenced.

Their demand was on unliquidated claims for money overdrawn or kept back by James Whyte, and if they had a claim for more they should have claimed it then in the summons. They could not split their claim and sue for a part and afterwards claim more.

Vide Cowen's Treatise, 4th ed., pp. 440, 441, §§ 1080-81.

15th Johns. Rep., 432 and 229.

16th Ibid, 136 and 121.

Miller vs. Covert, 1 Wend., 487.

Guernsey vs. Carver, 8 Wend., 492.

Stevens vs. Lockwood, 13 Wend., 644.

Bendernagle vs. Cocks, 19 Wend., 207.

Fish vs. Foley, 6th Hill, 54.

Bækmau vs. Platner, 15 Barb., 550.

2. But on examining the books, all the items they could point out as erroneous in the accounts, only amount to that sum, or less. They are as follows :

September 27, 1860—Seaman's ac.....	\$102 50
“ 12, 1859—Brokerage.....	5 04
July, 1859—chgd Arthur's ac.....	15 00
April 2, 1859—Westcott ac.....	100 00
January 3, 1859—Arthur's ac.....	10 00
December 31, 1858—Petty cash ac.....	15 00
October 2, 1858—Not posted his ac.....	20 00
April 15, 1859—Posted to ac.....	43 00
Overdraft on books.....	285 49
<hr/>	
Add what they claimed, but not entitled to charge to Westcott....	69 00
<hr/>	
	\$765 03

And it makes only \$ 1 13 more than claimed in the summons.

As to charge of \$728 60 (p. 94, §358), there is no error. and so shown by the books, and is explained by James, p. 107.

So of the charge of \$490, p. 108.

So of the items of \$69; and as Westcott gave it up himself, at the time when all was fresh, James' version should be taken as the true one.

3. This includes all the alleged errors which were not clearly disproved by the books, except the amount of Freeman, and there is no error shown in that account. It was only by speculative reasoning that the witness Westcott tried to establish an error in that account; those reasonings were not based on the facts.

There was a total want of production of the necessary documents to test the accuracy of that account.

The checks and check-books should have been produced and examined.

The respondents, Arthur & Westcott, claim that the transactions, with slight exceptions, were in exchange of checks of equal amount.

It is not pretended that James received any money. How, then, could he defraud them by crediting, in the account of Freeman, a less sum than was charged in the exchange, thus leaving him in debt?

**VI.**—The respondents, Arthur & Westcott, took the conveyance of the farm, and assignment of the mortgage, with full notice of the equitable rights of the plaintiff.

1. James Whyte swears he told them it was the property of his father, and purchased with his money.

*Vide* Case, p. 35, fol. 132.

2. Although the respondents deny this knowledge, yet, in the answer, p. 22, fols. 83 and 84, they, say “ that on the day following that upon which the agreement with said James was made, said James stated to these defendants, that part of the purchase money for said farm came from moneys raised by the sale of lots in this city, belonging to said James’ father, the complainant, which said complainant had sold ; that these defendants did not believe said statements, and regarded it then, &c. ; it is manifest that this was before the execution of the deed, else how could it be a pretext on the part of James, to get rid of paying what he owed them.

That this is inconsistent with the testimony of Westcott, only goes to show that his testimony cannot be relied on ; there is a palpable contradiction of himself under oath.

Case, p. 84, fols. 314 to 317, inclusive.

**VII.**—But it will be alleged on the part of the respondents here, as it was before his Honor the Chancellor, that the respondents having the deed and assignment of the mortgage on the part of James and his wife, and the appellant alleging a want of consideration to render these instruments valid ; The *onus probandi* rested upon the appellant to prove such want of consideration, and not upon the respondents to prove such consideration on their part, and, therefore, that the books and papers, and other evidence on that point should have been produced by the appellant.

I think the respondents are in error on this point.

The appellant having proved that the money consideration mentioned in those instruments was not paid by the respondents—but other consideration, to wit, the defalcations of the defendant James White, alleged by them as the real consideration.—The onus was then changed, and it devolved upon them to show that such defalcations existed beyond the amount of money paid by him through the Savings' Bank fund.

And the evidence of such defalcations, if any existed, was in their possession and under their control; they should have produced the books and checks, which would show the real state of the case, and so of the other evidence, the testimony of the other parties and witnesses cognizant of the transactions to establish the facts alleged affirmatively by them, to show such defalcations and the extent of them, and not producing them, the respondents' case lacks those essential points of evidence to counteract the positive evidence of James White and wife, which shows that there was no consideration.

It is a general rule of evidence that the burthen of proof lies on the person who has to support his case, by proof of a fact which lies more peculiarly within his own knowledge, and of which he is supposed to be cognizant.

1 Phillips' Evidence, 495.

Where a voluntary conveyance is prepared by the grantee and there exists any confidential relationship between the parties giving the grantee a controlling influence over the grantor, the burthen of proof is upon the grantee to show the entire fairness and honesty of the transaction.

Sears *vs.* Shafer, 1 Barb., 408.

*Vide* 6 N. Y., 2d Seld., 268.

An old man had made a will, declaring his intention to produce equality among his children in the division of his estate, and afterwards, he being very infirm and deaf, a deed to his daughter was executed by him, on the reading of it by her husband, which apparently produced inequality, but purported to be made to place her upon an equality with the other children: Held, on a bill to set aside the

deed, that it was incumbent on the daughter (the grantee) under the circumstances, to show how equality would be produced by the deed, in connection with the unrevoked will.

Lansing *vs.* Russell, 3 Barb. Chan., 325; and see 13 Barb., 510.

An old man, of decayed mind, executed a will, unequal in its provisions and contrary to his former declarations of his intention. The husband of the chief beneficiary employed the draftsman of the will and arranged and attended the execution. Held, that the party propounding the will was bound to show affirmatively that precautions were taken to secure the testator the full and free action of his faculties, and that no imposition or undue influence was practised.

2 Bradford N. Y. Sur. Rep., Mowry *vs.* Silber, p. 133. Vreeland *vs.* McClelland, 1 Id., 393.

**VIII.**—The portions of testimony objected to on the part of the appellant should be stricken out, and the decree of the chancellor declared to be erroneous and reversed, and the relief prayed for by the appellant granted.

J. E. CARY,  
Solr. for and of Counsel  
with Appellant.

# INDEX.

---

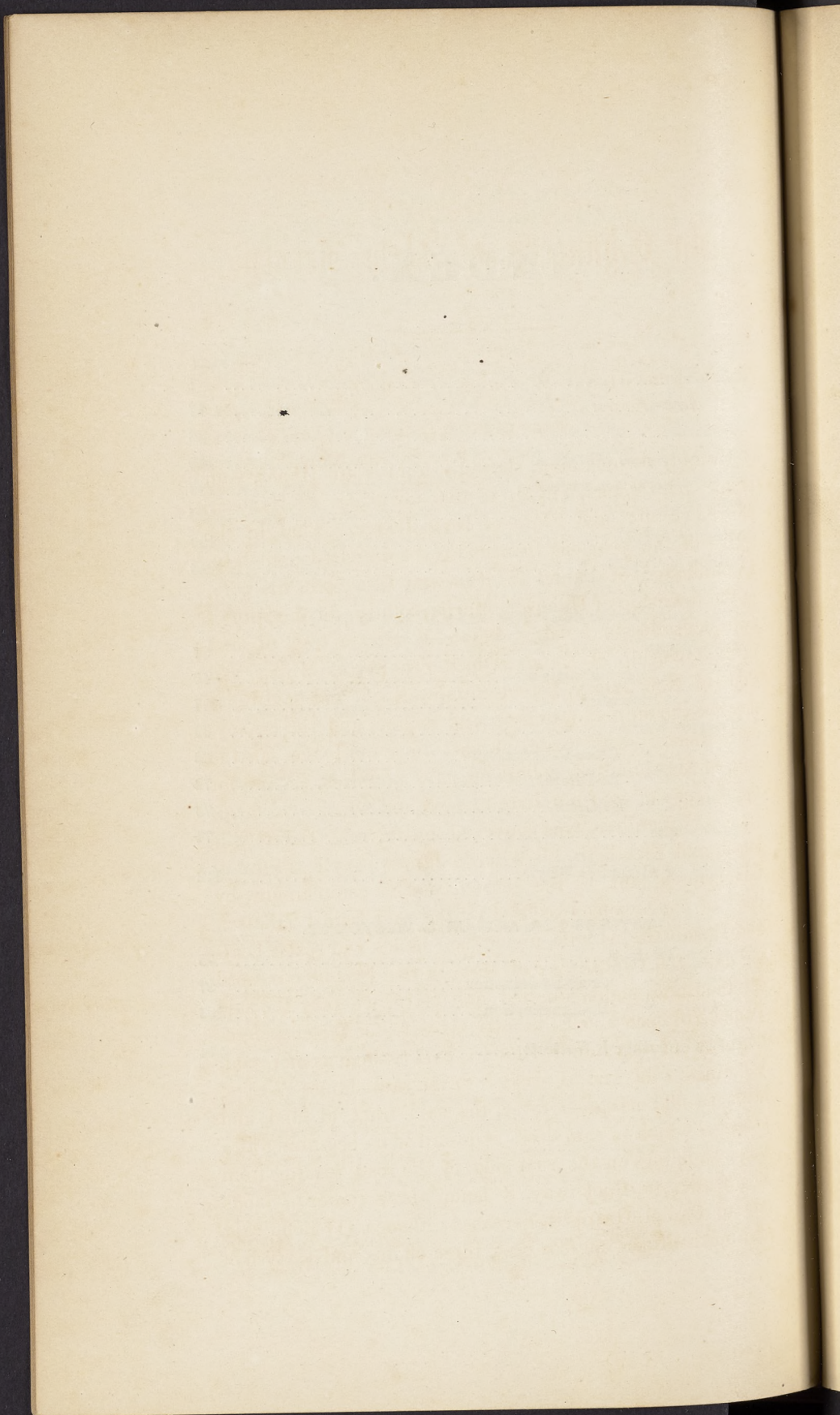
	PAGE.
Cross-Bill .....	1
“ Answer .....	17
Replication .....	26
Mem. of Original Bill and Answer .....	119
“ Decree <i>pro confesso</i> .....	119
Final Decree .....	120
Notice of Appeal .....	123
Petition of Appeal .....	125

## WITNESSES FOR ALEXANDER WHYTE.

James Whyte .....	27
“ “ Cross-Examination .....	40
“ “ Recalled .....	107
Alexander Whyte .....	59
“ “ Cross-Examination .....	63
“ “ Re-Direct .....	72
“ “ Re-Cross .....	73
Emma Whyte .....	74
Exhibits for Alexander Whyte .....	112

## WITNESS FOR ARTHUR & WESTCOTT.

Charles S. Westcott .....	75
“ “ Cross-Examination .....	87
“ “ Re-Examination .....	103
Exhibits of Arthur & Westcott .....	114



## In Chancery of New Jersey.

---

To his HONOR HENRY W. GREEN, *Chancellor of the State of New Jersey* :

Humbly complaining, showeth unto your Honor, your orator Alexander Whyte, of the township of Hanover, Morris county, and State of New Jersey. That in the spring of the year one thousand eight hundred and sixty, he purchased of Daniel Tillotson and Elizabeth, his wife, of the township of Hanover, Morris county, for the sum of two thousand six hundred dollars, a certain tract of land <sup>1</sup> in the township of Hanover, in the county of Morris, and State of New Jersey, hereinafter described, and paid them therefor the sum of two thousand dollars, and the conveyance thereof was made, subject to a mortgage for the sum of six hundred dollars on said premises, as and for the balance of said purchase money, and which said farm, tract and premises, was conveyed by the said Daniel Tillotson and Elizabeth, his wife, to James Whyte, the son of this complainant, by the consent of this complainant, by deed of conveyance executed by the said Daniel Tillotson <sup>2</sup> and Elizabeth, his wife, under their hands and seals, bearing date, the twelfth day of May, in the year of our Lord one thousand eight hundred and sixty, whereby the said Daniel Tillotson and Elizabeth, his wife, for the consideration of twenty-six hundred dollars, paid to them as aforesaid, bargained, sold and conveyed to the said James Whyte, his heirs and assigns forever, the said tract of land and premises which in said deed is described as beginning at a stake standing on the east side of the road leading from Morristown to Rockaway, it being also a corner of lands <sup>3</sup> late of Daniel Garrigus, deceased ; thence (1) along said road north fifteen degrees east, three chains and sixty-five

links to a corner in said road; thence (2) south sixty-two degrees east, thirteen chains and thirty links to a black oak sapling for a corner; thence (3) north twenty-eight degrees east, five chains and sixty-seven links to a stake, for a corner; thence (4) south sixty-two degrees east, seven chains and fifty links to a corner: thence (5) north twenty-eight degrees east, seventeen chains and eighty-  
 4 three links to a stake, for a corner; thence (6) west thirty-five chains and eighty-seven links to a corner of James F. Elmer's land; thence (7) along said Elmer's line, south twenty degrees and fifteen minutes west, ten chains and seventy links to a stake, for a corner; thence (8) south sixty-six degrees and thirty minutes east, twelve chains to the place of beginning, containing forty-seven acres and seventy-four hundredths of an acre, be the same more or less, except a certain lot conveyed by Ebenezer W. Tut-  
 5 hill and wife, to the Harrisonville school district, and on which the school-house of said district now stands, and excepting also a piece of land containing one acre, lying adjacent to and in rear of said school-house lot, and along the land of George S. Comin, said last-mentioned piece of land being of the same width as the said school-house lot, and extending back along the land of the said Comin far enough to contain one acre, and excepting also the land  
 6 deeded by David Tomkins, to the Morris and Essex Railroad Company, for their branch road to Dover, to have and to hold all and singular the above-described premises, with the privileges and appurtenances thereunto belonging unto the said James Whyte, his heirs and assigns forever, as by said deed will more fully appear.

And your orator further shows that on the day and year last mentioned, the said Daniel Tillotson and Elizabeth, his wife, appeared before Augustus W. Cutler, a Master in Chancery of the state of New Jersey, and the said Master in Chancery having first been satisfied that they were the grantors in said deed named and having  
 7 made known to them the contents of said deed, they acknowledged that they respectively signed, sealed and delivered the said deed as their voluntary act and deed, and the said Elizabeth Tillotson, being by said Master in Chan-

cery privately examined, separate and apart from her said husband, acknowledged that she signed, sealed, and delivered the same as her voluntary act and deed, without any fear, threats, or compulsion of her said husband, and that on the eighteenth day of May, A. D. 1860, the said deed was recorded in the Morris county clerk's office, in Book No. 5 of Deeds, page 100, as by the said deed and the certificate of the said Master in Chancery and the clerk of said county, endorsed on said deed, will more fully appear. 8

And your orator further shows that the said James Whyte negotiated said purchase and took said deed of conveyance of said farm and premises as the agent of and in trust for your orator, and to hold the same for the sole use and benefit of your orator, although the trust was not expressed in said deed thereof, which was absolute on its face, but the said James Whyte paid no portion of said purchase money of his own funds, the same being wholly paid out of the funds of your orator, as aforesaid. 9

• And your orator further shows that in consideration of the premises, and in order to vest the legal title to said farm and premises in your orator, to whom the same equitably belonged, the said James Whyte and Emma, his wife, by deed of conveyance, executed by them, under their hands and seals, bearing date the 21st day of February, A. D. 1861, for the consideration of three thousand dollars, therein expressed, bargained, sold, and conveyed to your orator, said tract, farm and premises, above described, subject to the said mortgage of six hundred dollars thereon, which your orator assumed to pay as a part of said purchase money. 10

And your orator further shows that previous to and at the time of the making of the said last-mentioned deed, the said James Whyte represented to your orator and induced him to believe that it was best for your orator to give him, the said James Whyte, a mortgage on said farm and premises for the sum of two thousand two hundred dollars, he agreeing to hold the same only for the use and benefit of your orator; and your orator, having great confidence in his said son, 11 and fully believing that he was managing the matter wholly for the benefit of your orator, and in a manner to

promote his best interests, consented to give such a mortgage. And at the time of the execution of the said deed by the said James Whyte, and Emma, his wife, to your orator, the said James Whyte produced a bond and mortgage already prepared by him or by his procurement, as the bond and mortgage which your orator was to execute according to the agreement and understanding aforesaid, and your orator executed the same, supposing and fully believing that it was a bond and mortgage to his said son James Whyte, according to the understanding and agreement aforesaid. But your orator, to his great surprise, long afterwards discovered that said bond and mortgage were drawn to the said Emma Whyte, the wife of the said James Whyte, and are the same bond and mortgage hereinafter mentioned as assigned by said Emma Whyte to the defendants, William H. Arthur and Charles S. Westcott.

13 And your orator further shows that he was entirely ignorant of the said Emma Whyte being the mortgagee in said mortgage and the obligee in said bond at the time he executed the same, and he would not have executed the same had he known that she was the obligee and mortgagee therein, and that he was deceived by the said James Whyte, and made to believe that the bond and mortgage were made to him, the said James White, to be taken and held by him only for the benefit and use of your orator; and there was no consideration whatever for said bond and mortgage to 14 said Emma Whyte, paid either by her or any person for her, but the same was procured by deception and executed under a mistake on the part of your orator as to the person named as obligee and mortgagee therein as aforesaid.

And your orator further shows that he is a weaver by trade, and is not a man of much education, and had little or no experience or skill in the purchase and sale or management of real estate. That his said son, James Whyte, is his eldest son, of about thirty years of age, and had 15 generally had the management of his business of that kind, and he had sold some real estate of your orator in New York, and appropriated the proceeds thereof to the pur-

chase of the said farm and premises for your orator, and your orator had such confidence in his son and in his competency to manage the business for him to the best advantage, that he was accustomed to act upon his advice and direction, and sign papers prepared by him or under his direction without examination or even reading the same, and he did not read the said bond and mortgage for two thousand two hundred dollars so given by him, and did 16 not understand by hearing them read that they were not to his son, but to his wife.

And your orator further shows, that, in or about the month of April, 1860, he entered into the quiet and peaceable possession of the said farm and premises as his own property, and has continued so to possess and occupy the same to the present time.

And your orator further shows, that said James Whyte visited him with his wife in the summer and fall of 1861, and spent considerable time with him on said premises, 17 and on looking about the said farm and premises, he suggested various valuable improvements which it were desirable to make on the same, and advised your orator to make such improvements, and asked him why he did not do so. Your orator told him he had no money with which to make said improvements; the said James Whyte represented to your orator that it was very desirable to have such improvements made, both for the comfort and convenience of your orator and as a mode of increasing the value of the property; and proposed that your orator 18 should convey the said farm and premises to the said James Whyte, and he would then go on and make said improvements, and would hold said farm and premises for the use and benefit of your orator. And your orator, confiding entirely in his said son, and believing that he was acting only for the good of your orator, submitted implicitly to his advice and direction and accordingly conveyed the said farm and premises to him, his said son, the said James Whyte, by deed dated October 3, 1861, for the 19 nominal consideration, expressed in said deed, of twenty-eight hundred dollars, subject to the said mortgage of six hundred dollars, and the mortgage of twenty-two hundred

dollars aforesaid, which he supposed he had given to his said son, as aforesaid. That no consideration whatever was paid to your orator by his said son for said conveyance, or agreed to be paid ; but the same was given entirely in the confidence that his said son would take the same and make improvements on said farm and premises as proposed, and hold the same for the use and benefit of  
 20 your orator.

And your orator further shows, that he is informed and believes and so charges the fact to be, that, on or about the 31st day of October, A. D. 1861, the said James Whyte and Emma, his wife, by deed of conveyance, executed by them under their hands and seals, and bearing date the day and year last aforesaid, bargained, sold, and conveyed to the defendants, William H. Arthur and Charles S. Westcott, the said tract of land, farm and premises hereinbefore described, and that they duly acknowledged  
 21 the execution of said deed on the day of the date thereof before Charles Nettleton, a commissioner, to take the acknowledgments of deeds, &c ; for lands in New Jersey, residing in the state of New York, and that the said deed was duly recorded on the first day of November, 1861, in Morris county clerk's office, in book B, 6, of deeds, as by the said deed, and the certificate of the said commissioner and clerk endorsed thereon will more fully appear.

And your orator further shows, that he is informed and  
 22 believes, and alleges the fact to be, that on the said 31st day of October, 1861, the said Emma Whyte executed, under her hand and seal, and delivered to the said defendants, a certain deed of assignment, dated the day and year last aforesaid, wherein and whereby she sold, assigned, and transferred to the said defendants, William S. Arthur and Charles S. Westcott, the said certain indenture of mortgage, dated the twenty-first day of February, 1861, made by your orator to the said Emma Whyte, and which he intended and supposed to be made to the said James Whyte  
 23 upon the premises therein described, which premises are the same as herein above described, which mortgage is recorded in the clerk's office of the said county of Morris,

in Book F, 2, of Mortgages, at page 205, &c., together with the bond therein described, and the money due and to grow due thereon, which deed of assignment was on the day of the date thereof acknowledged before Charles Nettleton, a commissioner as aforesaid, and was on the first day of November, A. D. 1861, recorded in the Morris county clerk's office, in Book No. 1 of Assignments, pages 505 and 506, as by said deed of assignment, or the record 24 thereof, will more fully appear.

And your orator further shows, that he is informed and believes, that at the time said deed of assignment was dated and acknowledged as aforesaid, said bond and mortgage were delivered by said James Whyte and Emma, his wife to the said defendants, William H. Arthur and Charles S. Westcott.

And your orator further shows, that he is informed and believes, and so expressly alleges the fact to be, that the said defendants, William H. Arthur and Charles S. West- 25 cott, paid no consideration for the said deed of conveyance of said farm and premises, or for the assignment of the said bond and mortgage, but that they procured the execution thereof by the said James Whyte and Emma his wife by the means and under the circumstances hereinafter stated, viz. :

The said defendants, William H. Arthur and Charles S. Westcott, are and were, at the time of the execution of the said deed and assignment to them, and had been for several years previous, partners in the stationery business 26 in the city of New York, and that for several years previous to the first day of October, 1860, the said James Whyte had been their book-keeper in their store in said city of New York, and left their service on or about the last day of September, 1860 ; that at the time of so leaving their employ the said James Whyte was indebted to them in the sum of about seven hundred and sixty-three dollars and ninety cents ; that said indebtedness had accrued by an overdraft of the said James Whyte on them on account of his salary at different times during his said 27 employment by them.

That, in the fall of 1861, the said defendants William H. Arthur and Charles S. Westcott made complaint against the said James Whyte, of such overdraft and consequent indebtedness, and also charged him with making various false entries in their books of account, by which they alleged they had been defrauded by the said James Whyte and they demanded of him payment of the sum of money which he had so as they alleged, defrauded them of, and  
28 they required him to give them a deed of the said farm and premises aforesaid, and that he should procure the assignment of the said bond and mortgage so held by his wife as aforesaid; the only amount ascertained to be due by said James Whyte to the defendants, William H. Arthur and Charles S. Westcott, by such overdrafts and erroneous entries, was the said sum of \$763 90, which the said James Whyte was willing and offered to pay them, but which they were not willing to accept in discharge of their claims, but refused to do so; the said James Whyte  
29 then offered to pay them nine hundred dollars as an amount abundantly sufficient, in his opinion, to cover all deficiencies, default and indebtedness on his part, but which was refused by them, but the defendants William H. Arthur and Charles S. Westcott, by an artful course of inuendos and insinuations as to the serious consequences which would result to him the said James Whyte if they should take proceedings against him, and expose him and his conduct to the public and bring him to punishment, excited in him great fear of the danger and dis-  
30 grace which would result to him by such exposure and prosecution, and the said defendants William H. Arthur and Charles S. Westcott, the more effectually to excite the fears and apprehensions of the said James Whyte, and work upon his fears, by means of which he could be induced to comply with their unjust and exorbitant demands procured him to be arrested by policemen or men representing themselves to be such, and he was so arrested and kept in custody until he complied with their said demands, which were that he should do, and he did pay them about  
31 eleven hundred dollars in cash, and execute the said deed and procure his wife to execute the said assignment of the

said bond and mortgage, in order to obtain a discharge from them, although in reality some eight or nine hundred dollars would have fully covered all his indebtedness to them, including the whole amount of his default in consequence of overdrafts and erroneous entries in said books, and all costs and interest thereon. But, conscious of having done wrong, and not having access to the books to ascertain with certainty the amount he was in default, the said James Whyte was so frightened by the means aforesaid, that he 32 complied with their demands as aforesaid; but he informed the said defendants, William H. Arthur and Charles S. Westcott, when they required him to give said deed, that the said farm and premises did not belong to him, but was his father's (your orator's) property, and that the said mortgage was given for no consideration and was not a valid security, and your orator avers and charges that the said defendants, William H. Arthur and Charles S. Westcott, took said deed and assignment under the circumstances aforesaid, without any consideration paid by them therefor, 33 and with full notice and knowledge of the equitable rights of your orator; and that one further reason or inducement for the said James Whyte to give to the said defendants, William H. Arthur and Charles S. Westcott, said deed and procure said assignment of said bond and mortgage, was, that he was led by them to believe, and acted on such belief, that they would hold the said deed and assignment only as security for any further default on the part of the said James Whyte, which they might discover on further examination of their said books, or on settlement or confer- 34 ence with their customers, they pretending to believe that there were other accounts falsified in said books by said James Whyte, which they had not yet discovered, and by which, when discovered, a larger amount of indebtedness would be made to appear than the said sum of \$763 90, which was all they could then discover from the books, or had any knowledge of, and that if no such further false entries and larger indebtedness should be discovered, the said farm and premises would be reconveyed to him and the said bond and mortgage reassigned to his wife, and said 35 deed and assignment were made in the full belief on the

part of said James Whyte that no such further default or indebtedness would be discovered, and that such reconveyance and reassignment would therefore be made.

And your orator further shows that he is informed and believes, and so expressly charges, that such pretended belief and apprehensions on the part of the said defendants William H. Arthur and Charles S. Westcott, that further default and large indebtedness on the part  
 36 of the said James Whyte would be discovered, were entirely unfounded in fact, and that the said sum of 763 90 was the whole amount of such default and indebtedness of the said James Whyte to them, and which was well known to them at the time they exacted the said deed and assignment, and which amount of default and indebtedness was more than paid to them in cash by said James Whyte, together with all costs and interest thereon, and the said deed and assignment were unjustly  
 37 extorted from him by the means aforesaid; and after the said deed and assignment were so made as aforesaid, the said James Whyte spoke to said Charles S. Westcott, one of said defendants, on the subject of such reconveyance and reassignment, and requesting that they might be made in pursuance of the understanding aforesaid, on the said defendants being satisfied that no such further default or indebtedness could be discovered, and he promised to speak to his partner, William H. Arthur, on the subject, and let him know the result; and that afterwards the said defendant, Charles S. Westcott, told him that he had spoken to  
 38 his said partner on the subject, and that he could give him no encouragement that such reconveyance and reassignment would be made, although neither of said defendants then alleged or pretended that any such further default or indebtedness had been discovered, or was likely to be discovered.

And your orator further shows, that the first knowledge he had that said deed of conveyance of said farm and premises had been given by his said son to the said defendants, William H. Arthur and Charles S. Westcott, was on  
 39 or about the 8th day of April, A. D. 1862, or a few days subsequent thereto, when one or both of said defendants,

William H. Arthur and Charles S. Westcott, came out there and desired him to show the lines of the farm, and he then learned that they claimed to have received a deed thereof from his said son.

And your orator further shows, that the said defendants, William H. Arthur and Charles S. Westcott, claim to be the lawful owners of the said farm and premises, and of said bond and mortgage, and utterly refuse to recognize any of the rights of your orator to the same, and are endeavor-40 ing to enforce their alleged title to said farm and premises in utter disregard to the legal or equitable rights of your orator in the premises, and have caused a notice to be served on your orator, on the 25th day of April, 1862, signed or purporting to be signed by the said defendants, William H. Arthur and Charles S. Westcott, whereby your orator is notified and required to quit the dwelling-house, lands, and premises owned by them, and now occupied by your orator, situate in the township of Hanover, in the county of Morris and state of New 41 Jersey, on the first day of August next, and to deliver possession thereof to them on or before that day, and which notice was dated April 12th, 1862, and your orator believes and has reason to believe and apprehend that the said defendants, William H. Arthur and Charles S. Westcott intended to take measures to turn your orator out of possession of said premises, and deprive him of all his equitable rights therein and hold said premises under said deed, and enforce said bond and mortgage so given and assigned to them by the said James Whyte and wife, 42 if they shall not be restrained from so doing by the injunction of this honorable Court, and compelled by its decree to reconvey said premises to your orator and reassign the said bond and mortgage to said Emma Whyte to be by her cancelled.

But now so it is, may it please your Honor, that the said William H. Arthur and Charles S. Westcott, combining and confederating with divers other persons at present unknown to your orator—but whose names, when discovered, your orator prays may be inserted in this his bill of 43 complaint, with apt and proper words to charge them as

defendants hereto—to injure and aggrieve your orator in the premises, and have exhibited and filed in this honorable Court their bill of complaint against your orator alleging the said conveyance to them by the said James Whyte and wife of the said farm and premises and the assignment to them by the said Emma Whyte of the said bond and mortgage thereon and that they have become the owners thereof and that your orator is in possession of said premises  
 44 as their tenant, and they also by said bill charge your orator with having been cutting a considerable quantity of wood off of said premises during the last winter of great value, to wit, of the value of one hundred dollars, and that he was then, at the time of exhibiting of their said bill, cutting down trees and timber there, and that your orator or those in his employ have cut and ranked upon said premises from fifty to seventy cords of wood, and also a considerable quantity of timber that seems to be designed for railroad cross-ties, and that most or all of said cutting  
 45 has been done since the said premises were conveyed as aforesaid, by the said James Whyte and wife, to the said defendants William H. Arthur and Charles S. Westcott, and since the first day of November last; and they also allege that all of said cutting has been done without the knowledge or consent of the said defendants, and that your orator has no right or authority whatever to cut wood or trespass upon said premises (except that they expected that your orator would cut such as was necessary and suitable for his own use as firewood), and that said cutting is a  
 46 great damage to the said defendants and tends greatly to injure and impair the value of said premises.

And they also allege in their said bill, that they believe and have much reason to fear that your orator will continue to cut trees and wood upon said premises and will sell and dispose of for his own benefit, the wood that has been already there cut, and they therein pray your Honor the premises considered, to grant unto them not only the state's writ of injunction issuing out of and under the seal of this honorable Court to be directed to your orator, his  
 47 workmen, laborers, servants and agents, and each and every of them restraining each and every of them from

cutting down or destroying the timber or other trees standing, growing or being in or upon the said mortgaged premises or any part thereof, and from taking and carrying away, selling or disposing of or causing to be taken, carried away, sold or disposed of, any wood, timber or cross-ties, lying or being upon said premises or any part thereof, that has been cut upon the same since the first day of November last, and from committing or doing any further or other waste or spoil in or upon the said premises or any part thereof, but also the state's writ of subpœna issuing out of and under the seal of this honorable Court, directed to your orator therein and thereby commanding him on a certain day and under a certain penalty therein to be specified to be and appear before your Honor in this honorable Court, then and there to answer all and singular the premises contained in their said bill of complaint, and to stand to and abide by such order and decree in the premises as shall seem meet and agreeable to equity and good conscience, and which writ of injunction restraining your orator, his workmen, laborers, servants and agents, as therein prayed for, was on the eleventh day of April last, issued out of this honorable Court under the seal thereof, and served on your orator on or about the seventeenth day of April last, and also the said writ of subpœna of the tenor and effect prayed for in said bill was, on the seventeenth day of April last, issued out of this honorable Court and under the seal thereof, returnable on the thirtieth of April, 1862, and served on your orator on or about the said seventeenth day of April last. 48 49 50

To the end, therefore, that your orator may be protected in his rights, and the said William H. Arthur and Catharine A. Arthur his wife and Charles S. Westcott and Hamilton Westcott his wife, and James Whyte and Emma Whyte his wife, may upon their several and respective corporal oaths true, full and perfect answers make to all and singular the said premises as fully and particularly as if the same were here again repeated and they thereunto particularly interrogated, and that they may be decreed to convey to your orator, the said land and premises, and also to assign to your orator the said bond and mortgage of 51

\$2,200, and that in the meantime they may be restrained from taking any proceeding at law, or otherwise to dispossess your orator of his said premises, and also from selling, conveying, or in any way incumbering the said land and premises, and that your orator may have such other and further relief in the premises as the nature of the case may require, and as may be agreeable to equity and good conscience.

52 Wherefore and forasmuch as the said William H. Arthur and Catharine A. Arthur, his wife, and Charles S. Westcott and Hamilton Westcott, his wife, and James Whyte and Emma, his wife, are combining and confederating with divers other persons at present unknown to your orator—but whose names, when discovered, your orator prays may be inserted in this his bill of complaint, with apt and proper words to charge them as defendants hereto—to injure and aggrieve your orator in the premises, your orator respectfully solicits the aid and protection of this  
53 honorable Court.

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 William H. Arthur and Charles S. Westcott, their agents and attorneys, restraining them and each and every of them, from selling, conveying, mortgaging, or in any manner incumbering the said farm and premises hereinbefore described, or any part thereof, to any other person than to your orator, and from  
54 taking any measures or process to eject or dispossess your orator of or from said farm and premises, or in any manner to interfere with or deprive him of the full, entire, and peaceable possession thereof, and from collecting from your orator any rent of said premises, or any compensation for the use and occupation thereof by him ;

But, also, the state's writ of subpœna issuing out of and under the seal of this honorable Court, directed to the said William H. Arthur and Catharine A. Arthur, his wife, and Charles S. Westcott and Hamilton Westcott, his wife,  
55 and James Whyte, and Emma Whyte, his wife, therein and thereby commanding them, and each and every of

them, on a certain day, and under a certain penalty therein to be specified, to be and appear before your Honor in this honorable Court, then and there to answer all and singular the premises contained in this your orator's bill of complaint, and to stand to and abide by such order and decree in the premises as shall seem meet and agreeable to equity and good conscience; and that the said William H. Arthur and Catharine A. Arthur, his wife, and Charles S. Westcott and Hamilton Westcott, his wife, 56 and James Whyte and Emma, his wife, may be compelled by the decree of this honorable Court to convey to your orator the said farm and premises hereinbefore particularly described, by good and sufficient deed of conveyance thereof, to be duly executed and acknowledged with proper covenants therein against any act of said defendants, William H. Arthur and Charles S. Westcott, and each of them, whereby said premises have in any manner been incumbered or the title thereof conveyed or impaired since the same were conveyed to 57 them on the 31st day of October, 1861, as aforesaid; and also, that the said defendants, William H. Arthur and Charles S. Westcott, by an instrument under their hands and seals to be duly executed and acknowledged by them, reassign said bond and mortgage to the said Emma Whyte, which by her were assigned to them as aforesaid; and that the said Emma Whyte execute an instrument in writing, under her hand and seal, in due form of law, by which satisfaction of said bond and mortgage shall be duly acknowledged or certified, and that the same be delivered, 58 together with said bond and mortgage, to your orator, to be cancelled of record; and that the said defendants also deliver to your orator all deeds and muniments of title to said premises, which may be in the possession of them or any of them, or that such other or such further decree or order may be, by your Honor, made in the premises as may be according to equity and good conscience.

J. E. CARY,

*Solr. for and of Counsel for Complainant.*

59 STATE OF NEW JERSEY, }  
*Morris County,* } ss.

ALEXANDER WHYTE, the above-named complainant, being duly sworn according to law, upon his oath, saith that the matters and things set forth in the above bill, so far as relates to his own acts, are true, and so far as relates to the acts and doings of others he believes them to be true; and he further, on his oath, saith that on or about the 25th day of April, 1862, a person, whose name he does not know, called on him at his residence on the farm mentioned in the complaint, and required him to give him the possession of the said farm on behalf of the defendants, William H. Arthur and Charles S. Westcott, and claimed that he was authorized by them to take possession of said premises; that this complainant refused to give up the possession on the ground that he was entitled to said farm, and said person left with an intimation or threat that proceedings would be immediately taken against him, and returned on the same day and served on this complainant a notice, in writing, signed or purporting to be signed by the said William H. Arthur and Charles S. Westcott, requiring this complainant, to the effect and in the words and figures following, viz. :

60 To ALEXANDER WHYTE :

SIR : You are hereby notified and required to quit the dwelling-house, lands and premises owned by us and now occupied by you, situate in the township of Hanover, in the county of Morris, and State of New Jersey, on the first day of August next, and to deliver possession thereof to us on or before that day.

Dated April 12th, 1862.

WM. H. ARTHUR,  
 CHAS. S. WESTCOTT.

62 And he believes that this is one of the preliminary steps taken by the said William H. Arthur and Charles S. Westcott to turn this complainant out of the possession of said

premises; and that, if not restrained, they will proceed to obtain possession of said premises and eject and remove this complainant therefrom.

ALEX. WHYTE.

Sworn to and subscribed this 28th day }  
of May, A. D. 1862, before me. }

THEO. LITTLE,  
*Master in Chancery.*

63

### IN CHANCERY OF NEW JERSEY.

The joint and several answer of William H. Arthur and Catharine A., his wife, and Charles S. Westcott and Hamilton, his wife, four of the defendants to the bill of complaint of Alexander Whyte, complainant.

These defendants, now and at all times hereafter saving and reserving to themselves all manner of benefit and advantage of exception to the many errors and insufficiencies in the complainant's said bill of complaint contained for answer thereunto, or unto so much and such parts thereof 64 as these defendants are advised is material for them to make answer unto, answer and say :

That they admit that one Daniel Tillotson and wife conveyed to James Whyte, the son of the complainant, by deed of conveyance executed by the said Daniel Tillotson and wife under their hands and seals, bearing date the twelfth day of May, in the year eighteen hundred and sixty, the farm, tract and premises, in said deed described, and which are particularly mentioned and set forth in said bill of complaint, to have and to hold all and singular the 65 said premises, with the privileges and appurtenances thereunto belonging, unto the said James Whyte, his heirs and assigns forever. That the consideration named in said deed is twenty-six hundred dollars; and that said deed was acknowledged and recorded, as is in said bill stated.

And these defendants, further answering, admit that they have been informed by the records of Morris county, as well as by said bill, and believe it to be true, that the said James Whyte and Emma, his wife, executed a deed of  
 66 conveyance for said land and premises to the said complainant, bearing date the twenty-first day of February, A. D. 1861, subject to the mortgage of six hundred dollars, in said bill named. And they admit and say that the said Alexander Whyte did afterwards execute, under his hand and seal, and deliver to the said Emma Whyte, a bond and mortgage, bearing date the twenty-first day of February, A. D. 1861, to secure the payment of the sum of two thousand two hundred dollars, with interest thereon from the date thereof. And that the said mortgage  
 67 was upon (and the said Alexander Whyte conveyed, thereby, to the said Emma Whyte, her heirs and assigns) the said lands and premises. And that the said mortgage was duly acknowledged and recorded in the Morris county records of mortgages, Book F, 2, fol. 205.

And these defendants, further answering, admit and say, that afterwards the said Alexander Whyte, by deed of conveyance, dated the third day of October, in the year eighteen hundred and sixty-one, and executed under the hand and seal of the said Alexander Whyte, conveyed the said  
 68 lands and premises to the said James Whyte, his heirs and assigns, which last-mentioned deed was duly acknowledged by the said Alexander Whyte, and is recorded in the Morris county records of deeds, in Book A, 6, of Deeds, pages 157, &c.

And these defendants further answering, admit that, on or about the 31st day of October, A. D. 1861, the said James Whyte and Emma, his wife, by deed of conveyance, executed by them, under their hands and seals, and bearing date the day and year last aforesaid, bargained, sold, and  
 69 conveyed to these defendants, William H. Arthur and Charles S. Westcott, the said tract of land, farm, and premises: and that the said James Whyte and Emma, his wife, duly acknowledged the execution of said deed, on the day of the date thereof, before Charles Nettleton, a commissioner to take the acknowledgment of deeds, &c., for

lands in New Jersey, residing in the state of New York ; and that the said deed was duly recorded on the first day of November, A. D. 1861, in the Morris county clerk's office, in Book B, 6, of Deeds, as by the said deed, and the 70 certificates of said commissioner and said clerk, endorsed on said deed, now in possession of these defendants William H. Arthur and Charles S. Westcott, ready to be produced, will more fully appear.

And these defendants, further answering, admit that, on or about the said 31st day of October, A. D. 1861, the said Emma White executed, under her hand and seal, and delivered unto these defendants, William H. Arthur and Charles S. Westcott, a certain deed of assignment, dated the day and year last aforesaid, wherein and whereby she sold, assigned, 71 and transferred to them the said indenture of mortgage, dated the twenty-first day of February, A. D. 1861, made by the said Alexander Whyte to the said Emma Whyte, together with the bond from Alexander Whyte, therein described and above referred to, and the money due and to grow due thereon ; which deed of assignment was, on the day of the date thereof, acknowledged before Charles Nettleton, a commissioner as aforesaid, and was, on the first day of November, A. D. 1861, recorded in the Morris county clerk's office, in Book No. 1 of Assignments, pages 72 505 and 506.

And that, at the time said deed of assignment was dated and acknowledged, as aforesaid, said bond and mortgage were delivered, by said James Whyte and Emma, his wife, to these defendants, William H. Arthur and Charles S. Westcott.

And these defendants, the said William H. Arthur and Charles S. Westcott, further answering, deny the allegation in said bill of complaint contained, that they paid no consideration for the said deed of conveyance of said farm 73 and premises, made to them by said James Whyte and his wife, or for the said assignment of the said bond and mortgage ; but these defendants state that they paid a full and ample consideration therefor ; and that the said lands and premises belong to them and are their property ; and they respectfully submit to the Court that their title to

the said lands and premises is full and complete in the law; and that this honorable Court will protect them in the assertion of their rights to the same, and in the enjoyment thereof.

And these defendants, William H. Arthur and Charles S. Westcott, further answering, admit and say, that at the time of the execution of the said deed and assignment to them as aforesaid, they were, and, for several years previous thereto, had been, partners in the stationery business in the city of New York, under the name and firm of W. H. Arthur & Co.; and that, for several years previous to the first day of October, 1860, the said James Whyte had been their book-keeper, and also their cashier, in their store, in the said city of New York, having the charge of the books of said firm, and of the moneys received and paid out by them. And that, on or about the last day of September, 1860, the said James Whyte left the service of said firm.

And these defendants, Arthur & Westcott, further answering, state, that some eight or ten months after said James Whyte so left their service, they discovered that they had been cheated out of a large amount of money during the time of the service of said James with them, amounting, as these defendants believe, during the last two years of his service with them, to, at least, the amount of \$20,000. That, on an examination of the books of the firm, they discovered that said James had made false entries and overdrafts, and had falsified entries. That they went or sent several times to the residence of said James Whyte, in New York city, in order to see him, but were informed that he was at his farm in New Jersey.

That these defendants made inquiries at the savings banks in New York city, to see if said Whyte had been depositing moneys there; that they found moneys deposited in three savings banks in his name; and, in order to attach that money and have it held in that way, until they could find James Whyte, and the matter could be further investigated, they commenced a civil suit of attachment in the Supreme Court of the state of New York, for about the sum of seven hundred or eight hundred dol-

lars, and attached said moneys, as the property of James Whyte.

That afterwards this defendant, William H. Arthur, went out to New Jersey for the purpose of seeing said James Whyte; that he did not go further than Morristown, New Jersey, but that in the cars there or near that place he found the said James Whyte, going towards New York; that said William H. Arthur came back to New York in the same train with the said James Whyte, and said James Whyte came over to the store of W. H. Arthur & Co. That these defendants there charged him with making false entries and falsifying their books, and obtaining large amounts of money from them; that the said James Whyte admitted that he had done so, said he could not tell the amount, but that all that was left of the moneys which he had thus taken was in the savings banks, and invested in his farm in New Jersey, and offered to convey to these defendants said farm, and give to them said moneys in the savings banks, in restitution for the moneys he had taken from them. That these defendants, believing that nothing further of the indebtedness to them from said James could be secured, consented, at his request, to take in payment thereof the said farm and said moneys on deposit in the savings banks, although the amount of money which said James had thus obtained from them far exceeded the amount of said money in the savings banks and the value of said farm. That, at the time of the said James making said offer, and of these defendants consenting thereto, and of the said agreement between said James and these defendants, nothing was said, or pretended, or intimated by the said James that his father owned said farm, or had any interest therein, or had paid any part of the purchase money therefor; that this was in the evening of the day; that, after this arrangement had been made, these defendants were desirous to go home, and it was agreed between these defendants and said James that the papers necessary to carry out such agreement should be drawn up by a lawyer on the following day, and executed. That this defendant, Charles S. Westcott, asked said James Whyte to go to the Stevens House, a

a hotel near to the store of William H. Arthur & Co., and stay all night, saying that he, said Westcott, would pay his expenses there; that he procured the services of a policeman to go with said James to see that he remained there. That these defendants did not arrest said James, nor make any criminal complaint against him; that they expressly informed said James that he was not under arrest, or compelled in any way to act as he proposed. That, on the following day, the papers to carry out said arrangement were drawn by a lawyer and executed (including said deed and assignment. That said civil suit was discontinued by these defendants, and, as these defendants think, a receipt given to said James by these defendants for all de-  
82  
83  
84  
85  
mands; that the reason of the giving of said receipt by these defendants was that they believed they would be able to get nothing more from said James, and they were advised by their lawyer to give the same; that the amount due to them from said James was much larger than the value of said farm (or the consideration named therefor in said deed), and the amount of money in the savings banks, obtained by these defendants as aforesaid; that on the day following that upon which the said agreement with said James was made, said James stated to these defendants that part of the purchase money for said farm came from moneys raised by the sale of lots in this city, belonging to said James' father, the complainant, which said complainant had sold; that these defendants did not believe said statement, and do not now believe it, and regarded it then, as they regard it now, as a mere pretext on the part of said James to get rid of paying them what he owed them, and these defendants so informed said James, and said assignment and said deed were executed by said James and Emma freely and of their own accord; that, at the time these papers were executed, these defendants were informed by said James that his father was living on said premises, and consented that he should remain there until the following spring without payment of rent; that these defendants did not send to said complainant an account or notice of their said purchase, but supposed said James would inform him of that, and trust-

ed to him to do so ; and these defendants do not know and cannot state when said complainant was first informed of the same.

And these defendants, William H. Arthur and Charles S. Westcott, further answering, deny each and all of the allegations in said bill, hereinafter set forth, viz. : That at the time said James left their employ he was indebted to these defendants in only the sum of seven hundred and sixty-three and  $\frac{90}{100}$  dollars ; or that they required him to give them a deed of said farm and procure the assignment of said bond and mortgage (except as is above in this answer stated) ; or that the said James offered to pay them nine hundred dollars, as an amount sufficient to cover all deficiencies, default and indebtedness on his part ; or that they induced him to execute said papers by inuendos or insinuations of any kind ; or that they procured said James to be arrested ; or that, in reality, eight hundred dollars or nine hundred dollars would have covered all his indebtedness to them ; or that he informed these defendants at the time, or before he gave said deed, that said farm did not belong to him, but was the complainant's property ; or that the mortgage was given for no consideration and was not a valid security ; or that the said James was led to believe by these defendants, that they would hold the said deed and assignment only as security for any further default, on the part of the said James Whyte, which they might discover on further examination of said books, or on settlement or conference with their customers, or in any other way ; or that the sum of seven hundred and sixty-three  $\frac{90}{100}$  dollars was all the indebtedness they could then discover from their books, or had any knowledge of ; or that, if no further false entries and larger indebtedness should be discovered, the said farm and premises should be reconveyed to said James ; and said bond and mortgage reassigned to his wife.

And this defendant, Charles S. Westcott, further answering, denies that, after the said deed and assignment were so made as aforesaid, the said James spoke to him on the subject of such reconveyance and reassignment, and requested that they might be made, in

pursuance of such understanding ; but this defendant says that some time after the said deed was given, said James did speak to this defendant about his father's having money  
90 in the farm ; but no reference was made to any such agreement or understanding, as, in said bill, is pretended.

And these defendants, William H. Arthur and Charles S. Westcott, while they do not know what conversations passed between said complainant and his said son, James, in reference to said farm, nor the character of all their private arrangements relating thereto, have been informed and believe, and so charge the fact to be, that the said farm was not purchased with the funds or moneys of the said complainant, and further charge that said complain-  
91 ant as against these defendants, has no rights nor interest therein.

And they further say that they were informed by said James Whyte, and believe it to be true, that the consideration of said bond and mortgage, given by said complainant to Emma Whyte, was the purchase money of the farm, at the time it was conveyed to said complainant ; and they say and charge that in their hands, it is good against said premises ; and they believe and so charge that the statement of the complainant, in said bill, in  
92 regard to the giving and the execution and the consideration of said bond and mortgage, by said complainant, is false.

And these defendants, William H. Arthur and Charles S. Westcott, admit, that they claim to be the lawful owners of the said farm and premises, and of said bond and mortgage ; that they have notified said complainant to leave the said premises ; and that they have exhibited and filed in this honorable court, their bill of complaint, setting out that they are the owners of said premises ; and that they have obtained a writ of injunction, restraining  
93 said Alexander Whyte, his workmen, laborers, servants, and agents, from cutting down the wood and timber on said premises, &c., as, by the said bill of complaint, and said writ of injunction, now on file in this court, and to which these defendants pray leave to refer, will more fully appear.

And these defendants further say, that they believe, and

so charge, that the said Alexander Whyte and James Whyte are now conspiring together to defraud and wrong these defendants out of said lands and premises.

And these defendants deny all unlawful combination<sup>94</sup> and confederacy, in said bill charged, without that; that any other matter or thing, material for these defendants to make answer unto, and not herein or hereby well and sufficiently answered, confessed or avoided, traversed or denied, is true, to the knowledge or belief of these defendants.

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

95

ALFRED MILLS,  
*Solicitor for and of counsel with*  
WILLIAM H. ARTHUR and wife, and  
CHARLES S. WESTCOTT and wife,  
*Defendants.*

*New York, New York County, ss.:*

WILLIAM H. ARTHUR and CHARLES S. WESTCOTT, CATHARINE A. ARTHUR and HAMILTON WESTCOTT, the above named defendants, being duly sworn, on their oath, say, that the matters and things, set forth in the above answer,<sup>96</sup> so far as relate to their own acts, are true; and so far as relate to the acts of others, they believe them to be true.

WILLIAM H. ARTHUR,  
CHARLES S. WESTCOTT,  
CATHARINE A. ARTHUR,  
HAMILTON S. WESTCOTT.

Subscribed and sworn to before me  
on this 8th day of October, A. D.  
1862. All which I hereby cer-  
tify under my hand and official  
seal.

CHARLES NETTLETON,  
*Commissioner for New Jersey,*  
*in New York.*

97



## IN CHANCERY OF NEW JERSEY.

Between	}
ALEXANDER WHYTE, <i>Complainant.</i>	
<i>and</i>	
WILLIAM H. ARTHUR & CHARLES S. WESTCOTT <i>et al.</i>	}
<i>Defendants.</i>	

This repliant saving and reserving to himself all and all  
 98 manner of exception to the manifold insufficiencies of the  
 said answer of the defendants William H. Arthur and  
 wife and Charles S. Westcott and wife, for replication  
 thereunto, saith that he will aver and prove his said bill  
 to be true, certain and sufficient in the law to be answered  
 unto, and that the said answer of the said defendant is un-  
 certain, untrue and insufficient to be replied unto by this  
 repliant; without that, that any other matter or thing  
 whatever, in the said answer contained, material or effec-  
 tual in the law to be replied unto, conferred and avoided,  
 99 traversed or denied, is untrue; all which matters and  
 things, this repliant is and will be ready to aver and prove  
 as this honorable Court shall direct, and humbly prays, as  
 in and by his said bill he has already prayed.

J. E. CARY,  
*Solicitor, and of Counsel for Complainant.*



3. Previous to the date of the deed from Tillotson to you, had you or not been doing business for your father Alexander Whyte, and what? State fully the business you 103 were doing for him, if any.

*Ans.* I had been doing business for my father previous to that date. Well, the business I was doing for him, was the paying of the tax bills, water bills, and so forth, and other matters of kindred character, I cannot recollect distinctly; that's about all.

4. Where?

*Ans.* In Forty-fourth street in New York city.

5. Had your father real estate in the city of New York?

*Ans.* He had.

104 6. What did that real estate consist of?

*Ans.* Three lots on which were built four houses in Forty-fourth street.

7. Were any of these houses and lots sold, and if so, for whom, and by whom?

*Ans.* They were conveyed to me, and sold at two different times—conveyed to me by my father.

8. When they were conveyed to you by your father, for what purpose were they so conveyed?

*Ans.* For the purpose of realizing from the property, and 105 with the proceeds to purchase that piece of land in Jersey, and also to refund me some money that my father owed me—which money I retained out of the proceeds of the sale of the property.

9. After retaining from the proceeds enough to pay what your father owed you, what was done by you with the balance of the proceeds?

*Ans.* I purchased that place in Jersey. I mean the premises described in Exhibits C 1 and C 2 on part of complainant.

106 10. What is your father's trade and occupation?

*Ans.* He is a carpet-weaver.

11. At the time you conveyed the New Jersey farm to your father, did he give a mortgage on it for twenty-two hundred dollars?

*Ans.* He did.

12. Why, and on what consideration was that mortgage given?

*Ans.* Well, it was to secure it against any action that might have been brought against me by Messrs. Arthur and Westcott, for an over-draft of salary. 107

13. State how your father came to give that mortgage and what conversation you had with him in regard to it, previous to its execution.

(Objected to, as to giving the conversation relating to it between witness and his father.)

*Ans.* The mortgage of twenty-two hundred dollars to my wife. Well it was, I told you in my previous answer, it was for the purpose of securing the place from any trouble that might arise from Westcott and Arthur. I didn't state that to my father, I simply asked him for the mortgage, and of course having every confidence in me he gave it. I don't recollect distinctly of any particular conversation. 108

14. When you spoke to your father about giving the mortgage, was it to be a mortgage to you?

(Objected to.)

*Ans.* Do you mean to me personally, or to my wife? Yes, it was to be a mortgage to me.

15. Who procured the mortgage to be prepared and drawn? 109

*Ans.* I did.

16. To whom was the mortgage made?

*Ans.* The mortgage was made to my wife.

17. Previous to the execution of the mortgage by your father, had you said anything to him about giving it to your wife?

(Objected to.)

*Ans.* I believe I did not say anything to him about giving it to my wife.

18. Was the mortgage exhibited to him previous to the time of its execution? 110

*Ans.* It was not.

19. Did your father read the mortgage or hear it read, before executing it?

*Ans.* He didn't read it. I don't suppose he thoroughly understood it at the time.

20. Did your wife, or any one for her, pay any consideration for the making of that mortgage, or the bond accompanying the same?

111 *Ans.* Never made any consideration or any person for her; she, or any other person for her, never paid anything in consideration. I mean the consideration for that bond and mortgage.

21. When you spoke to your father about his making the bond and mortgage of twenty-two hundred dollars to you, was anything said, by you or him, as to how and for whose benefit the mortgage should be held? (Objected to.) And if so what?

112 *Ans.* I don't recollect the conversation, at this time, of what took place then.

22. Well, at any time?

*Ans.* I don't recollect anything about that bond and mortgage now particularly, beyond his disinclination to give a bond and mortgage.

23. Was or not, your father in the habit of trusting you to do his business in regard to his real estate, and of executing papers prepared by you, or under your direction, without examining them himself?

(Objected to, leading. Question waived.)

113 24. What was the usual course of your father, in regard to executing papers prepared by you or under your direction?

*Ans.* His invariable course was for him to sign any document that I might ask him to do, and to leave matters of that kind entirely to myself.

25. Had he any son older than you, or are you the oldest?

*Ans.* I am the oldest.

26. When did your father take possession of that farm in New Jersey? 111

*Ans.* I don't recollect the date when he went out there; it was prior to the date of the Tillotson deed.

27. Did you spend any time with him on the farm in the summer and fall of 1861?

*Ans.* Yes, sir; I was out there; I don't recollect distinctly the times; but on one occasion I was there during several months, I believe; I was out there on several occasions.

28. While you were there, during that year, was anything said by you to your father, in regard to making improvements on the farm, and if so, what? State fully what you recollect on that subject. 115

(Objected to.)

*Ans.* From time to time I did make several suggestions as to improvements of different kinds, the building of fences, draining, and so forth, to my father; that is all, I believe, the question calls for.

29. What, if anything, did your father say to those suggestions?

(Objected to.)

116

*Ans.* He coincided with my different observations and suggestions.

30. Was anything said by him, and if so, what, in regard to his ability to make such improvements?

(Objected to.)

*Ans.* I don't exactly understand that question.

31. As to his pecuniary means.

*Ans.* There was nothing said by him; I don't recollect particularly anything was said at that time in reference to any person's ability to carry out such improvements.

32. Did your father convey those premises to you in the fall of 1861? 117

*Ans.* Which premises do you refer to ?

33. The New Jersey premises.

*Ans.* I don't recollect the date ; I know he conveyed them to me.

(Witness looks at deed of Alexander Whyte to him.)

I see the deed is dated the third of October, 1861.

34. Did you pay, or agree to pay, any consideration to  
118 your father for that deed ?

*Ans.* No, sir ; I didn't pay any consideration for that deed.

35. For what purpose did your father make that deed to you ?

*Ans.* He made it because I asked him to make it.

36. Did you hold out any inducement to your father to make that deed ; and if so, what ?

*Ans.* Well, I can't recollect that I did.

37. Did you convey these premises to Arthur & West-  
119 cott, the defendants, and if so, when ?

*Ans.* Yes, I did, on the 31st day of October, 1861, under compulsion.

38. Did the grantees, Arthur & Westcott pay you any consideration for that deed ?

*Ans.* No, sir.

39. Did your wife, Emma Whyte, execute an assignment of the twenty-two-hundred-dollar mortgage on the same premises, to the said Arthur & Westcott, on the same day ?

120 *Ans.* She did.

40. Was there any consideration paid to you or your wife for such assignment ?

*Ans.* No, sir, there was not.

[12½ P. M., a recess of one hour taken for dinner.]

41. State the circumstances under which that deed and assignment were procured by the defendants, Arthur & Westcott.

*Ans.* In coming to New York from the farm there, with my wife, I saw Mr. Arthur on the same train, in the cars, and afterwards saw him on the steamboat, in Jersey City. 121 When about halfway over the river, as I was sitting in the cabin of the steamboat with my wife, a person approached me and made a sign. On going to the door of the cabin with him, he said it would be necessary, after putting my wife in a conveyance and sending her home, to accompany him to the Chief's office, in the City Hall; that is the phrase he used if I recollect right. He asked me if I knew or could guess the nature of his business with me. I answered him, I supposed it was business in connection with some over-draft in the books of Arthur & Co. Upon 122 putting my wife in a coach or stage, I should say it was in Broadway, he said, if I preferred it, I could go with him to the store of Arthur & Westcott, which I did, after seeing my wife up Broadway. I went around with him to the store of Arthur & Westcott. While there they charged me with over-draft and falsified entries on their books, and producing their cash-book, they desired me to make a statement of those entries or the differences, and asked me what I supposed to be the amount of my indebtedness to 123 them, saying there were several accounts which they couldn't with positive certainty tell how they stood. I told them my indebtedness to them was seven hundred dollars, I believed, in round numbers or figures, but if I were allowed to overhaul my account and the postings on the cash-book, that I was positive eight hundred dollars would cover, and more than cover, every cent they had a right to claim from me. Upon which Messrs. Arthur & Westcott retired to a distant part of the store to confer together, 124 apparently; and in the meantime the party who had beckoned to me on the boat was relieved by another individual, and upon my offering to pay the eight hundred dollars, they refused, saying they believed it was more. A short while after that, Westcott asked me what I was going to do that evening; he said that I would not be allowed to go home that evening, I believe, but that I could accompany that policeman, that name he gave him, I believe, to a hotel for the night. I was obliged, of course, to

do so, to accompany him. That evening, sitting in the reading room of the Stevens House, the lower part of Broadway, the policeman told me it was necessary for me to go into a small room adjoining the bar in the hotel, for a little while, as he wished to attend to some business or go somewhere, for half an hour. Upon the policeman's returning I was allowed to go out of the room and spent that evening, the rest of it, with the policeman, in the reading-room principally. I was locked in that room, the key was turned upon me, it was a dark room, during the half hour the policeman was gone ; upon being liberated from that room  
 126 contiguous to the bar-room, we went into the reading-room that evening, where we remained till about midnight, twelve o'clock. About midnight we went up to our room, bed-room, and almost immediately after retired for the night. Previous to this individual's going into his bed, the door of the room was locked, the key taken out and placed under his pillow by him. On the following morning, we went around to the store of Arthur & Westcott, and I was asked if I didn't have at home figures or a statement or some paper or document showing my overdraft exactly.  
 127 I replied that I had not ; that I had some savings bank account books showing what money I had deposited, all the means I had in my possession. They told me it would be necessary to produce them, or the box containing them ; that they knew pretty well how much money I had, from their having gone to the banks, the savings banks, and making pretty full investigation ; that they had posted themselves up on my family relations ; knew all about my wife's relatives, and so forth, in fact a perfect history of me, in fact, I think the phraseology they  
 128 used, and upon my saying that I had money sufficient to indemnify them, and was willing to hand it over, eight hundred dollars ; they professed to believe that the farm in Jersey was purchased from means obtained from their place ; on my offering to prove to the contrary, that the place always belonged to my father, they wouldn't listen to it, but said it would be better to hand over everything I had to them. Knowing that my indebtedness to them was not more than eight hundred dollars or thereabouts,

and believing them to be men that would not take 129 more than rightfully belonged to them, I consented, though reluctantly, to do as they said, knowing their assertion to me was incorrect, that any inaccuracy existed with regard to one or two accounts, which they mentioned to me one of thirty thousand dollars.

In the presence of their lawyer they insisted upon having a conveyance of everything that I had. They wouldn't listen to no other settlement at all. I was obliged, accompanied by this policeman, to go to my house to procure my wife to join me in making a conveyance of everything 130 over to them, which accordingly was done at the house of their lawyer, who resides next to Mr. Westcott, Twenty-fifth street, New York. After having signed the various documents, which I did mechanically, and procuring the acknowledgment of my wife and the assignment of that mortgage, which she did from my telling her I supposed it must be done, a receipt was then drawn by their lawyer for some thirty-three odd hundred dollars, which embraced the two thousand dollars on the farm and the money in the different banks, which bank accounts had 131 been assigned by me to them with power to draw the money. The receipt for the thirty-three hundred dollars was handed to me, and the policeman, they informed there was no further use for his services, they believed. At the request of Mr. Westcott, I called round to his house on the following morning, at nine o'clock in the morning, or about that time, by appointment, to accompany him to the different banks to give my signature, before he could draw the money, which I did. The amount drawn was, I believe, in the neighborhood of eleven hundred dollars. When 132 about leaving Mr. Westcott, he told me that he would have some conversation with his partner, Arthur, with a view of seeing what could be done in the way of restoring that farm to my father. I then and there, as at different times previously, told him, which I supposed he knew before, as to how I procured the means to buy that farm. He said that he had no doubt in his own mind that the property in Forty-fourth street belonged to my father, or had belonged to him, and that I need not at that time convey any intel-

133 ligencc of these operations to my father, as nothing would be done for some months to come, and that it was useless to worry or annoy his mind at the present; that he would see, after having a talk with Arthur, what could be done. On another occasion, I called upon Mr. Westcott at his house; there was a messenger sent for me, a lad, one Sunday, this interview; upon seeing Mr. Westcott at his house, he got off a joke; he said Mr. Arthur was like the man in the play, and had nothing to say, if I recollect precisely the words that he used. The impression he produced upon my  
 134 mind at that time was that Arthur was the person who stood out against me, more than himself, and that it was he, Arthur, who wouldn't listen to anything I had to say, or in other words, that if the matter was entirely connected with himself only, no doubt everything could be settled up satisfactorily to all parties, and that he had understood that some person or persons had informed Arthur that I had stocks or bonds or some other evidences of value, and that, laughable as it would seem, he, Arthur, had been told that I sometimes carried them concealed in my boots.  
 135 Upon asking him whether he believed any report of that kind himself, he said, "No," but that "Arthur was one of those kind of men, who, when he got a kink in his head, it was hard to get it out," or something like that. Upon wishing or asking Mr. Westcott to be confronted by any party that made any accusations at all, he said that he did not know anything about it—it was some matter of Arthur's; and added, in an off-handed way, by way of a flyer, "Suppose you just take off your boots, so that I might say to Arthur, or mention the fact to Arthur,  
 136 that I had just got you to do it." I finally consented, took off my boots, mentioning at the time that they were in a very sorry condition to contain any evidences of value, stock, bonds, and so forth. Well, that is about the substance of what passed at that interview—all that I recollect. That's about the condition of matters; nothing has transpired since, to my knowledge.

42. State what, if anything, was said by them about their ascertaining thereafter the amount of the defalcation or overdraft.

*Ans.* There was never anything said to me.

137

43. Was anything said by them, that they could not, at that time, ascertain the exact amount you had overdrawn?

*Ans.* During one of the interviews I had with Mr. Westcott, he remarked there was an account in the ledger, and one only, I believe—at least one only he mentioned—that they had not yet been able to examine or sift, the party that had this account being then in Washington, and that he might not return in some little time—a couple of months. I expressed my willingness to Westcott to examine with 138 him, or any person, that or any other account in the books, satisfied that my indebtedness in every shape or form would be covered by eight hundred dollars; that I was willing to pay that and interest, or even the whole eleven hundred dollars, the money I had in the banks, if the farm was restored to my father, to whom it righteously belonged. His answer was, “We’ll see about it,” or “We’ll see into it,” or something.

44. You say that eight hundred dollars would cover all your indebtedness and overdraft to them. Why, then, did 139 you consent to convey the farm and have the mortgage assigned to them, after paying them eleven hundred dollars and over of money in bank?

*Ans.* Because they made threats of various kinds, or insinuated threats, particularly Arthur, and that I believed them to be honorable, straightforward men, or feeling satisfied that my whole indebtedness was covered by the sum I mentioned, of eight hundred dollars, and after that account of twenty thousand dollars had been examined and found correct, that they would reconvey to me the 140 farm. Then I was desirous of having no publicity in the matter. I didn’t want any exposure, for I thought after a sufficient time had elapsed they would not hold the property, but would reconvey it to me, knowing that all the accounts in their books were perfectly correct in every particular, to the best of my knowledge and belief, except in my overdraft and little differences in the postings, all of which would be balanced by eight hundred dollars.

141 45. (Witness being shown paper is asked,) Is that a copy of the summons served on you ?

*Ans.* Yes.

(Summons offered in evidence and marked Exhibit C 3, on part of complainant.)

46. When was that paper handed to you ?

*Ans.* It was handed to me immediately after the assignment of my bank accounts and the conveyance of that farm. Previous to that, I had no knowledge of it.

142 47. Was there any other suit commenced by them against you in the Supreme Court than that ?

*Ans.* There was not, of which I have any knowledge.

48. Look at that paper. (Paper shown to witness.) Is that the receipt given to you by Arthur & Company, at the time this matter was settled ?

*Ans.* Yes, this is the receipt. (Receipt offered in evidence and marked Exhibit C 4, on part of complainant.) W. H. Arthur & Co., is the firm name of Messrs. Arthur & Westcott. The summons was handed to me first, immediately after the assignment of the funds, and property, 143 conveyance of the property ; and immediately after, at the same interview the receipt was given to me.

49. Before executing the conveyance of the farm to Arthur & Westcott, what did you tell them, if anything, in regard to whom the farm belonged ?

*Ans.* I told them distinctly, that the farm did not belong to me, that I had no right to convey it to them or any one ; that it belonged to my father, and purchased for him from property in the city of New York, sold by me on his account and for his benefit. The property in the city be- 144 longed to my father.

50. What did you tell them in regard to the bond and mortgage, which they wished your wife to assign to them, prior to the assignment thereof ?

*Ans.* I don't distinctly recollect of their asking or me telling anything about it, particularly at that time. In the sale of the 44th street property which belonged to my father, the property was sold at two different periods ; there

was a mortgage of eight hundred dollars made to me by the buyer. I think his name was Henry Hassen, which mortgage was turned over to Daniel Tillotson, on account 145 of the purchase money of the farm.

51. As a part of the proceeds of that sale of the city property, to whom did that mortgage belong?

*Ans.* It belonged to my father.

52. In what capacity were you in the service of W. H. Arthur & Co.?

*Ans.* I kept their books of account.

53. Down to what time, when did you leave there?

*Ans.* I can't mention the month, but I can connect it with circumstances. The last of September, 1860, the 146 very day the Prince of Wales came into New York.

54. Did you pay them anything on account before this conveyance of the property spoken of, and if so how much and when?

*Ans.* I commenced refunding my over-draft by the payment of fifty dollars on account, on November 17, 1860. I took their receipt for fifty dollars on account. This is the receipt I hold here.

(Receipt offered in evidence and marked Exhibit C 5, 147 on part of complainant.)

55. The defendants Arthur and Westcott knew of your over-draft at that time, did they?

*Ans.* I believe they did know of it at that time, the date of the receipt.

56. What was the occasion of your leaving the service of Arthur & Westcott?

*Ans.* On coming back to the store on one occasion after an absence of three or four days, and while standing at my desk, Mr. Arthur had occasion to have two or three 148 notes drawn, and he came out of the private office passing me with very certain significant glances, because displeased, I suppose, at my absence, although I had asked permission before I went, thereby ignoring my presence, and asking my assistant, a young man, to draw these

notes, giving him a memorandum of the same. This had always been my duty in matters of that kind, and I suppose it was, no doubt, intended for me to take notice of, and thereupon I left the establishment, then and there. I 149 suppose that was what he wanted.

It being three quarters after three, A. M., the examination was adjourned to Tuesday, April 28, 1863, ten A. M. On which day and hour, the examination was resumed.

And being *cross-examined* by defendant's counsel, the witness says :

(Deeds of Alexander Whyte, to James Whyte, dated, October 3d, 1861, and of James Whyte and his wife, to the defendants, Arthur & Westcott, dated, October 31st, 1861, are offered in evidence, and respectively marked Ex-  
150 hibit M 1, and M 2, on part of defendants Arthur & Westcott.

*Question* 1. What is the age of your father ?

*Ans.* I don't know the age of my father.

2. Will you state it, as nearly as you can ?

*Ans.* I suppose it is rising of fifty, I believe.

3. What was his family in the winter of 1859 and 1860, of whom did it consist ?

*Ans.* Three sons and one daughter, besides himself.

4. Where did he live at that time ?

151 *Ans.* 312 44th street, New York city.

5. Did you live in the same house ?

*Ans.* I did not.

6. What business had he been engaged in previous to that time ?

*Ans.* He was in the carpet factory at one time. He was also in a small grocery business.

7. When was he engaged in the grocery business ?

*Ans.* I don't recollect the date.

8. How long was he engaged in it, and at what place in  
152 New York ?

*Ans.* I don't know how long he was engaged in it. He

was connected with a younger brother of mine in that grocery business.

9. Did your father fail or become embarrassed while in that business ?

*Ans.* No, he did not, not to my knowledge ; there was no failure.

10. Did he become embarrassed ?

*Ans.* Not that I am aware of.

11. About how long was it, that he quit that business, 153 before this New Jersey farm was purchased ?

*Ans.* I couldn't say particularly. It was several months I suppose then.

12. About how long was he engaged in that business ; was he engaged in it a year ?

*Ans.* I couldn't tell how long.

13. Did he make money or lose money in that business ?

*Ans.* I can't answer.

14. Don't you know ?

*Ans.* No, I do not know. 154

15. Did he leave the business in the summer of 1859 ?

*Ans.* I don't recollect dates at all ?

16. Do you know of any judgments recovered against him in New York ?

*Ans.* I do not.

17. Did you ever hear of a judgment recovered against him by the Van Nostrands of New York city ?

*Ans.* No, I never knew there was a judgment recovered.

18. Did you know your father was sued ?

*Ans.* I don't recollect anything. 155

19. Did you ever tell Arthur & Westcott so, or either of them ?

*Ans.* I may have told them. I don't recollect what I said to them.

20. Why don't you know about your father's success or want of success in business in New York ? Did you not have charge of his affairs ?

*Ans.* I didn't have charge of his affairs in that little grocery.

21. Who did have ?

*Ans.* A brother of mine had to do with that.

22. Who had charge of the business?

*Ans.* The brother, of any business that was done.

23. In whose name was the business conducted?

*Ans.* There wasn't any name at all, I believe.

24. Will you state, if you please, in what other kinds of business your father has been engaged?

*Ans.* He was engaged at his trade. That is all I am aware of.

157 25. What was the age of this brother of whom you have just spoken, in 1859?

*Ans.* I guess he was twenty-two or twenty-three. I don't know his age; somewhere in that neighborhood.

26. Before this farm in New Jersey was purchased, did you go out to see it?

*Ans.* Yes.

27. How often and when?

*Ans.* I don't know—once and perhaps more; I don't recollect the date; I can't remember when.

158 28. Did your father go out to see it before it was purchased?

*Ans.* Yes, he did.

29. With you?

*Ans.* No, he didn't go with me.

30. Who went first, you or he?

*Ans.* He.

31. When did he go?

*Ans.* I don't recollect the date; some little time before the date of the deed from Tillotson to me. That is the  
159 only way that I can connect dates.

32. Were you out there at the time he moved out, or did you go out with him?

*Ans.* He went out and selected or looked at that place, of which he had previous knowledge of Mr. Tillotson, with a view of buying it.

33. Quest. 32 repeated.

*Ans.* No, sir; I was not out there the time he moved out, nor did I go out with him.

34. When did you go out there to stay?

*Ans.* I don't know ; I don't recollect the date.

35. How long have you had charge of your father's real estate in New York ?

*Ans.* Having charge, the expression having charge inasmuch as paying bills, taxes, water rents, or bills of that kind ; I had been in the habit of attending to it for several 160 years, all the charge I ever had of it.

36. What were the numbers of those houses of your father in 44th street ?

*Ans.* I believe the numbers were 312, 314, and 316 ; I am not positive.

37. How long had your father owned them ?

*Ans.* The lots as far back as 1849, I believe ; I don't know the names of the parties they were purchased of ; I don't recollect. [Witness looks at deeds.] These are the deeds for the three lots. By these deeds it appears that 161 one lot was purchased from James Fullerton, by deed dated 14th day of November, 1849, in this deed the lot is designated as Lot 131, on map mentioned in the deed ; the numbers of the two are 129 and 130, conveyed by Jonathan Wilt and wife, and Arnest Fink, Jr., and wife, on the 28th day of November, 1849.

38. These are the three lots referred to, under the street numbers 312, 314 and 316, are they not ? and are the real estate referred to by you in this examination.

*Ans.* Yes, sir.

162

39. Did your father own any other real estate in New York ?

*Ans.* No ; none that I am aware of ; I guess not.

40. When was the conveyance made by your father to you of that property in New York ?

*Ans.* I cannot tell dates, sir.

41. Were there any mortgages upon it at that time ?

*Ans.* Yes, sir.

42. Can you state what mortgages were upon it ?

*Ans.* There was a mortgage of eight hundred dollars to 163 Mr. Tillotson, from whom the farm was purchased and another one for two thousand, I think, but the name I forget ; I don't recollect.

43. Was there one for three thousand to Bullard ?

*Ans.* That is the one I referred to when I said two thousand  
164 sand ; I forgot the amount of the second ; I should have  
said three instead of two thousand ; Bullard is the name.

44. Do you recollect now of any other mortgage ?

*Ans.* No other mortgages, I believe, except those two I  
have mentioned.

45. How long did you hold the property, after it was  
conveyed to you, before you sold it ?

*Ans.* Some months, I believe ; don't know how long  
exactly.

46. You say that your father owed you for moneys which  
165 you had paid for him ; will you state what moneys you  
had paid for him ?

*Ans.* I paid I think it was five hundred dollars or  
thereabouts ; I loaned him that money, to help pay for  
sewering 44th street, and that was a particular sum for  
one purpose ; it was some five hundred and odd dollars, but  
he afterwards refunded me the excess, making it five  
hundred dollars he still owed me together with four hun-  
dred dollars loaned at different times, and for different  
purposes, making altogether nine hundred dollars.

166 47. Did you let him have money to build a basement  
with, and if so, how much ?

*Ans.* No, sir, I never paid any money to build a base-  
ment with.

48. Did you let him have money to pay for lumber ?

*Ans.* I don't know, I can't recollect that he bought any  
lumber with money I loaned, I am not aware of it.

49. Did you ever let him have money to buy brick  
with ?

*Ans.* No, sir.

167 50. Were these assessments made against that prop-  
erty by the city authorities ?

*Ans.* I believe they were ; yes.

51. Did you ever pay any assessments made on the  
property ?

*Ans.* As I distinctly said before, I loaned five hundred  
and odd dollars to help pay the laying the sewer in that  
street, that is the purpose the money was wanted for, I be-

lieve, I mean the assessment for laying or building the sewer.

52. When was that ?

168

*Ans.* Well, I don't recollect the date ; it was some time ago.

53. That was loaned at one time ?

*Ans.* That five hundred and odd dollars was.

54. Did you ever pay at any other time any assessment-upon this property, for your father or let him have the money to do it with ?

*Ans.* I am not aware of paying any other assessments on that property, nor loaning him any money to do it with.

55. Did you pay \$207 10 for assessments on this prop- 169  
erty on the 11th of February, 1852 ?

*Ans.* I may have done so, with his money.

56. If you did so with his money, you would not charge it to him, would you ?

*Ans.* I would not expect him to pay me such a sum of money unless I had paid it from my own means for him.

57. Did you ever tell any one that you had paid that money for that purpose ?

*Ans.* Out of my own means do you mean ?

58. Yes.

170

*Ans.* I am not aware of having made a remark of the kind to anybody.

59. Did you ever charge your father with one hundred dollars cash, to build a basement with ?

*Ans.* I did so on that paper, that memorandum or statements, whatever you choose to call it, but I never gave him that money for that purpose. Don't recollect of giving him any money.

60. Is that charge true or false ?

*Ans.* False.

171

61. Did you charge your father with \$200 cash paid for interest on mortgage ?

*Ans.* It is hard to say what I charged him with. That's my answer to that question.

62. Are you in the habit of making false charges ?

*Ans.* I don't have occasion much to make false charges, consequently I am not in the habit of it.

63. Did you ever make any false charges against your father ?

172 *Ans.* Inasmuch as that statement is concerned I have, if you refer to the charges of dollars and cents.

64. Why did you make false charges against him ?

*Ans.* That paper was made up in my simplicity, I believe I ought to call it, of business, or ignorance of matters of real estate.

65. Was it your simplicity that led you to make false charges in the books of Arthur & Westcott ?

(Objected to, as assuming too much.)

*Ans.* That is another question. I hav'n't got any other  
173 answer to make to that question. (The latter part of answer given on the interrogation of Master, whether witness had any other answer to give to the question.)

66. Have you any accounts in writing of your dealings with your father in regard to this real estate, in New York ?

*Ans.* I have no accounts.

67. You depend then in your testimony here, as to that matter, entirely upon your memory ?

*Ans.* I am somewhat clouded by your question ; from  
174 the time it was sold, I have.

68. I refer to the dealings between you and your father, in reference to this real estate, previous to the time you sold it ?

*Ans.* I have no detailed account.

69. Did you ever make out any account ?

*Ans.* There was no account necessary.

70. Question sixty-nine repeated.

*Ans.* The five hundred dollars odd, he owed me, I recollect of course from memory, that being a matter distinct and by itself. And the other four hundred dollars  
175 making the nine hundred dollars, I have a memorandum of that, but destroyed it, supposing it was useless, after I was paid.

71. Please to state, whether you ever made out, in writing, an account against your father, showing the transac-

tions between you and him, or his indebtedness to you, concerning this real estate, prior to the sale made by you of that real estate.

*Ans.* I never rendered him any account nor did I ever make out any, that I am aware of, beyond that document 176 which you have there and which he never has seen, I don't believe; I never rendered it to him.

72. If you made out any account of that kind, why was it made out?

*Ans.* I never made out any account that I ever was aware of.

73. You are certain of that?

*Ans.* I believe I never made out any account.

74. Did you ever make out, in writing, any paper of that kind?

177

*Ans.* I made out a paper in writing, purporting to represent a sufficient amount against him to cover the real estate.

75. For what purpose was that done by you?

*Ans.* At the time I intended it as a reason why the real estate should be conveyed to me, or to make the transaction look square.

76. As a reason for whom?

*Ans.* As a reason for anybody.

77. Whom did you expect that reason to influence?

178

*Ans.* I didn't know, perhaps Arthur & Westcott. I may have had the fear, that possibly it was to make the transaction look square on the face of it, if it ever should be desired by anybody.

78. Look square to whom?

*Ans.* To any person that ever might become cognizant of it—to make it look square and have the appearance of a straight-forward transaction.

79. Did you think it was necessary to do this, in order to have a reason for procuring a conveyance to you of this property?

179

*Ans.* I suppose I did think at that time it was necessary or better to have it as an evidence it was a square transaction.

80. Was that the reason this paper was made out before the conveyance was made?

*Ans.* I suppose it was.

81. Who drew it up?

*Ans.* I did.

180 82. Where?

*Ans.* God knows where; I don't know where I did it.

It being two o'clock an adjournment of one hour was taken for dinner. Two o'clock resumed:

83. Do you think that paper makes the transaction look square?

*Ans.* No; I don't know that it does.

84. Was the object for which that paper was made out attained?

*Ans.* No; there was no object attained at all.

181 85. Who advanced the money that was used in carrying on the business in your father's grocery?

(Objected to, there being no evidence that it was the father's grocery.)

*Ans.* The money that was advanced, money that they had, was money that my brother Alexander had.

86. Where did he get it?

*Ans.* I don't know where he got it.

87. Did you ever put any money in that store?

*Ans.* I loaned some money to them, yes.

182 88. How much?

*Ans.* Altogether \$400.

89. Is that the \$400 to which you referred a short time since, in your examination?

*Ans.* It is; yes.

90. Where did that money, that four hundred dollars, come from—where did you obtain it?

*Ans.* I obtained it from my own savings, and so forth, in my situation.

91. Where were you employed, and what salary did you 183 get?

*Ans.* I was employed by W. H. Arthur & Company, and got twelve hundred dollars a year.

92. How long did you receive twelve hundred a year as a salary?

*Ans.* For nearly a year, I believe.

93. Before that, how much salary did you get ?

*Ans.* A thousand dollars a year.

94. How long did you get a thousand dollars a year ?

*Ans.* For several years I believe.

95. Did you sell that property in New York, and if so,  
to whom, and when ? 184

*Ans.* I did sell it ; the time I don't recollect.

96. Was it after the date of the deed from your father to you, and before the date of the deed for the farm from Tillotson to you ?

*Ans.* It was after the deed to me ; I don't know whether it was before or after the date of the farm deed—before, I should say.

97. To whom was the New York property sold ?

*Ans.* To two different parties, one name was James F. Chamberlin, and the other Mr. Hassen. 185

98. What was sold to Mr. Chamberlin ; what lot I mean ?

*Ans.* The two lots and houses built on the rear of them ; there are two covered by the Fink deed, dated November 28th, 1849, of which I have above spoken.

99. In that deed they are called what numbers ?

*Ans.* Numbers 129 and 130.

100. What did Mr. Chamberlin pay for those lots ?

*Ans.* I believe \$4,600.

101. How was the purchase money paid to you ? 186

*Ans.* It was paid to me in money, I believe, deducting the mortgages.

102. What mortgages were there on them ?

*Ans.* There was one of \$3,000, and the other of \$800 ; these mortgages were over all three of the lots.

103. Was the amount of those mortgages deducted from the purchase money, the forty-six hundred dollars ?

*Ans.* I believe it was. The three-thousand-dollar mortgage I know was, with back interest, and one hundred dollars on account of the eight-hundred-dollar, was paid, with the interest accrued. 187

104. How much money did you realize from that sale ?

*Ans.* Well, I forget the amount of money I obtained,

after deducting the mortgages and expenses, and so forth.

105. Can you tell about what it was ?

*Ans.* I couldn't recollect now, without refreshing my memory.

188 106. To whom was the other lot, No. 131, sold, and what was that lot sold for ?

*Ans.* It was sold to this Mr. Hassen, and I think it was thirty-one hundred dollars that he paid for it.

107. How was that purchase money paid ?

*Ans.* It was paid by Hassen, assuming the seven-hundred-dollar mortgage, which was the balance of the eight hundred dollars, which covered the three lots, and giving me another mortgage of eight hundred dollars, I think, and the difference in cash, deducting all expenses.

189 108. What amount of cash did you realize on that sale ?

*Ans.* I don't recollect the exact amount.

109. Can you give the amount nearly ?

*Ans.* Thirteen or fourteen hundred dollars, I believe; something like that.

110. Look at that paper, and say of what it is a statement.

(Paper shown to witness.)

*Ans.* This seems to be the statement or memorandum of the two lots and the houses on the rear of them, which 190 was sold to Chamberlin.

111. Is that a correct statement ?

*Ans.* It seems to be.

112. In whose handwriting is it ?

*Ans.* I don't know whose handwriting it is.

113. Is there any handwriting of yours on the paper ?

*Ans.* This marginal note looks like mine.

114. Are the figures on the margin also yours ?

*Ans.* It looks like mine.

115. Don't you know whether they are or not ?

191 *Ans.* I don't know positively.

116. What do they mean ?

*Ans.* At this date I don't know what they mean.

117. Which was made first, the sale to Chamberlin or the sale to Hassen ?

*Ans.* The sale to Chamberlin, I believe.

118. What kind of houses are on these lots ?

*Ans.* On the Chamberlin lots, frame houses with brick fronts ; don't know anything about the size ; couldn't tell the number of stories even ; I know they are frame houses, 192 with brick fronts.

119. Can't you tell whether they are one or three-story houses ?

*Ans.* They are two or three-story, but I don't know positively now.

120. Is that paper in your handwriting ? (Paper is handed to witness).

*Ans.* Yes ; that seems to be in my handwriting. 193

121. Can't you tell certainly whether it is or not ?

*Ans.* I believe it to be my handwriting.

122. When did you make out that paper ?

*Ans.* I don't know when this paper was made out ; there is no date to it.

123. Is that the reason you cannot tell when it was made out—namely, that there is no date to it ?

*Ans.* Yes ; that's the reason.

124. Was the deed from your father to you for this property dated the 28th of September, 1859 ? 194

*Ans.* I don't know the date ; I don't know when the deed was dated.

125. Have you any recollection of making out that paper ?

*Ans.* I don't distinctly recollect when I made it out, but I believe I made it out.

126. By that paper, what balance appears to be due to your father on the 28th of September, 1859 ?

*Ans.* It seems to be a balance, from this paper, of \$249 50. 195

127. What was the bill of sale which is referred to in that paper ?

*Ans.* I have no recollection of the bill of sale. The paper shows that the balance, \$249 50 was due to me, and not to my father, as I stated.

128. In closing up the business of the grocery, did you not take a bill of sale for the goods that remained in the store, and was not the consideration of three hundred dollars, named in that bill of sale, moneys which you have  
196 advanced towards carrying on the business?

*Ans.* I have no recollection of taking any bill of sale, and any money that I loaned wasn't refunded to me in that manner.

129. When the grocery business was closed, or about that time, did you not receive goods from the store from your father?

*Ans.* There was no goods there that I recollect of, hardly of any kind.

130. To what does that second charge of cash to build  
197 basement refer?

*Ans.* It refers to itself. It has no foundation in fact.

131. What property is referred to in this statement?

*Ans.* That statement refers to nothing in fact—it is a sheer fabrication.

132. Is not the property referred to in the words, "By property," in that statement, the lots 129, 130, and 131, in 44th street, New York?

*Ans.* My answer to that question is, that it doesn't refer to any property at all.

198 133. To what mortgage do the words "Mortgage, P. Bullard, \$3,000," in that statement, refer?

*Ans.* It may refer to Bullard's mortgage, judging from the paper. I forget, now, the circumstances attending that paper—not having any basis in fact, I can't recollect now.

134. Do you know of Bullard's having any other mortgage for three thousand dollars than that which was on this 44th street property?

*Ans.* No, I don't know of any other mortgage than the  
199 three thousand.

135. Is it not then probably that mortgage which is referred to here?

*Ans.* I haven't looked at it, I don't know.

136. Look at it. (Witness looks at it.)

*Ans.* I know there was a mortgage to Bullard of three

thousand dollars. I don't know anything at all about what reference that is made to.

137. What word is that beginning with a capital letter R, on the eleventh written line of that statement?

*Ans.* It seems to be Rogers. I don't know. 200

138. Do you know of your father's getting lumber of R. N. Rogers?

*Ans.* No.

139. Were the assessments on this property pretty heavy when your father owned it?

*Ans.* Not pretty heavy. There was one assessment that was pretty heavy in that view, I recollect.

140. You say this statement was fabricated, who fabricated it?

*Ans.* I believe I wrote it. 201

141. Did you fabricate it?

*Ans.* I put it together.

142. Did you fabricate it?

*Ans.* My answer is I put it together. I want to make an explanation; in bringing it down to a single distinct word, I would like to know what construction you want to put on the word fabricate.

143. You have yourself said that it was fabricated. I now ask you if you fabricated it?

*Ans.* In my sense of the word, I did. 202

144. For what purpose?

(Objected to, as being already answered.)

*Ans.* I have nothing to say.

145. Do you refuse to answer my question, which is for what purpose that paper was fabricated?

*Ans.* If my memory serves me right now, I might have intended it to show to a younger brother of mine, in order to make him believe that I have given value for the property.

146. Would that have been an honest purpose?

(Objected to, as being a question of law.)

203

*Ans.* No, there was no honesty about it.

147. Can you state any nearer, than you have already done in your examination this morning and this afternoon, the object of making that paper ?

*Ans.* No.

148. In whose custody was this paper kept ?

*Ans.* I believe it was in mine.

149. Is the endorsement on the back in lead-pencil, in your handwriting ?

204 *Ans.* No, sir, it is not in my handwriting.

(The paper offered as an exhibit, in this cause and marked *Exhibit M 3*, on part of defendants, Arthur & Westcott.)

150. How did you come to take the deed for the New Jersey farm in your name, if, as you say, it was bought with the funds of your father ?

*Ans.* I don't know positively why I took it in my name, further than if anything had happened to my father, there being other brothers that might not have had as much  
205 title to it as I believed myself to have, it being probable that I would be expending more or less money on the place.

151. Did you expend any money on the place ?

*Ans.* I expended a little.

152. In what way ?

*Ans.* That little house out there I have fixed a little. I mean the dwelling-house on the farm. I expended some little money there in repairing it.

153. Did you make what improvements were made on  
206 that farm ?

*Ans.* I made a few improvements from time to time.

154. Were there no other improvements made in the buildings than those you made ?

*Ans.* I don't know, I'm sure.

155. Do you know of any ?

*Ans.* Not up to the time I left. I don't know the date; I never recollect dates.

156. Who sold the wood that was sold off the farm ?

*Ans.* Don't know that there was any sold.

157. Did you make any contract with any man or men 207  
by the name of Dickerson, by which they were to cut the  
wood that was then growing on the farm ?

(Objected to as being immaterial.)

*Ans.* I believe my father—I don't recollect of making  
any arrangement myself.

158. Can you say that you did not ?

*Ans.* I don't believe I did.

159. Do you recollect of seeing any men by the name of  
Dickerson out there ?

*Ans.* Oh, yes, I recollect of seeing men by the name of 208  
Dickerson out there.

160. Do you recollect of making any agreement with  
them, under which they were to cut wood for railroad ties,  
on this farm, and give you part of the proceeds ?

(Objected to.)

*Ans.* I have no remembrance of any arrangement of the  
kind you mentioned.

161. Can you recollect about the amount of the im-  
provements you laid out on that farm and the buildings on  
it? 209

*Ans.* No, I don't recollect.

162. At the time you directed the mortgage from Alex-  
ander Whyte to Emma Whyte to be prepared, who went  
with you to the person whom you employed to draw it ?

*Ans.* I don't know who went with me. I am not posi-  
tive now.

163. Did your father go with you ?

*Ans.* I don't recollect.

164. Where was the deed from yourself and wife to Al-  
exander Whyte, and the mortgage from Alexander Whyte 210  
to Emma Whyte, executed ?

*Ans.* Out at the farm.

165. Was not the mortgage which Alexander Whyte ex-  
ecuted, read over by the commissioner and explained to  
your father before he executed it ?

*Ans.* I don't know that it was ; I don't recollect that it was.

166. Do you know that it was not ?

*Ans.* I don't know that it was not.

211 167. Was not the mortgage, after its execution, delivered by the commissioner to Emma Whyte in the presence of Alexander Whyte ?

*Ans.* I don't recollect that it was.

168. You recollect it was not ?

*Ans.* My impression is that the papers were taken possession of by myself.

169. The question is, whether the commissioner did not immediately after the execution of the mortgage, and the endorsement on it of the certificate of acknowledgment, deliver the mortgage to Emma Whyte, your wife ?

*Ans.* I don't know that he did ; I could not positively say that he did.

170. Was that mortgage in possession of your wife or yourself, from the time it was recorded up to the time it was assigned to Arthur & Westcott ?

*Ans.* Part of the time it was in my possession and part of the time it was not.

171. Who had it during the time it was not in your possession ?

213 *Ans.* It, with other papers was in an old coat hanging up in a bed-room, at the farm-house ; I think it was there while I was in New York.

172. That coat was yours and contained other papers of yours ; was it not ?

*Ans.* I don't know whose coat it was ; it might have been my brother's ; I believe there were in it other papers besides this particular mortgage ; I don't know whose they were.

173. That mortgage was recorded ?

214 *Ans.* I suppose it was.

174. At the time this deed was made, to your father, in February, 1861, was twenty-eight hundred dollars a fair price for the property ?

*Ans.* It wasn't worth that, I don't believe.

175. In what manner were these over-drafts, which you say you made, while with Arthur & Westcott, made ?

*Ans.* A portion of my over-draft was made by charging directly to my account, over-drawing my salary, and the balance mainly by omitting to charge to my account in the ledger. 215

176. How many different kinds of books did you keep?

*Ans.* Three principal books ; cash book, journal, and ledger.

177. If you did not put in the ledger, cash entered in the cash book to you, how did you post that cash ?

*Ans.* To some other account representing the loss, I suppose.

178. It was posted to some one or to some account, was it not ?

*Ans.* Yes, I believe it was. 216

179. Did you, on the 6th of January, 1859, charge yourself on the cash book with ten dollars and post that to W. H. Arthur's account ?

*Ans.* I am not aware that I did ; I don't recollect that ten dollars, particularly.

180. Did you charge such items of cash, entered in your name on the cash book, to the account of different persons in the ledger or to different accounts in the ledger ?

*Ans.* Yes ; I suppose I did.

181. Can you now give any instances of charges of that kind ? 217

*Ans.* I couldn't specify anything now.

182. Did you ever enter in your credit column of the cash book, figures denoting money and put no account what it was paid for ?

*Ans.* I have an indistinct recollection of balancing my cash in that way, just prior to my leaving their establishment.

183. Do you recollect the amount of that entry ?

*Ans.* I don't recollect. 218

184. Did you ever erase figures that had been correctly entered in the cash book or journal, and by that means obtain money for your own benefit ?

*Ans.* I believe there was one instance where I did make an erasure for that purpose.

185. Do you recollect how much you gained by that, was it a hundred dollars?

*Ans.* I don't; I forget the amount now.

219 186. The amount of overdraft made by charging yourself directly, with more cash than your salary amounted to, would appear on the face of the books upon turning to your account would it not?

*Ans.* Yes, I believe it would.

187. Do you recollect the amount of overdraft upon the book in that way, at the time you left Arthur & Company's employ?

*Ans.* Some rising \$250. I believe in the neighborhood of \$300 perhaps.

220 188. That was the overdraft upon which this \$50, for which you have produced a separate receipt, was paid, was it not?

*Ans.* It was on account of my indebtedness; my entire indebtedness to Arthur & Company, that I refunded them that \$50.

189. Do you know whether or not, before you paid that \$50, these false entries had been discovered by Arthur & Company?

221 *Ans.* I suppose that they must have had some acquaintance with these entries at that time, with some of these entries at least.

190. Did they tell you that they knew of them?

*Ans.* I don't know that they told me.

191. You were cashier as well as bookkeeper of Arthur & Co., were you not?

*Ans.* Not exactly, I didn't have full power as cashier. I simply paid money as they instructed me.

192. Was the money received by the firm in your custody?

222 *Ans.* It frequently was received by them; it was in my custody.

193. Did you have the key of the safe, in which this money was kept?

*Ans.* I had one key of the safe. (Exhibit M 2, on part of defendants, Arthur & Westcott, being shown witness,

he says): I acknowledged that deed reluctantly to the parties there and then, the commissioner being present.

JAMES WHYTE.

Taken, sworn and subscribed April 28, {  
1863, before me at Jersey City. }

223

A. S. JACKSON,

*Master in Chancery, New Jersey.*

February 1st, A. D. 1865, the examination was continued, by consent of parties, in presence of Jeremiah E. Cary, Esq., of counsel for the complainant, and Alfred Mills, Esq., of counsel with the defendants, Arthur and Westcott.

ALEXANDER WHYTE, the complainant, being duly sworn, on his oath deposes and says :

1. (Exhibit C 2 being shown witness)—Is that a deed of 224 the farm from James Whyte to you—of the farm on which you reside?

*Ans.* Yes.

2. (Exhibit C 1 being shown witness)—Is that a deed of Daniel Tillotson and wife to James Whyte, of the same farm?

*Ans.* Yes.

3. When this farm was conveyed to James Whyte, with whose money was the purchase made?

*Ans.* It was with my money.

225

4. Was that the reason that James Whyte and wife executed a deed of it to you, Exhibit C 2?

(Objected to, as leading.)

*Ans.* Yes, sir.

(The question and answer waived.)

5. What was the reason that this deed of James Whyte and wife to you was made—I mean deed C 2?

*Ans.* Because it was at first bought with my money.

6. Look at that deed, Exhibit M 1. On conveying the  
226 premises by that deed to James Whyte, did he pay you any  
consideration for it?

(Evidence of the consideration between Alexander and  
James Whyte objected to, on account of irrelevancy.)

*Ans.* He did not.

7. Did he agree to pay any?

*Ans.* No.

8. What was the reason of your conveying the premises  
to him by that deed?

*Ans.* He wanted me to make some improvements on  
the place, and I told him I hadn't the money to do it.  
227 He told me that, if I would convey it to him, he would  
do it.

(Evidence of conversation between James and Alexander  
Whyte objected to.)

I gave him a deed of it, and he was to keep it for my  
benefit.

9. What improvements did he speak of?

*Ans.* About draining the lots, taking the stones off, and  
fencing it in.

228 10. Did he ever make these improvements?

*Ans.* No, sir.

11. Did you give James' wife a mortgage of \$2,200 on  
that farm, of the same date of the deed to you?

*Ans.* I considered that mortgage was given to James  
himself, and not the wife. I thought it was so at the  
time.

12. Who got the mortgage drawn?

*Ans.* James.

13. Did you read it?

229 *Ans.* No.

14. Was it read in your hearing?

*Ans.* It was read in my hearing, but I didn't hear the  
first words, and James said it was all right.

15. Did you know it was a mortgage to James' wife at  
the time you executed it?

*Ans.* No.

16. What was the object of giving that mortgage ?

*Ans.* I don't know what his object was in wanting that mortgage ?

17. What was your intention of giving the mortgage ?

(All evidence relative to the mortgage objected to.) 230

*Ans.* Well, I heard him say he was afraid that something might come against him.

18. Was there any understanding that you were to be called upon to pay the mortgage ?

*Ans.* No, sir, none.

19. Was there any understanding that you were not to be called upon to pay it ?

*Ans.* I was never to be troubled about it.

20. Who had had the management of your business for some years previous to that time ? 231

*Ans.* James.

21. He is your son, is he ?

*Ans.* Yes, sir.

22. In the course of that management of that business, had he sold any property of yours in the city of New York ?

*Ans.* Yes.

23. Had he received moneys belonging to you ?

*Ans.* He drew rents.

Deed of Jonathan Wilt and wife and Arnest Fink, Jr. and wife to Alexander Whyte, dated November 28, 1849, recorded in Register's office of city and county of New York, Dec. 8, 1849, Liber 531 of Conveyances, page 159, of two lots in 44th street, New York city, offered in evidence, and marked Exhibit C 6, *consideration* \$1,025 00. 232

Deed of James Fullerton and wife to Alexander Whyte, dated November 14, 1849, recorded in said Register's office, November 21, 1849, Liber 529 of Conveyances, p. 312, for one lot on 44th street, New York city, offered in evidence, and marked Exhibit C 7, *consideration* \$550 00. 233

24. You say James received some rents, was it from these houses in New York ?

*Ans.* Yes, sir.

25. Did he transact other business for you in New York?

*Ans.* Well, nothing further than paying attention to the taxes, water rent; he paid attention to the paying of that sewer that went through the street; I mean 44th street.

26. When these lots were sold, who received the money  
234 for them?

*Ans.* James.

27. Was or not the money which James received for you, for the rents he received and on the sale of this property, appropriated to the paying of the taxes and assessments and the purchase of the farm in question in New Jersey, so far as he has accounted for the same?

*Ans.* The money he got for rents went to pay taxes, part of the money he got for the property paid for the farm in Jersey.

235 28. At the time that mortgage of \$2,200 was executed by you to James' wife, did you receive from James' wife any money, as a consideration for that mortgage? (Objected to.)

*Ans.* I never received any money from her; I never received any property or anything from her.

29. Were you indebted to her at the time in any amount?

*Ans.* No.

30. Did anybody pay you anything as a consideration  
236 for that mortgage to her?

*Ans.* No, sir.

31. Or promise you anything?

*Ans.* No, sir.

32. What is your age, Mr. Whyte?

*Ans.* I am sixty-two the 11th of March, next.

33. What was your occupation before you went on the farm?

*Ans.* I was in Higgins' carpet factory for four years before that. I am a carpet-weaver by trade.

237 34. What was the reason, if any, why James had charge of your business outside?

*Ans.* He thought he could do it better than me, and I

was pretty often sick and couldn't attend to it. That's all the reason.

35. What time did you go into possession of the New Jersey farm ?

*Ans.* In April, 1860, I believe. I know it was in April, 1860. I was on the ground before the deed was made.

36. Have you been in possession of the place ever since?

*Ans.* Yes, sir.

238

37. When did you first find out or learn that Messrs. Arthur & Westcott claimed any right to that property ?

*Ans.* One of the partners, I don't know his name, came to the premises and went into the barn ; I don't recollect when. Now I know, it was just before I received a notice to quit the place ; that was in 1862, in the month of April, of that year. I must have seen the partner on the premises.

38. Was that the notice you received ?

*Ans.* Yes, sir.

(Notice offered in evidence and marked Exhibit C 8.) 239

39. State, Mr. Whyte, if James at any time made any repairs on the premises and what.

*Ans.* He put weatherboards on the front of the house. Nothing else.

40. Was anything paid for it ?

*Ans.* Yes, James paid for it. It was my money that paid for it. I gave James the money to pay for it.

Examination adjourned to Thursday, Feb. 9, 1865, at 10 o'clock, A. M.

---

The parties appear and the examination was continued. 240

*Cross-Examined :*

1. What business were you engaged in, in April, 1860 ?

*Ans.* Nothing, particular.

2. How lately before that had you been engaged in business ?

*Ans.* It wasn't very long—couldn't say the date.

3. What business were you last engaged in before April, 1860?

*Ans.* I was engaged in the grocery business in Forty-241 fourth street, New York—No. 312.

4. How long were you engaged in that business?

*Ans.* I couldn't tell—a few months; I was sick at the time.

5. Who furnished the capital for that business?

*Ans.* My son, Alexander Whyte.

6. How old was he at that time?

*Ans.* I couldn't say how old he was at that time.

7. Tell as near as you can.

*Ans.* I think that he was about twenty-one; but I 242 couldn't say positively.

8. How old is he now?

*Ans.* I couldn't say, twenty-four or twenty-five, or thereabouts.

9. Did you put any capital in that grocery?

*Ans.* No, sir.

10. How much did your son put in?

*Ans.* I don't know, sir. He put in all his savings.

11. Was that business successful or unsuccessful?

*Ans.* I don't believe, sir, there was anything lost or 243 won.

12. Why did you stop it?

*Ans.* Alexander wanted to be at something, at what he would make more of.

13. What business had you been engaged in, just previous to your going into the grocery business?

*Ans.* I was in the carpet-weaving business; I am a carpet-weaver by trade.

14. Were you at work at your trade as a journeyman up to the time of your going into the grocery business?

244 *Ans.* I believe I was.

15. Was this store in one of the houses named in the deed to you, from Arnest Fink and wife, and Jonathan Wilt and wife?

*Ans.* I believe the store was built upon the lot bought of one Fullerton; I never had but one deed from Fuller-

ton, and that I believe has been shown here; it is Exhibit C 7.

16. Did you convey this 44th street property to your son James?

*Ans.* Yes.

17. State when and for what consideration.

245

*Ans.* I was sick and unable to attend to it myself; I gave it over to him to attend to it for my benefit; I think the time was about 1859.

(A certified copy of a deed from Alexander Whyte to James Whyte, for three lots on 44th street, New York, dated, September 28, 1859, and recorded September 29, 1859, in Register's office, of the county of New York, Liber 795, of Conveyances, page 169, &c., exhibited by counsel and marked Exhibit M 4.)

246

18. What mortgages, if any, were on that property, when you conveyed it to James Whyte?

*Ans.* Seven hundred dollars to Mr. Tillotson, I believe; three thousand dollars to Mrs. Bullard, of Pearl street. No more.

19. Were those assumed by James, in your conveyance to him?

*Ans.* O, yes.

20. What wages did you get at that time?

*Ans.* Who from?

21. Those who employed you.

247

*Ans.* That was according as I wrought.

22. Whom did your family consist of?

*Ans.* Four sons and a daughter; my wife had died a short time previously.

23. James was the oldest son, and Alexander the next, wasn't he?

*Ans.* James was the oldest son, William Thomas Whyte the next, and Alexander was the next, Margaret Jane comes next, John comes next.

24. Give me the ages of the last two children in 1860.

248

*Ans.* I couldn't tell their ages at that time.

25. What funds had you in April, 1860?

*Ans.* My funds was this 44th street property.

26. When was that sold by James ?

*Ans.* I believe in 1859.

27. Who made the sales ?

*Ans.* Mr. Chamberlin, I believe, sold them.

28. Then in April, 1860, what did your property consist  
249 of ?

*Ans.* Four houses on the back of the lots and the store  
in front of one of the lots.

29. You did not have that property in the spring of  
1860, when you moved out to Morris County, did you ?

*Ans.* James had it then.

30. Had he not sold it the year before that ?

*Ans.* He never told me when he sold it.

31. Did you not know that James Whyte sold it before  
you went out to the farm in Morris county, in April, 1860 ?

250 *Ans.* I do not know when he sold it.

32. Did you not know, when you went out to that farm,  
that the 44th street property had been sold by James ?

*Ans.* No, sir.

33. When did you first learn of that fact ?

*Ans.* It was after that some time ; it was after I was  
on the farm, I learned it was sold.

34. Who bought the farm in Morris county where you  
now live ?

*Ans.* James, my son ; he bought it for my benefit.

251 35. To whom was the deed made ?

*Ans.* I believe James took it out in his own name, to do  
it for my benefit.

36. Did he take the deed in his own name with your  
consent ?

*Ans.* Yes, from Tillotson.

37. If the farm was bought for you, why wasn't the  
deed made to you, instead of to James ?

*Ans.* James was doing all my business and he took the  
deed in his own name for my benefit ; that was the reason.

252 38. Did you think that it was for your benefit, that a  
farm, bought for you, should be deeded to James instead  
of to you ?

*Ans.* Yes.

39. Why ?

*Ans.* Because I always found him doing what was right to me.

40. How would it be to your advantage to have the deed to him, instead of to you ?

*Ans.* Because he did all my business before that, and I wasn't in a state of health to look after it myself. 253

41. Could he not attend to your business as well, if the deed was made to you as he could if it had been made to him ?

*Ans.* He wanted it in his own name ; I had every confidence to place in him.

42. Why did he want it in his own name ?

*Ans.* I don't know, any farther, than it was to be done for my benefit.

43. Did not James continue to do your business after the purchase of the farm ? 254

*Ans.* I had very little business to do ; he put weatherboards on the front of the house ; it was for me.

44. Why, then, did James and his wife make a conveyance to you, of this farm, February 21st, 1861 ?

*Ans.* Well, he thought it would be better for me to have it in my own name.

45. Was there any reason in February, 1861, for holding the property in your own name that did not exist in May, 1860 ?

*Ans.* No reason, that I know of. 255

46. Why then did you, in February, 1861, yourself take the title of the farm ?

*Ans.* James wanted it.

47. Did you consider the change, made in February, 1861, of the title to this property to be for your benefit ?

*Ans.* Yes, he told me it would be for my benefit.

48. What consideration was paid to Mr. Tillotson, in May, 1860, upon his making a deed to James for this farm ?

*Ans.* One hundred dollars. 256

49. Was that all that was paid, when the conveyance was made to James ?

*Ans.* When the deed was made, I don't know what was paid, Mr. Tillotson and he fixed the matter.

50. Can you tell what was paid for the farm ?

*Ans.* Two thousand six hundred dollars.

51. Can you state how that was paid ?

*Ans.* First, a hundred dollars ; if I mistake not, there was a mortgage on the place, which Mr. Tillotson took in  
257 part pay, and the rest in cash.

52. Who paid that cash ?

*Ans.* James paid it for me.

53. Did you give it to James to pay it over ?

*Ans.* No, he had money out of the property that was sold, that was due to him.

54. At the time you sold the 44th street property to James, it was incumbered for about four thousand dollars, wasn't it ?

*Ans.* About thirty-six hundred dollars, something there-  
258 abouts.

55. Did James, at that time, give you any note, or bond, or mortgage, or paper, showing that he owed you a balance on the purchase of that 44th street property ?

*Ans.* No.

56. Did he have accounts with you at that time ?

*Ans.* No, he had no accounts with me ; everything was in his own hands ; he had no accounts against me.

57. He kept the accounts between you and him, did he ?

259 *Ans.* Well, there was no accounts to keep ; he had no accounts against me ; he did that business for me.

58. Did you trust him at that time, to do all your business, and make all payments, relative to that 44th street property ?

*Ans.* Yes.

59. All accounts regarding that property were kept by him, were they not ?

*Ans.* Yes.

60. Did you believe that he kept them correctly ?

260 *Ans.* I believe so, sir.

61. You yourself kept no accounts, did you ?

*Ans.* I kept no accounts.

62. For how long prior to April, 1860, was your health poor ?

*Ans.* For six months prior to that time.

63. Before that six months, how was your health?

*Ans.* It was very middling, just as it is now.

64. Was you able to work all or most of the time?

*Ans.* Not all the time.

65. For seven or eight days before the spring of 1860, 261  
was not your health quite impaired?

*Ans.* Yes, partly broke down.

66. Can you tell us how much of that time, you were  
able to work, in general terms, I mean?

*Ans.* No, sir, I couldn't say.

67. Half of the time?

*Ans.* Well I couldn't say, if it were half or not.

68. Quarter of the time?

*Ans.* Well, sir, I couldn't say what time I could work.

69. Can you tell us what the rents of that 44th street 262  
property amounted to per year?

*Ans.* No, sir.

70. Can't you come pretty near it?

*Ans.* There were tenants going out and in, some paid  
rent, and some didn't.

71. Now, wouldn't they average three hundred dollars a  
year?

*Ans.* Yes, I should think they would come there  
about; I wouldn't be certain.

72. Wouldn't they average four hundred dollars a year? 263

*Ans.* I couldn't say, sir; I paid no attention to it.

73. How many houses were there?

*Ans.* Four on the back of the lots, and a store upon the  
front of one of the lots.

74. Were they used as tenement houses?

*Ans.* Yes, sir.

75. What are they, wooden or brick?

*Ans.* Brick front and wood at the back.

76. Did you have anything to do with the sale, which  
James made of the 44th street property? 264

*Ans.* No, sir, James attended to it himself; I had nothing  
to do with making the bargain or selling the property  
or receiving the money.

77. Can you tell us more definitely than you have done

when it was you first knew that the 44th street property was sold by James ?

*Ans.* It was some months after I was upon the farm ; I can't tell the number of months.

78. At the time of the conveyance to you of the farm 265 in February, 1861, did you go with James to a lawyer in Morristown, and ask him to prepare the deed, for James and his wife to sign, and the mortgage for you to sign ?

*Ans.* I was along with James there.

79. Was the lawyer instructed by you, or by James in your presence, what deed and mortgage to prepare ?

*Ans.* It was James that give the instruction, I was only there ; I gave no instructions.

80. All the conversation there in reference to those papers was had in your presence, was it not ?

266 *Ans.* It was in my presence, but I paid no attention to the conversation ; James told me it would be all right for me ; I paid no more attention.

81. Did you hear what was said there ?

*Ans.* No, I could make no sense of the conversation.

82. Couldn't you have heard if you had tried to do so, or wished to do so ?

*Ans.* I might have heard ; he told me it was merely a form ; it would be all right, and I trusted all to him.

83. What was a mere form ?

267 *Ans.* Signing these papers, which he was having drawn by Mr. Mills, the lawyer ; James told me that it would be all right.

84. Was the deed to you a mere form ?

*Ans.* Well, I left it all to James.

85. Had you ever asked him to have that farm, which you say was bought for you, conveyed to you ?

*Ans.* Yes.

86. Was it in compliance with that request that this deed of February, 1861, was made ?

268 *Ans.* No ; I don't think it was.

87. If that farm had been bought in the spring of 1860, with your money, why did you give a mortgage for \$2,200, when you received a deed for it ?

*Ans.* James wanted it. I would have signed any papers he laid down to me then.

88. Is that the only reason ?

*Ans.* That's the only reason.

89. When you asked James—as you say you had asked him—for a conveyance of that property to you, did he ask you for a mortgage ?

269

*Ans.* Yes.

90. Did you agree to give it to him ?

*Ans.* Yes—to him.

91. How long was this before the papers were drawn ?

*Ans.* I don't know how long it was—I think it was something within a month. I can't say how long it was.

92. At the time you executed the mortgage, was it not first read over to you by the commissioner who took the acknowledgment ?

*Ans.* Yes, sir ; but I paid but little attention to it, because James said it was all right, and I signed it.

270

93. After the mortgage was executed, and the certificate of acknowledgment endorsed, were not the bond and mortgage handed by the commissioner to Mrs. Emma Whyte in your presence ?

*Ans.* I believe there were a paper handed to her by the commissioner.

94. Did you not, at the time, suppose the paper or papers, whatever they were, were the bond and mortgage which you had executed ?

271

*Ans.* I considered the papers, the bond and mortgage, to be given over to James.

95. What was the reason, so far as you could judge, for handing over the papers to Mrs. Whyte, when her husband was present ?

*Ans.* I don't know the reason. I don't understand law.

96. Why did you convey this property to James in October, 1861 ?

*Ans.* Because he wanted it.

97. Why did he want it ?

272

*Ans.* Well, I don't know why he wanted it ; but he told me it was all right enough, and, therefore, I let him have it.

98. Was there any wood cut off the farm that fall or the following winter ; and, if so, by whom and under whose direction ?

*Ans.* There were wood cut off that fall, by James' direction ; it was cut by Stephen Garrigus. A winter after that it was cut by my direction, by Dickenson Brothers.  
273 James sent me word that he had no time to pay attention to it, and I employed them myself.

99. That was the reason, was it, that you got them to cut the wood ?

*Ans.* That was the reason.

*Re-direct Examination :*

41. In regard to the grocery business, were you to have a portion of the profits of the grocery ?

*Ans.* There were an understanding that Alexander was to have the store, the use of the lot ; any profit arising  
274 out of the store, I was to have half.

42. You say you were sick at the time you quit the grocery business ; was that any part of the reason for quitting the business ?

*Ans.* The reason of quitting the business was, that Alexander wanted to go into something he could make more of.

43. When James asked you for a mortgage on the farm, what did he say he wanted it for ?

*Ans.* Well, I don't think he said anything particular,  
275 what he wanted it for.

44. I refer to the mortgage of \$2,200 on the farm ; did he say what his object was for wanting it ; if so, what ?

*Ans.* I believe he said something might come against him, but I would be right enough.

45. When the property, in 44th street, in the city of New York, was purchased, with whose money was it bought ?

*Ans.* With mine.

46. In regard to the cutting of the wood on the farm,  
276 how long before the Dickersons commenced cutting was it that Stephen Garrigus commenced cutting ?

*Ans.* Stephen Garrigus commenced cutting the winter before ; the Dickersons cut the winter after it.

47. When you conveyed the 44th street property to James did he pay you anything for it ?

*Ans.* No, sir.

48. When you conveyed the farm in New Jersey to James, in October, 1861, did he pay you anything for it ?

*Ans.* No, sir ; he paid me nothing ; he never paid me at any time anything for it nor agreed to pay anything.

*Re-cross Examination :*

100. What time of the winter did Garrigus cut wood on the farm, the first or the last ? 277

*Ans.* Through the course of the winter ; no stated time ; he went when the weather permitted.

101. Did he cut any in February or March ?

*Ans.* I couldn't say ; he cut it through the course of the winter ; I didn't see him cut ; he cut when he wanted.

102. Were the mortgages on the 44th street property, amounting as you say to \$3,600, upon the property when you bought it or given by you after you bought it ?

*Ans.* They were given after I bought them ; there was 278  
a mortgage on which there was due \$394 and interest, to Philo T. Ruggles, which was on when I bought it ; this mortgage was on two lots. The mortgage for \$3,000, given to Mrs. Bullard, was for money to build with. The \$800 Tillotson mortgage was given by me partly to build with, and to take up some previous mortgage ; I think it was so ; I don't recollect.

103. You say in your principal examination, that James put some weatherboards on the house, and you gave him money to pay for it, where did that money come from ? 279

*Ans.* It come out of the sale of the property in New York.

104. Did you yourself give him the money ?

*Ans.* No, he had the money in his own hand belonging to me.

ALEXANDER WHYTE.

Taken, sworn and subscribed before me }  
Feb. 1st and 9th, 1865 at Jersey City. }

A. S. JACKSON,

*Master in Chancery.*

EMMA WHYTE, a witness produced on the part of the complainant, being duly sworn, deposes and says :

(The giving of evidence by this witness objected to, because she is the wife of one of the parties in interest in this suit.)

(The counsel for complainant say, that they do not propose to give any evidence as against the defendant James Whyte, her husband, but only as against the defendants 281 Arthur & Westcott.)

1. Do you recollect of a mortgage being given to you for two thousand two hundred dollars, in February, 1861, on the farm in question, in New Jersey, by Alexander Whyte ?

*Ans.* Yes.

2. Did you give Mr. Alex. Whyte any money for that mortgage ?

*Ans.* No, sir.

3. Did you agree to give him any ?

282 *Ans.* No, sir.

4. Do you recollect of assigning that mortgage to Arthur & Westcott, defendants in this case ?

*Ans.* I do.

5. Did they pay you anything for the mortgage ?

*Ans.* No, sir.

6. Did they agree to pay you anything for it ?

*Ans.* They did not.

*Cross-Examined :*

1. Do you know why the mortgage was given to you, 283 instead of to your husband ?

*Ans.* I do not.

EMMA WHYTE.

Taken, sworn and subscribed before me, }  
Feb. 9th, A. D., 1865, at Jersey City. }

A. S. JACKSON,  
*Master in Chancery.*

List of witnesses—

James Whyte,  
Alexander Whyte,  
Emma Whyte.

284

I hereby certify the within to be a true copy of the direct and cross-examination of witnesses, on part of complainant, in the suit herein named.

Dated, *Feb.* 17, 1865.

A. S. JACKSON,  
*Master in Chancery.*

---

IN CHANCERY OF NEW JERSEY.

<p style="text-align: center;">Between ALEXANDER WHYTE, <i>Complainant,</i>  <i>and</i> WILLIAM H. ARTHUR and CHARLES S. WESTCOTT <i>et al.</i>  <i>Defendants.</i></p>	}	<p><i>On bill of relief and injunction.</i> 285</p>
---	---	---

DEPOSITIONS OF WITNESSES ON BEHALF OF DEFENDANTS,  
ARTHUR AND WESTCOTT.

Examination of witnesses on the part of the defendants, Arthur & Westcott, taken before me, Abraham S. Jackson, a Master and Examiner in Chancery, on Thursday, the 9th day of February, A. D., 1865, at half past three o'clock, P. M., at my office, No. 7 Exchange Place, in Jersey City, in presence of Alfred Mills, Esq., of counsel, 286 with the defendants, Arthur & Westcott, and of Jeremiah E. Cary, Esq., of counsel for the complainant.

CHARLES S. WESTCOTT, one of the defendants, being sworn on behalf of the defendants, Arthur & Westcott, deposes and says :

1. In the year 1861, where and with whom were you engaged in business, and how long had you been so engaged in that business ?

*Ans.* At 39 Nassau street, New York; with William 287 H. Arthur; engaged in the stationery business, retail, since December, 1852. The firm continued in that business, until 1st of July, 1862, when it was dissolved.

2. Was James Whyte, one of the defendants in this suit, in the employ of the firm, and if so, in what capacity, how long was he engaged, and when did he leave that employ ?

*Ans.* He was in our employ as bookkeeper and cashier for four or five years continually. He left in the fall of 1860, September, I think. The day the Prince of Wales 288 came to New York.

3. Did he, or not, during that time, have sole charge of your books ?

*Ans.* He had sole charge of the principal books and for several of the last years, had charge of the cash-book and cash.

4. Were, or not, his relations to the firm, those of a confidential clerk ?

*Ans.* They were.

5. What was his capacity as a bookkeeper and account- 289 ant ?

*Ans.* The best of any person I ever knew, as regards accuracy.

6. How was it as to quickness ?

*Ans.* He was slow.

7. How came he to leave your employ ?

*Ans.* Haven't the remotest idea, except from his testimony in this cause.

8. Had he given you notice of his intention to leave ?

*Ans.* No, sir.

290 9. At the time he left, what was the state of his account between him and the firm, as stated by him on your books ? Was there, on the face of that account, money due from him to you, or from you to him ?

(Objected to, unless the books are produced.)

*Ans.* The account was in such a shape as showed him in our debt, between two hundred and fifty and three hundred dollars, I think.

10. (Exhibit C 5, on part of complainant, being shown to witness.) What was that receipt given to James Whyte for? 291

*Ans.* For fifty dollars, on account of his indebtedness to us, which at that time we did not suppose to be more than from two hundred and fifty to three hundred dollars. The name of our firm is W. H. Arthur & Co.

11. What indebtedness was that?

*Ans.* More money taken by him and charged to his account by himself than his salary amounted to up to the date of his leaving our employ, as it appeared from his own account in our ledger, kept by him.

12. What salary did you pay him at that time? 292

*Ans.* Twelve hundred dollars per annum.

13. Did you at the date of this receipt (Exhibit C 5), Nov. 17, 1860, know of any other indebtedness of James Whyte to your firm, or any frauds against you, committed by him?

*Ans.* I did not.

14. Did your partner, as far as you knew?

*Ans.* Not to my knowledge.

15. Did you then suspect any?

*Ans.* I did not. 293

Examination adjourned to Thursday, March 2, 1865, at 10 o'clock, A. M.

---

Thursday, March 2, 1865, 10 o'clock, A. M., the examination resumed.

16. Did you ascertain anything further with regard to James Whyte's account with your firm, and if so, when, what did you ascertain, and how?

(The counsel for complainant objects to any evidence being given by this witness, of anything contained in any

294 books of accounts or other writing, without the production here before the examiner of such books, accounts, and writings, so that we have the privilege of examining the same, and testing the accuracy of the witness.)

(The counsel for Arthur & Westcott states that all books and papers, which the witness may refer to in his evidence, will be produced by these defendants if in the power of these defendants to do so. That the books of Wm. H. Arthur & Co. were not produced here to-day, because at the last meeting of the parties before the examiner here, coun-  
295 sel for complainant said that he did not ask for their production at this time, unless he should give us notice.)

(The counsel for complainant desires to state that the witness asked me in substance if I was going to insist upon his bringing over those books. I said in effect, that I would not, unless I considered it necessary; I would avoid it if I could. I did not intend to be understood as waiving the right to have the books present when the witness should be examined in regard to them.)

*Ans.* I never ascertained anything further with regard to  
296 his own account with us. But I did ascertain with regard to the accounts of other people, kept by him in our books, with us, that he had made false entries and postings, and altered others by erasing and inserting figures by which he was enabled to account for the cash which came into his possession, thus defrauding us of various sums of money at various times. I think it was in the fall or winter of 1860, perhaps in the early part of 1861, in settling an account with Henry J. Seaman, he disputed an item of cash, which we had charged to him. I told him that I knew the charge was cor-  
297 rect, as it was made by Mr. Whyte, who never made any mistakes. He said he would go with me to our office and look at Mr. Whyte's entry in our cash-book; which he did. And in looking at a number of entries immediately following each other, which were marked with commas for ditto, and which had been posted by Mr. Plume, Mr. Whyte's assistant, as debits against Mr. Seaman, he discovered, and

called my attention to the fact, that there were no commas or ditto marks opposite to one of those entries, to indicate that a charge was made against him. The figures against which there was nothing written, merely served to make<sup>298</sup> the credit side of the cash-book foot up correctly, showing that the amount had been taken from the cash, and no account made of its disposition. After ascertaining this one very apparent fraud, I commenced an investigation and examination of the books, kept by Mr. Whyte, and found numerous fraudulent and false entries and postings. I also found cases of erasures and alterations of figures, all of which would enable Mr. Whyte to appropriate our money to his own use, without our knowledge or discovery of the same, except by an<sup>299</sup> extended examination of the books for that purpose. I never had any suspicions of Mr. Whyte's integrity, or that he had made any false or fraudulent entries upon any of our books, until the case occurred with Mr. Seaman, which induced me to make an examination, in order that I might ascertain whether the entry pointed out by Seaman was intended as a fraud, or was merely an oversight on the part of Mr. Whyte. Mr. Whyte had charge of our cash-book and cash accounts, but I had a key, by which I could get access to the cash in his charge myself, if necessary, dur-<sup>300</sup>ing his absence, which I did do a number of times, if I had omitted to inform Mr. Whyte of any moneys that I took from his cash drawer, he could not have balanced his cash account without discovering the deficit, which it would have been his duty to report to Mr. Arthur or myself.

(It was objected in time by the counsel of the complainant, to all that part of the foregoing testimony which refers to entries in, or alterations of books or accounts, without the production of the books.)

17. Upon your examination, how much did you believe<sup>301</sup> that James Whyte had defrauded your firm of?

(Objected to.)

*Ans.* I never made up my mind as to any amount from my examination of the books, but a book-keeper, who examined them afterwards, reported a deficit of about twenty-two thousand dollars, and I believe that the report made by this book-keeper was substantially correct.

(Answer objected to, because hearsay.)

18. What was your belief as to the amount of moneys, 302 that you had been swindled out of by Whyte, at the time Whyte made to you the deed, marked Exhibit M. E., on part of defendants Arthur & Westcott ?

(Objected to.)

*Ans.* Twenty to twenty-two thousand dollars.

19. Is or is not that your belief at the present time ?

(Objected to.)

*Ans.* It is.

20. After the discovery of these frauds did you take any means to communicate with James Whyte, and if so, state what they were ?

303 *Ans.* We did, some time after their discovery. Previous, however, to communicating with him, we endeavored to ascertain what he had done with the money. We found that he had money in three or four savings banks and that he had had money in others, which he had drawn out. We commenced a civil suit against him and attached the moneys we found. After this was done, Mr. Arthur, accompanied by a gentleman by the name of Hayes, went to see Mr. Whyte and found him on his way to New York, and induced him to come to our store. Before this, we 304 had inquired at his house in New York, but could not succeed in finding him, and we were informed that he was at his farm in New Jersey.

(Objection to that portion of the testimony, that is hearsay.)

*Ans.* Mr. Arthur afterwards went to find him.

21. Who was your attorney in that suit commenced in New York you referred to, and what was the object of that suit?

(Objected to.)

*Ans.* Luman Sherwood was the attorney. The object 305 of the suit was to get back as much of the money from Whyte as possible, and particularly to enable us to attach the money he had in the savings banks and prevent him from drawing the same out before we could find him. We were advised by our attorney that it was only necessary to commence a suit for the amount of his over-draft to enable us to do this, but that we had better include in it a few of the fraudulent entries which was done. This suit was commenced before we had arrived at any conclusion as to the amount, as we had not had at that time an opportunity 306 to complete our investigation of the books.

22. (Exhibit M 2, on part of defendants being shown to witness.) State the circumstances attending the execution of that deed of James Whyte and wife to you, giving us the history of the transaction.

*Ans.* After Mr. Whyte came to our store with Mr. Arthur, the evening before the date of this deed, we charged Mr. Whyte with having defrauded us by means of fraudulent entries in our books, and he admitted that he had made some, but did not admit any amount or any particular 307 fraudulent entries, excepting only those pointed out to him by us. He expressed a willingness to make restitution, as far as he was able, stating that he had nothing except the moneys in the savings banks and a farm in New Jersey, but as he had not admitted anything except what he found was already known to us, and, as I believe that he had a great deal more in his possession than he had admitted, and, knowing him to be very careful and methodical in all his transactions, I advised him not to go home that night, to place himself in a position of being accused 308 of destroying any evidences of property which he might have in his possession, or any accounts of moneys which

he had obtained from us, which, I believe, from his habits, he had kept; to save his wife from any anxiety about him, I volunteered to carry to her any note which he might write. This proposition he accepted, agreeing with me, that it would be well for him so to do. And he went in company with a policeman and stayed that night at a hotel at our expense.

309 (Counsel for complainant objects to the foregoing answer to the last question.)

23. Did James Whyte, at your store, at that evening, offer to make any restitution to you for the moneys he had taken, and if so what?

*Ans.* He offered to give us everything he had, stating that he had nothing except the moneys in the savings banks and the farm in New Jersey.

24. What arrangement, if any, was made that evening for effecting a transfer to you of that property? How was 310 it to be done?

*Ans.* No arrangement was made that evening, to my recollection, other than the expression by Whyte of his willingness to give up all to us; and we agreed to postpone the whole matter until the next day, upon his consenting not to go home, so as to have access to his accounts and papers which he might have there. He wrote a note to his wife, which I delivered to her that night, as I had agreed to. I am not aware of the contents of that note, as it was sealed up in an envelope. The next day he wrote an order 311 for a tin box, which he said contained all his accounts, papers and memoranda, that he had relating to his money affairs. The box was brought to Mr. Sherwood's office by the messenger who carried his order, and the box was found to be broken open and the leaves of an account book which it contained which had been written upon, were cut out, leaving enough margin, however, to show Whyte's handwriting upon the margins. In questioning him in relation to the box being opened, he said that he presumed that his wife had broken it open to take out a silver nap- 312 kin ring, which he said was in it. In relation to the book

with the leaves cut out, he gave no explanation, except that it had contained some little accounts of his own, which he did not want any longer, and had cut them out. After spending a good portion of the day in waiting for the box and in talking with Mr. Whyte about conveying the farm, which he had objected to, on the ground that the money in the savings banks was enough to pay us for all he had taken, and we had at this time not made him aware of but a few of the amounts which we had discovered; the amounts, of which we had informed 313 him, not exceeding the amounts in the savings banks. Finally, upon our lawyer's telling him, that we had reason to believe that the amount was much greater than we had told him, and that we did so believe, he determined to come with his wife that evening to Mr. Sherwood's house and convey the property, and go the next day with me to the savings banks and draw the money. Mr. Whyte and his wife came that evening and executed the conveyance of the property and an assignment of a mortgage held by Emma Whyte upon it, to Mr. Arthur and myself. While 314 Mr. Whyte and myself were in company the next day, going to the savings banks for the money, he told me how fortunate it was that he had taken a deed of the farm from his father, as he was thus enabled to convey it to us, and that he had had the deed made, and was, when met by Mr. Arthur, on his way to New York with the intention of making restitution to us for his acts, as they had of late troubled and annoyed him very much. He also expressed a great deal of anxiety in relation to his father being informed and told us that he would have to leave the place, as 315 he had nowhere else to go. I told him that it was not necessary to say anything to his father about it, as we should not care to do anything in relation to the place until towards spring, the proper season of disposing of such property, and that his father might remain upon it, as he was then doing, until we wanted to dispose of it, and that probably before that time he would be enabled to obtain some business and thus be in a position to take care of him. He also expressed his regrets as to what he had done and his determination to be upright in future, and I 316

317 promised to aid him all in my power in obtaining employment. Up to this time I had heard nothing said by him, to the best of my recollection, of the farm belonging to his father. I asked him why he had transferred it to his father, taken a mortgage in his wife's name, back for it. He said he could not give any good reason further than that he was worried about it and supposed it must have been, because he feared that discoveries would be made of his indebtedness, as he calls it, to us and that we would get the farm back. He also told me that he did not like to  
 318 leave it in his father's name, because he was afraid that some of his father's creditors would get it, and he mentioned a firm by the name of Van Nostrand, to whom his father owed money for groceries when he kept store. These statements of his furnished to my mind satisfactory reasons for the conveyances and re-conveyances of the property.

(Answer objected to.)

*Ans.* I will not attempt to give his exact language, but the substance of it. We gave him a receipt in full for all  
 319 his indebtedness to us for the deed and mortgage on the farm and the cash in the savings banks, which we supposed to be all that we would ever get from him.

(Exhibit C 4 being shown witness, he says this is the receipt.)

25. How did this paper, Exhibit M 3, come into your possession ?

*Ans.* It was found in the tin box, brought from Mr. Whyte's house, to which I have referred.

26. Was it kept by you with the consent of James  
 320 Whyte ?

*Ans.* I think I told him I would keep it and he interposed no objections.

27. Was James Whyte under arrest during any of these transactions relating to the conveyance of the farm ?

*Ans.* He was not.

28. Who was this man Hayes whom you said went with Mr. Arthur to see Mr. Whyte ?

*Ans.* A person employed by the New York clearing-house.

29. Was he a police officer ? 321

*Ans.* Can't say positively, but think he was no officer at all.

30. Did the chief of police have any office at that time in the City Hall of New York ?

*Ans.* No, sir ; I would say further that there was no chief of police at that time in the city of New York, the office having been abolished.

31. Had you instituted any criminal proceedings or issued a *capias* for the arrest of James Whyte upon any civil proceedings ? 322

*Ans.* We had not.

32. Did you or your partner state to James Whyte that evening, when he was at your store, which you have referred to, that he would not be allowed to go home that night ?

*Ans.* Not to my knowledge, and such statement was unnecessary from the fact that he voluntarily acceded to my request, that he should not go home.

33. Were any threats or words of intimidation used to induce James Whyte to make the deed to you ? 323

*Ans.* Not any.

34. Was anything said or intimated by James Whyte, on that evening when he was at your store, as to his father's having any interest in this farm ?

*Ans.* Not a word in my hearing.

35. Did you have any agreement of any kind with James Whyte, that you would, in any event, re-convey the farm to his father ?

*Ans.* Not the slightest.

36. Did you ever make any promises to him to that effect ? 324

*Ans.* I told him some time after the conveyance of the farm, that, if he could satisfy us that he had not taken from us as much as the value of the farm and money, we

would be willing to re-convey the farm. He has never made any attempt to do so, except by mere talking.

37. Was anything of that kind said, at the time of, or before the conveyance of the farm to you?

325 *Ans.* There was not.

38. Is the firm of Wm. H. Arthur & Co. still in existence, if not, when was it dissolved?

*Ans.* It was dissolved July 1st, 1862. The books of the firm are in the possession of William H. Arthur; I have had the cash-book once or twice to look at. I am now and have been in a business separate from Mr. Arthur; I am in a separate place; Mr. Arthur's place of business is No. 39 Nassau street, and mine is No. 79 John street, both in New York city.

326 39. Did you ever, in any conversation with James Whyte, say or intimate to him in any way, that you knew, or thought, or believed, that his indebtedness to you for his over-draughts and frauds, did not amount to more than the amount of money received by you, from the savings banks?

*Ans.* No, sir.

40. (Paper being shown to witness.)—Where did you get that paper?

*Ans.* From P. H. Kingsland, a searcher in the Comp-  
327 troller's Department.

(Paper mark Exhibit M 5, on part of defendants, Westcott & Arthur.) (Objected to as evidence.)

41. At the time when, after the conveyance was made, James said that his father had an interest in the farm, did he say or pretend that the whole farm belonged to his father?

*Ans.* No; only that he had some money in it.

42. Was Mr. Sherwood present during these negotiations with James as to the conveyance, if so, state where  
328 he is now?

*Ans.* He was present making the negotiations, as our attorney; he is now dead.

*Cross-Examined.*

1. After the conveyance by James, to you, of the farm, when did you next see him?

*Ans.* The next day.

2. Where?

*Ans.* at my house, 148 West Twenty-fifth street, New York city.

3. What conversation did you have with him there 329 then?

*Ans.* Not any special, except that he called to go with me to the savings banks for the money.

4. How much money of his did you get from the savings banks?

*Ans.* I can't say exactly; it is not far from one thousand two hundred dollars, it may be a little over or short.

5. When and where did you next see him?

*Ans.* I couldn't tell.

6. Did you see him often after that, before this suit was 330 commenced?

*Ans.* Not very often, perhaps three or four times.

7. How many times did you have any conversation with him before the commencement of this suit?

*Ans.* Can't tell, sir; perhaps two or three times. They were all repetitions of about the same thing; it was a manifestation of a desire on the part of James Whyte to get the farm back, and his assertions that we were fully repaid what he had taken from us, by the money we had received from the savings banks.

331

8. When were these conversations?

*Ans.* Can't tell; some months after the conveyance.

9. When James spoke of his father having money in the farm, did he say what amount of money, or how large an interest his father had in the farm?

*Ans.* He did not, but he attempted to explain to me, that it was bought with the proceeds of the sale of the New York property, that his father had sold to him.

10. Are you quite certain that this was not said by James, at the time, or before the execution of the deed by 332 him to you?

*Ans.* I am quite certain that it was not said to me or in

my hearing. My attention at that time was directed, not so much to the obtaining the conveyance of the farm, as to an endeavor to ascertain what other moneys or property he might have, as the proceeds of what he had obtained from us, as I believed that the amount of money and value of the farm was but a small part of the money he had taken from us.

333 (This part of the answer objected to by counsel of complainant, as not responsive.)

11. When was it that you told James Whyte, that if he could satisfy you that the amount he had taken from you was not as much as the value of the farm and the money you had received from him, that you would re-convey the farm ?

*Ans.* I guess it was about January, 1862, very near the time I had told him, that I would want possession of the farm.

334 12. Who was the police officer you spoke of, who went with James at night ?

*Ans.* I don't know his name, sir. Some friend of Hayes, he got to stay with him, as he, Hayes, was tired out and wanted to go home. Hayes got him, we didn't.

13. Did you go with him ?

*Ans.* No, sir.

14. Do you know whether the police officer took James in charge as a police-officer ?

*Ans.* I know that he did not.

335 15. How do you know that he did not ?

*Ans.* Because he told me he could not without a warrant, and I requested him not to. I also informed James of the fact.

16. What was the object then of having a police officer go with him ?

*Ans.* That I might be sure that Whyte had no opportunity of concealing or destroying any evidences of property, memoranda of accounts, which he might have, before I could have an opportunity of examining them, as I explained to Mr. Whyte, at the time.

336

17. How could you be sure of that, if the police officer had no authority to detain James ?

*Ans.* Because James promised me that he would stay with him, and I believed he would keep his word ; and because, if he did not, I could, by this means, have been informed of the fact.

18. Where were you at the time, when you had this conversation with the police-officer, about their staying ?

*Ans.* No. 39 Nassau street, New York, our place of 337 business then.

19. Did you request any person to call in that officer ?

*Ans.* No, sir.

20. How came he to come to your place of business ?

*Ans.* He was an acquaintance of Mr. Hayes, whom he met, and Mr Hayes had informed him that he desired him to come.

21. Where did Mr. Hayes meet him ?

*Ans.* Don't know.

22. Did he go out after him ?

338

*Ans.* No, sir ; the whole party came together, consisting of Arthur, Whyte, Hayes and the policeman ; Hayes remarked, in effect, that he wanted to go home, that he had met this man, who would do anything we wanted, as well as he, and we let him go ; I did not know that this man was a policeman at the time, until making arrangements for the night was talked of ; he was in citizen's dress.

23. Was the man known as a detective policeman ?

*Ans.* I don't know ; I have since learned that he is now 339 detailed for special duty on Wall street ; he had no badge on.

24. Were you with Mr. Arthur and Hayes when they met James that day ?

*Ans.* No, sir.

25. How do know that Hayes did not arrest, or take in custody, James, when they met him ?

*Ans.* Simply by his saying he didn't, and James also saying that he didn't, and his detailing the conversation when he was accosted.

340<sup>m</sup>

26. What was that conversation he detailed to you ?

*Ans.* That he wanted him to come with him to Arthur's store, and Whyte said he knew what it meant ; and he came.

27. What was the object of having Mr. Hayes perform this office ; couldn't Mr. Arthur have requested him just as well ?

*Ans.* Arthur had an idea that Whyte was trying to keep out of our way ; he thought Hayes was pretty  
341 shrewd in hunting up rogues, he might help him find Whyte, if he couldn't do it alone.

28. Do you know where Mr. Hayes is now ?

*Ans.* I do not.

29. In what capacity was he employed at the clearing-house ?

*Ans.* I really don't know, except they wanted some one strong and athletic to repel any attack ; he is a son of the old celebrated policeman of that name.

30. During what years was it that the false entries were  
342 made, and the alterations and deficiencies in your books, as you have stated, occurred ?

*Ans.* They ended when Whyte left us in 1860, and run back for a period of about two years and a half, to the best of my recollection.

31. In which books, cash-book, ledger, or both, did they occur ?

*Ans.* Ledger, cash-book, journal, and, I think, invoice book.

32. How many are there of those books ?

343 *Ans.* I don't recollect how many—one or two cash-books, one or two ledgers, one or two journals ; I do not know for certain.

33. You said James mentioned the name of Van Nosstrand, to whom his father was indebted ; did he say to what amount ?

*Ans.* I think between three and four hundred dollars.

34. Who kept the cash-book, immediately preceding the time James kept it ?

*Ans.* Arthur or myself ; I don't remember which.

35. How long before James quit did he commence keep-<sup>344</sup>  
ing the cash-book ?

*Ans.* I guess it was two years and a half ; I think from January 1, 1858, to September, 1860 ; I am not positive.

36. Did any of the false entries, alterations, erasures, or omissions, of which you have spoken, occur during any period of time, when James was not keeping the cash-book ?

*Ans.* Not one of them.

37. Were there any erasures or alterations made in any of the entries, in any of the books at any time, by any<sup>345</sup>  
other person than James Whyte ?

*Ans.* Not to my knowledge, in any of the books kept by him, or the parts that were kept by him ; if there were any corrections to be made James was told of it and he would make the corrections. There were alterations and erasures made by him which were not frauds.

38. Does there appear to be any alterations or erasures on any of the books, not kept by James, or at a time when they were not kept by him ?

*Ans.* None by which we could be defrauded, that<sup>346</sup>  
I know ; mistakes would occur, which, when discovered, were corrected. There are no other books by which we could be defrauded except those kept by James.

39. Do you know of what items the amount of \$20,000, found by the book-keeper, was composed of ?

*Ans.* I do not, now ; after giving the receipt to Mr. Whyte we abandoned the investigation and paid no further attention to it ; didn't even keep the papers ; didn't even keep the memoranda relating to it, as we concluded that we couldn't get any more of it back ; that it was useless to<sup>347</sup>  
waste any more time or money in the matter.

40. What was the name of the book-keeper you employed ?

*Ans.* Herman L. Herrwig under the United States Life Insurance Company, in Broadway, New York.

41. You spoke of waiting for the box and talking with James for three or four hours ; where was that ?

*Ans.* At Sherwood's office, in Pine street.

42. You say you agreed to postpone the whole matter  
348 till the morrow, what was the whole matter to be postponed ?

*Ans.* The whole matter of Mr. Whyte's frauds and his compensating us as far as it was in his power, as he promised to do.

43. Who made the inquiries at James' house, you speak of?

*Ans.* Our clerks.

44. How do you know what answers were given to them?

349 *Ans.* By their reports, and their corroboration by James Whyte's statements, under oath, on this trial.

45. How do you know that Mr. Arthur went to the farm in New Jersey?

*Ans.* I said that Arthur started to go to Whyte's farm in New Jersey, to find him; and, as he returned in company with Whyte, I think he succeeded.

46. That is not the answer I refer to—I refer to the answer to direct question No. 20.

(Question waived.)

350 47. What was the amount of the error in Henry J. Seaman's account?

*Ans.* Some hundreds of dollars; can't recollect how many.

48. What was the error—was it an overcharge of an amount of money paid to Seaman?

351 *Ans.* There was no overcharge of money paid to Seaman by Whyte. He charged Seaman with a correct amount of money, put comma, or ditto marks, under it, and opposite them placed another correct charge against Seaman; and under all these correct charges against Seaman, he placed in the total column of the cash-book such figures as would make that column foot up correctly, and against these figures he placed nothing whatever, his assistant posting these figures against Mr Seaman's account, supposing it was a charge against him.

(The counsel for complainant says that this is all the cross-examination of this witness, until the books of account are produced.)

And thereupon the examination was further adjourned to Tuesday, March 7, 1865, at 10 A. M.

352

-----

Tuesday, March 7. 1865. Examination resumed in presence of the respective parties.

49. State and point out in the cash-book of W. H. Arthur & Co., now before you, the first error in the account kept by James Whyte, that you discover in that book.

*Ans.* The first is in Seaman's account, Sept. 27, 1860, the one that I spoke of in my last answer. The amount of deficiency is \$202 50. The book is cash-book, lettered C. The next error that I notice, is under date of October 26, 1859, an alteration of the footing of a column 353 of the said cash-book; when footed up originally and carried forward, it was \$35,155 34, it now stands \$35,655 34. I don't know how it affects us, as I don't claim that there is anything wrong in it, because I couldn't tell without an examination of all the accounts on that page to see if they are footed up correctly, which examination I have not made.

50. Where then is the error in that account?

*Ans.* I don't claim there is any, as I can't prove it without a lengthy examination and investigation. I would 354 probably have to examine half a dozen accounts of other people.

51. Is there any error in the footing as it now stands?

*Ans.* I don't know, sir.

52. Where is the next error?

*Ans.* Another error (I don't know that it is the next) is Sept. 12, 1859, brokerage on \$530 bills, H. H. H. \$5 04, which was deducted before on 10th Sept. The amount of the error is \$5 04, against us. Another error is, James charging himself, in July, 1859, with sundry sums of 355

money, amounting to \$70, and putting \$15 of that amount to the account of James Arthur. Another error is, interpolating in the cash-book, under date of May 27, 1859, under my name \$69, which had been previously charged on the 26th day of March, 1859. I noticed at the time when James made the charge and remarked to him that it was not right, that it had been charged before, James said it was not so. I discovered afterwards that it had been charged on the 26th of March before. I discovered it the  
356 other night, when looking over the books.

53. When this charge was made, had Mr. Whyte a ticket against you showing that such a charge was proper?

*Ans.* He claimed to have, but I said that it had been charged before. He knew it had not, and I did not look back at the time to see, I acquiesced in his statement, supposing Whyte was right. The ticket was made by Whyte, as was the common custom.

54. Where is the next error?

*Ans.* April 2, 1859, \$110 charged against me, when I  
357 had but \$10, and putting the \$100 against merchandise on journal No. 3, page 302, and the \$10 to me. This item is an intentional fraud upon us. The overcharge against us is \$100. Another error is, March 18, 1859, in crediting Wm. H. Arthur, with \$490, when he should have credited him with \$728 60, making a difference in his (James') favor of \$238 60. The entry is made by Mr. Whyte in the words, "W. H. A., Carson & Hard, \$728 60." Mr. Arthur had given notes of the firm to Carson & Hard, which notes Carson & Hard furnished money to pay, and  
358 these notes were indicated on our books by the initials, "W. H. A.," to signify that they were charged to W. H. Arthur. This note fell due on the same week with another note of Carson & Hard, not indicated as being for Mr. Arthur's account for \$490, for which amount Mr. Whyte gave the credit. I knew this to be the fact, only from the writing of Mr. Whyte in the book.

55. What is the date of the entry of the \$728 60?

*Ans.* March 16, 1859.

56. What is the date of the entry of the \$490 00?

*Ans.* March 18, 1859.

57. What is the entry ?

*Ans.* " W. H. Arthur from Carson & Hard, to pay our note, due to-day, \$490 00."

58. What is the date of the charge to bills payable of \$490 00 ?

*Ans.* March 18, 1859.

59. How is that entered ?

*Ans.* " Bills payable, Carson & Hard, \$490 00."

60. What is the next error ?

*Ans.* January 3, 1859, James charges himself with \$10 359 in cash-book, and posted it to some other account.

61. What other account is that \$10 posted to ?

*Ans.* I can't answer without looking through the books ; it is Wm. E. Arthur's account.

62. What is the next error ?

*Ans.* December 31, 1858, James charged sundries as paid from the petty cash \$658 85, and charged merchandise with \$643 85, making a difference of \$15 in his favor.

63. What is the next error ?

360

*Ans.* October 2, 1858, James charged himself with \$20 in the cash-book, and did not put it to his own account.

64. What is the next error ?

*Ans.* April 15, 1859, James charged himself with \$43 in the cash-book, and posted it to merchandise account and not to his own.

65. What is the next error ?

*Ans.* May 17 and 18, 1860, James charged William C. Freeman \$3,075, and credited May 19th, 1860, \$2,286 20, 361 making a deficiency in the proper charge of \$788 80.

Another error is, May 21st and 22d, 1860, James charged in excess \$7 50, and credited in excess \$4 50, making a difference of \$3, or rather \$3 04, the correct amount.

Another error is, May 24th and 23d, 1860, James charged in excess \$47 75, and credited in excess \$38 52, making a difference in his favor of \$9 23.

Another error is, May 25th, 1860, James charged in excess \$54.

Another error is, May 26th, 1860, James charged in excess \$85 75.

Another error is, May 28th, 1860, James charged in excess \$74 75.

Another error is, May 29th, 1860, James charged in excess \$200.

Another error is, May 30th, 1860, James charged in excess \$5.

Another error is, May 31st, 1860, James charged 362 \$2,375 50, credited \$2,315 25, making a deficiency of \$60 25.

Another error is, June 1st, 1860, James charged \$2,350, credited \$2,200, making a deficiency of \$150.

Another error is, June 2d, 1860, James charged \$2,200, and credited \$2,000, making a deficiency of \$200.

Another error is, June 4th, 1860, James charged \$2,000, and credited \$1,900, deficiency \$100.

Another error is, June 5th, 1860, James charged \$1,900, and credited \$1,800, deficiency \$100.

363 Another error is, June 6th, 1860, James charged \$1,800, and credited \$1,700, deficiency \$100.

Another error is, June 7th, 1860, James charged \$1,700, and credited \$1,600, deficiency \$100.

Another error is, June 8th, 1860, James charged \$1,700, and credited \$1,500, deficiency \$200.

Another error is July 9th, 1860, James charged \$1,700, and credited \$962 50, deficiency \$737 50.

These are all the discrepancies I find in the account of William C. Freeman.

364 I conceive those to be discrepancies, by which we lost the amounts of money which they represent, from the fact that our transactions with Mr. Freeman, during that period, consisted only of the exchange of checks to carry for him an amount which he was indebted to the East River Bank for, during which time he was absent from the city, and we could have no other transactions with him, blank checks signed by him having been left with me for the purpose of making those exchanges.

66. Where are those checks.

365 *Ans.* I haven't the remotest idea where they are ; I have

tried a number of times to find them, for the purpose of correcting Mr. Freeman's account with the firm of W. H. Arthur & Co., which he believed to be incorrect by some four thousand or five thousand dollars, by reason of false entries made by Mr. James Whyte, as he (Mr. Freeman) stated to me.

67. Did you keep a regular check-book or books in which the amount of these checks are entered, of which you have been speaking?

*Ans.* We did, those of Arthur & Company. 366

68. Did you those you made out of Freeman's.

*Ans.* I did not, except a memorandum for a time, which I finally abandoned, thinking that the account kept by Mr. Whyte was sufficient.

69. Did the amounts of charges and credits at all times exactly correspond, as the transactions actually took place, so that if the entries of those amounts in the books had been correct, the accounts would exactly balance?

*Ans.* To the best of my recollection they would actually balance in all cases, with the exception, that some two or 367 three times we had checks of other parties, which made up the amount within a sum of ten dollars, and which were made to balance by drawing a check of Freeman for an amount, which would make it balance.

70. As those entries stand in the accounts on the books, they show a balance due from Freeman to your firm of the amount of the difference between the charges and credits, do they not?

*Ans.* They do, as they stand on the books.

71. Do there appear to be any erasures or alterations 368 of the original entries in these accounts of Freeman?

*Ans.* If you call these original entries, I do not see any. The dates in the cash-book are very badly mixed up for the month of July, and I think those are not original entries.

72. In what book then are the original entries made?

*Ans.* They seem to have been made in this book (cash-book, lettered C) in lead pencil by myself, and afterwards written in ink, excepting entries to Freeman, which were not made by me in pencil, and most of the other amounts had been.

369 73. Do the entries in ink correspond in amount with the entries in pencil made by you ?

*Ans.* Some of them do and some of them do not.

74. What is the effect of such discrepancy ?

*Ans.* Where the entries correspond with my memorandum, they show that the ink entries must have been taken from them, and those that do not correspond must have been obtained from some other source ; I don't claim that there is anything wrong from ink figures which do not correspond with my pencil marks, as they were for loose  
370 money, the checks being deposited and entered in check-books, from which I suppose he made the ink entries, being his own entries.

75. In this account of Freeman, do not the amounts entered by Mr. Whyte in the cash-book, the journal, and the ledger, all correspond in amounts respectively ?

*Ans.* As far as I know they do ; I have not examined them all.

76. Do you recollect of speaking to Mr. James Whyte about some difficulty in Freeman's account ?

371 *Ans.* I don't know whether I did or not ; I might have done so.

77. Do you not recollect that Mr. Whyte requested you to let him go there and examine your books with Mr. Freeman in reference to that account, he alleging that it was right in the books, and he could explain it to you and Mr. Freeman, if he had the opportunity ?

*Ans.* I do not ; I do recollect of his saying that he could show us that all his deficiencies were covered by money from the savings banks ; that I told Whyte that I thought  
372 it would not cover the discrepancies in Freeman's account, which we had not had an opportunity to settle, owing to Mr. Freeman's absence. Whether he proposed to be able to show that it was correct I have no recollection.

78. How would you suffer in consequence of the credits to Freeman not corresponding with the checks given by him ?

*Ans.* If the credits were less than the checks, we would lose the difference, unless Mr. Freeman paid it, which, in this case, he declined to do.

79. Have you settled with Freeman?

373

*Ans.* No, sir.

80. Did you call on Mr. Whyte to aid you in the examination and settlements of the accounts with Mr. Freeman?

*Ans.* No, sir.

81. I understood you to say that the transactions with Freeman, spoken of, were simply to deposit your and other checks to his credit, in the East River Bank, where he kept his account, and each day filling up blank checks of his, which he had left for the purpose, with a corresponding amount, using those checks yourselves, and then the 374 next day depositing a check or checks to keep the account good until the close of the transaction; was that the nature of it?

*Ans.* Yes, sir, by depositing or using Freeman's checks in some other way.

82. Have you ever examined the account of Mr. Freeman, in the East River Bank, so as to see whether the checks, as returned there, corresponded in amounts with those, for which he is credited on your books?

*Ans.* No, sir.

375

83. How did you settle with Freeman, as to the amounts?

*Ans.* He would not admit the correctness of our account, insisting that it was \$3,000 or \$4,000 too much, and we finally compromised by calling it \$8,000, which was about \$2,720 13 less than the balance of his account on our ledger.

(Counsel for complainant objects to all that part of this answer as to Freeman's admissions and insistings, as not being responsive.)

376

84. How much of his accounts was made up of this transaction of exchanging checks?

*Ans.* I should think about \$116,000; the whole amount was \$175,000 about; our account with Freeman continued to about November, 1860; the settlement was in the fall of 1863.

85. Are there any other accounts kept by James than those you have specified, that you can now point out as erroneous ?

377 *Ans.* There are, if I take time to look them up, as I do not remember the specific dates ; I must hunt through the books to find them ; I know that there are others that I have before seen, the particulars of which have passed out of my mind, as the examination of the books was made several years ago, and I have no memorandum of it.

(Counsel for complainant objects to the answer as irresponsible, unless the items complained of are produced.)

378 86. After James came with Mr. Hayes to your store, and Mr. Hayes left him with the police officer, did that police officer continue with James, until the deed and assignment were executed by him and his wife ?

*Ans.* I can't answer that question, because it contains facts based on some things that did not exist ; Mr. Hayes did not leave him with the police officer.

87. After the police officer came to your store, on that occasion, as mentioned by you, did he continue with James until the deed and assignment were executed ?

379 *Ans.* Not all the time.

88. What part of the time, did he not continue with him ?

*Ans.* He did not continue with him all the next day, but I think he was away most of the time after we went to Mr. Sherwood's office and that he was only with him that day, while Whyte went to bring his wife to execute the deed.

380 89. Who requested him to go with Mr. Whyte, while he went to get his wife, to execute the deed ?

*Ans.* I have no recollection.

90. Where did they go to get James' wife—up-town, to his house ?

*Ans.* I never inquired where they went; don't know; suppose they did.

And thereupon the examination was further adjourned to Friday, March 10th, 1865, ten o'clock, A. M.

---

March 10, 1865, examination resumed in presence of the respective parties:

91. Under question 60, you say James charged in excess \$7 50, and credited in excess \$4 50. What means have you of knowing whether those entries were correct or not? 381

*Ans.* I have no means, except from the cash-book kept by James, and my own recollection, that all these transactions alluded to with Mr. Freeman consisted of nothing more than an exchange of checks on each day with him, for the same amount; but I do know that there were a few days on which we did not endeavor to make these exchanges balance within a few dollars, as we did use other checks than our own, when we happened to have them, and which we corrected by drawing his checks, on some subsequent day, to such an amount as would equalize the account. I do not charge any fraud in these small amounts under ten dollars.—I am certain that these amounts did not exceed ten dollars in any one instance. 382

92. Have you any knowledge, except what appears on the books, or any recollection, that these particular entries of charges and credits were not true, and corresponding to the checks given, in amounts? 383

*Ans.* I have not, except that derived from the fact of my recollecting that these transactions were equal in amount on both sides. I cannot recollect the particulars of any particular transaction, and I have now no means of proving the correctness or incorrectness of any of them, except in the general manner I have stated.

93. You say that James charged in excess fifty-four dol-

lars, on 25th of May, 1860. Do you know whether any of the entries from which you come to that result are not  
384 correct and true?

*Ans.* I know that some of them must be incorrect.

(Answer objected to, as being argumentative.)

I know that some of them are incorrect only from the fact that I recollect that the receipts and payments in all these transactions were equal, and from the discrepancies appearing on the face of the cash-book.

94. What discrepancies?

*Ans.* The charges being larger than the credits, when the transactions were equal.

385 95. How many items are there in the charges of that day, and what are they?

*Ans.* \$2,000 and \$730, amounting to \$2,730.

96. Which of those entries is not correct?

*Ans.* Can't tell, sir, which it is.

97. How many items are there in the credit of that day, and what are they?

*Ans.* \$900, \$901 50, \$874 50—making \$2,670.

98. Which of those items is untrue?

*Ans.* Can't tell.

386 99. On May 26, 1860, you say James charged in excess \$85 75. What are the items from which you come to that result?

*Ans.* A charge of \$2,700, and three credits of \$900, \$850, \$864 25—making a total of \$2,614 25.

100. Which of these items is incorrect or untrue?

*Ans.* My answer is, that I can't tell in relation to any of the items of this account relating to Freeman, except from the discrepancies which appear on the face of the books. I mean this answer to apply to all the items in the Freeman  
387 account, and I can't tell whether the errors occur in the credit or debit side.

101. You say that these items should balance each other in the general result, as they were only an exchange of checks, intended to be of equal amounts, do you?

*Ans.* I do.

102. In your settlement with Freeman, did you not insist upon his paying, and did he not pay you on such settlement several thousand dollars, more or less, more than he was credited with on the books?

*Ans.* Freeman paid us \$8,000, being a part of the difference of the excess of the debits to him over his credits; I do not understand what Mr. Cary means by the payment of more money than was credited to him. 388

*Re-direct Examination :*

43. What balance, if any, appeared to be due Wm. H. Arthur & Co. upon their books, in the account against Wm. C. Freeman?

*Ans.* \$10,720 13.

44. What did he pay you in settlement of that account? 389

*Ans.* \$8,000.

45. Had that account commenced before these check transactions, and did it continue after those check transactions, and did it include other matters and charges, having no relation to those transactions?

*Ans.* It commenced before those check transactions, continued after them, and embraced a good many other transactions.

46. Why was that sum of \$2,730 13 thrown off by you in that settlement? What did that discount represent? 390

(Objected to.)

*Ans.* It was thrown off because Mr. Freeman did not believe in the correctness of the account, as he could not see how he could get in debt to us by exchanging checks, and he said as it had been standing for a long time, he would be willing to pay \$8,000 and have no further trouble about it, and I accepted his proposition.

47. Was there any difficulty in relation to any other part of the account, than that which embraced these check transactions? 391

*Ans.* He made mention of nothing else ; there was no difficulty about the rest of it.

48. How much did Arthur & Westcott lose, as appears by the settlement of that account with Freeman ?

(Objected to.)

*Ans.* \$2,720 13.

49. By what means was that loss caused to your firm, as you then believed and as you now believe ?

(Objected to.)

*Ans.* By reason of the false entries made in our books  
392 by James Whyte.

50. Did you, or not, suppose at the time these entries in relation to the Freeman account in bank made by Whyte, that the daily charges and credits balanced each other, with the exception of the occasional differences you have named of a few dollars ?

*Ans.* I suppose they did.

51. When did you discover that that was the fact ; before or after Whyte left your employ ?

*Ans.* After he left our employ, and after the entry had  
393 been pointed out to us by Mr. Seaman, of which I have before spoken ; I cannot tell how long after.

52. Was there any difference between you or your partner or Mr. Freeman, as to the nature of those transactions relating to the checks ? Was or not the character of them, as you have given them here, understood and admitted in the same way by your firm and Mr. Freeman ?

(Objected to.)

*Ans.* Mr. Arthur had nothing to do with the settlement with Mr. Freeman, and there was no difference of opinion between Mr. Freeman and myself, in relation to these  
394 transactions and entries.

53. State in what book all these charges and credits in the Freeman account, which you have referred to, were made, and by whom they were made.

*Ans.* In a book in which was kept an account of all

the receipts and disbursements of the firm of W. H. Arthur & Co., and they were made by James Whyte. The book was labelled "Cash C, W. H. A. & Co."

54. In the year 1860, and during the time James Whyte was your book-keeper, who was in the habit of drawing and filling up your checks? 395

*Ans.* James Whyte; it was a practice for him to fill up the checks, and bring them to Mr. Arthur or myself to be signed.

55. Were you or not in the habit of asking Whyte, when he brought you such checks to be signed, what they were for, or did you trust to his honesty and correctness?

*Ans.* We generally asked no questions. Sometimes he would be directed to draw specific checks, and sometimes he would draw such as he knew to be necessary without any direction. It was my habit to sign any check he presented 396 to me. We made our notes payable at the American Exchange Bank, and when we had discounts we would draw it from the other banks generally in bills, and deposit the bills in the American Exchange Bank. These checks would be made payable to bearer.

56. Turn to the cash-book, and state the dates or the charges and credits relating to Win. C. Freeman's account, in which you make a deficiency of \$788 80, which you refer to in your answer to cross-question No. 65.

*Ans.* The charges and credits embrace the 17th, 18th, 397 and 19th of May, 1860.

57. Is the deficiency of \$788 80 which you have named, correctly stated by you?

*Ans.* Yes.

58. Can you give any other reason, than you have already stated, why the credit to W. H. Arthur of \$490 00, instead of \$728 60, for the note to Carson & Hard is wrong on the cash-book?

*Ans.* Yes, sir; I find the note of \$728 60 charged against Mr. Arthur, in his account in the ledger, and the \$490 charged to Carson & Hard, on their account, in the 398 ledger, and I know that these notes charged to Mr. Arthur, and given to Carson & Hard, were to be paid for, not by the firm of W. H. Arthur & Co., as the money was

to be furnished for the purpose by Mr. Arthur, and I never knew an instance in which he failed to furnish it. The date of the credit to Mr. Arthur is made under date of 18th of March, the date of the maturity of the note to Carson & Hard, of \$190, but it was a custom of Mr. Whyte to enter all the notes due in one week, at one time and we cannot tell by the books whether the credits to Mr. Arthur were made on the day on which we received the money, or subsequently.

59. State briefly the circumstances under which you came to make good and keep good the account of Wm. C. Freeman, at the East River Bank.

*Ans.* He was going to Washington, I think, to get some money due him by the government, expecting to be gone only three or four days. He asked me to keep his account good, stating that the cashier of the East River Bank had consented to its being kept good in this way. He was detained in Washington much longer than I expected he would be, and I was therefore compelled to continue the exchange of checks or pay the amount ourselves.

60. In the evening that Mr. Whyte was at your store before the deed was given, was anything said there in his hearing about his being under arrest, and if so, what?

*Ans.* I distinctly told Mr. Whyte that he was not under arrest, and that I wanted him to go and stay with this man or policeman voluntarily, which he consented to do, upon my promising to take a note from him to his wife.

61. When were those figures in the cash-book, in pencil, which you have referred to in your cross-examination made.

*Ans.* July, 1860, during Mr. Whyte's absence. He was absent from the 3d to the 9th of July, 1860.

C. S. WESTCOTT.

Sworn before me, Feb. 9, 1865, }  
and subscribed March 10, A. }  
D. 1865, at Jersey City. }

A. S. JACKSON,  
*Mast. in Chancery, N. J.*

402 A true copy of the original testimony.

A. S. JACKSON,  
*Mast.*

## IN CHANCERY OF NEW JERSEY.

Between	}	<i>On bill for relief and injunction.</i>
ALEXANDER WHYTE, <i>Complainant,</i>		
<i>and</i>		
WILLIAM H. ARTHUR & CHARLES S. WESTCOTT, <i>et al,</i> <i>Defendants.</i>		

## REBUTTING TESTIMONY ON THE PART OF COMPLAINANT.

Examination of witnesses on the part of the complain- 403  
ant, taken before me, ABRAHAM S. JACKSON, a Master and  
Examiner in this court, on Friday, the 10th day of March,  
A. D. 1865, at half-past three o'clock, p. m., at my office,  
No. 7 Exchange Place, in Jersey City, in presence of Jere-  
miah E. Cary, Esq., of counsel for the complainant, and  
Alfred Mills, Esq., of counsel with the defendants, Arthur  
& Westcott.

JAMES WHYTE, a witness on the part of the complain-  
ant, being recalled for the purpose of giving rebutting tes-  
timony, deposes and says : 404

1. Look at the item of March 16, 1859, of \$728 60, and  
explain whether there be any error in that item, or  
about it.

*Ans.* I have looked at the item. It is "Bills payable,  
W. H. Arthur for \$728 60," and is correct in every par-  
ticular. On the 14th of March, 1859, I received from Mr.  
Arthur, as appears from cash-book, the sum of \$300, and  
also another sum of \$428 60, making, in the aggregate, the  
sum of \$728 60 credited to Mr. Arthur on the cash-book,  
on account of that note of \$728 60, showing that there is 405  
no error in that charge.

2. Now explain the \$496 item of 18th of March, the same year.

*Ans.* On the 18th of March I charge in the cash-book a note—expressed as Carson & Hard note—of \$490, and on the same date I received from Mr. Arthur, and credit him in the cash-book, as it appears, the sum of \$490 to liquidate that sum of \$490 thus charged. This shows that there is no error in this account.

406 3. May 27th, 1859, there is an item of \$69 charged to Mr. Westcott, which he calls an error. Is that an error, or is it correct?

*Ans.* I maintain it is correct.

4. Is the item of a similar amount on the 26th of March, 1859, the same or a different sum had by him?

*Ans.* I maintain it is a different sum entirely.

5. Is there any incorrectness in either of the charges?

*Ans.* I believe there is not.

407 6. In all those items in regard to Freeman's account, were the entries made by you truly made, in conformity with the amount of the checks as they were given at that time?

*Ans.* They were.

7. Were the checks given by you to Freeman of an equal amount, or intended to balance each other on each occasion, or was there a difference on the amount of the exchange? Explain with regard to alleged difference in these entries.

408 *Ans.* There were not of the same amounts all through those transactions. In the earlier part of these check transactions with Freeman, the checks given and received balance; but subsequently the checks given by Freeman exceeded those in amount received from him on corresponding dates. I noticed this fact in slightly looking over the account yesterday. I noticed it from the entries in the books.

8. The entries were made according to the fact, were they?

409 *Ans.* The entries were made according to the fact in every particular, and in every instance.

9. As to the alleged alteration in the footing of October

26, 1859, look at that and see if there is any incorrectness about that.

*Ans.* I see no inaccuracy, it is all correct.

10. Did you and Hayes, and Arthur, all go together to Arthur & Co.'s store, or did Arthur go ahead of you?

*Ans.* We did not go together. This Hayes, as he is called, accompanied me and my wife as far as Broadway, where Hayes hailed a stage, and my wife proceeded uptown, home. Hayes and I then walked along Broadway 410 in the direction of the City Hall, saying to me it would be necessary for me to go to the chief's office. After proceeding a little ways, turning to me, he asked me, if I would not prefer going to Arthur's store and see them first. Expressing a desire to go to the store, we turned and came into Arthur & Co.'s store, where I saw Arthur, he having preceded me.

11. Did Mr. Westcott tell you that you were not under 411 arrest?

*Ans.* I am certain that he did not.

12. What time was the police officer with you, and where did you go during that time?

*Ans.* From that evening at the store, during that entire evening, and during the entire next day, and until the deed was executed, and the assignment of the mortgage at the residence of this lawyer, Sherwood, who resided next door to Mr. Westcott, in Twenty-fifth street.

13. Did you consent voluntarily to go with the police 412 officer, and stay with him over night without understanding that he had you in charge, and that you were obliged to do it?

*Ans.* I did not consent; my consent was not asked in the matter.

14. The letter you wrote to your wife, as referred to by Mr. Westcott, as being sent by him to her, was it read to Arthur or Westcott before it was sent?

*Ans.* When about to seal that note to my wife, Mr. Arthur stepped up to me and told me he would like to see it before sealing; whereupon I handed it to him, and he returned, and I sealed it in his presence.

15. Did you tell Mr. Westcott that you would go down and look over Freeman's account and explain it to Freeman, if he would give you an opportunity of doing so? or what did you say to him on the subject?

*Ans.* I did express to Mr. Westcott a wish to examine this account of Freeman, or any other account, which contained differences of large amounts.

16. Did he ever give you an opportunity of doing so?

*Ans.* He never did, although I on more than one occasion expressed a desire to see W. C. Freeman's account.

17. Was the amount of each check given by W. H. Arthur & Co., entered in the check-book, with a statement showing to whom and for what object it was given, and would that memorandum remain, after the check was cut out?

*Ans.* My habit was to make explanatory notes, explaining the purposes for which checks were given, in the margins of the different check-books, so far as I know the purposes for which the checks were given. The amounts in the margins of the check-book will invariably agree 415 with the amounts charged by me in the cash-book.

18. Have you examined these books, which have been produced before the examiner on this examination and to which Mr. Westcott has referred to in his testimony, in reference to all the alleged erroneous entries and discrepancies in them?

*Ans.* I have examined them.

19. Will you say now, whether or not, the amount of money received by W. H. Arthur & Co. from your deposits in the savings banks, was enough or more than enough to 416 cover all indebtedness by you to them, on accounts of over-drafts, erroneous entries or any other account?

*Ans.* I say that the money I had in the savings banks, which was turned over to them was more than sufficient to cover my entire indebtedness to them from over-drafts, false or erroneous entries, or short postings or from any other cause.

20. If a settlement between W. H. Arthur & Co. and Wm. C. Freeman, all the books of account kept by you, together

with the stamps of the checks in the check-books remain- 417  
 ing and the checks, which had been returned to the re-  
 spective parties by the banks, on balancing the bank ac-  
 counts, had been carefully examined and compared, could  
 not the real and true state of the accounts between  
 those parties have been ascertained with reasonable cer-  
 tainty.

*Ans.* Certainly.

21. If there had been any false entries made by you in  
 those accounts, could not each particular error have been  
 ascertained on such examination and comparison? 418

*Ans.* Each particular error or discrepancy could easily  
 have been ascertained.

22. Did you say to Mr. Westcott that it was well that  
 you had obtained a deed from your father of the farm, so  
 that you could now convey it to them, or anything to that  
 effect?

*Ans.* I have never said that, or anything in substance  
 to that effect, to Mr. Westcott.

In answer to question put by counsel for defendants Ar-  
 thur & Westcott, he says, I forgot the circumstance of the 419  
 keys of the tin boxes; one of the boxes was broken open  
 before it came down, the other box was, I believe, opened  
 by Mr. Westcott; I don't recollect now; when we  
 came to New York we landed at the Cortlandt street  
 ferry.

JAMES WHYTE.

Taken and subscribed before me, }  
 March 10, 1865, at Jersey City. }

A. S. JACKSON,

*Master in Chancery, N. J.*

A true copy of the original examination.

A. S. JACKSON,

420

*Master.*

## ABSTRACT AND COPY.

*Exhibits on the Part of the Complainant.*

C 1.—Deed from Daniel Tillotson to James Whyte, dated, May 12, 1860, conveys in fee the premises as described in the complaint, recorded in Morris county, in Book W 5, pages 100, &c.

C 2.—Deed from James Whyte and wife, to Alexander Whyte. Deed dated February 21st, 1861. Consideration 421 \$3,000, conveys by warranty, the same premises in the complaint mentioned and set forth, subject to a mortgage, dated, May 1, 1847, given by David Tomkins and Sarah Tomkins, to secure the payment of \$600 with interest, payment of which was assumed by the grantee as a part of the consideration of the said deed.

C 3.—Copy summons.

## SUPREME COURT—COUNTY OF NEW YORK.

---

WILLIAM H. ARTHUR & CHARLES  
S. WESTCOTT,

422 . . . . . *ag'st*

JAMES WHYTE.

---

*To the above-named defendant :*

You are hereby summoned and required to answer the complaint in this action, which will be filed in the office of the Clerk of the city and county of New York, at the City-Hall, in the city of New York, and to serve a copy of your answer to the said complaint on the subscribers, at their office at No. 32 Pine street, in the city of New York, within twenty days after the service of this summons on

you, exclusive of the day of such service, and if you fail 423  
to answer the said complaint within the time aforesaid,  
the plaintiffs will take judgment against you for the sum  
of seven hundred and sixty-three dollars and ninety cents,  
with interest from the 17th day of November, one thousand  
eight hundred and sixty, besides the costs of this action.

Dated, October 1, 1861.

L. & L. SHERWOOD,  
*Plaintiffs' Attorneys.*

(Endorsed)

To JAMES WHYTE.

424

C 4.—Received of James Whyte, the sum of thirty-  
three hundred dollars in full, of damages and costs in a  
certain action commenced by us in the Supreme Court,  
by attachment and summons, by L. & L. Sherwood, our  
attorneys, and also in full of all claims and demands of  
whatsoever name, nature or kind, to the date hereof. And  
we hereby agree to discontinue all proceedings in said  
action.

Dated this 31st day of October, A. D. 1861.

W. H. ARTHUR & Co.

425

C 5.—

NEW YORK, *November 17th*, 1861.

Received from James Whyte, fifty dollars on account.  
\$50.

W. H. ARTHUR & Co.

C 6.—Deed from Jonathan Wilt and wife, to Alexander  
Whyte, all of the city of New York, consideration \$1025,  
dated, November 28, 1849, conveys with warranty, Lots,  
numbers 129 and 130, situated on 44th street, in the city  
of New York, duly executed, acknowledged and recorded 426  
in the office of the Register of the city and county of  
New York, in Liber 531 of Conveyances, page 159, De-  
cember 18, 1849.

C 7.—Deed from James Fullerton and wife to Alexander Whyte, dated the 14th day of Nov. 1849, consideration \$550, conveys with warranty, Lot No. 131, situated on 44th street, in the city of New York, duly executed, and acknowledged and recorded in the Register's office of the city and county of New York, in Liber 529 of Conveyances, page 312, November 21, 1849.

---

EXHIBITS ON PART OF THE DEFENDANTS,  
ARTHUR AND WESTCOTT.

EXHIBIT M 1.

Is warrantee deed from Alexander Whyte to James Whyte, dated October 3, 1861, acknowledged October 3, 1861, and recorded January 28, 1862, in Book A 6 of Morris County Deeds, page 157, &c., conveying, in consideration of \$2,800, the premises described in bill of complaint.

This conveyance is made subject to mortgage from Tomkins to Tomkins for \$600, and to mortgage from  
428 Alexander Whyte to Emma Whyte for \$2,200.

EXHIBIT M 2.

Is deed from James Whyte and Emma, his wife, to William H. Arthur and Charles S. Westcott, dated October 31, 1861, acknowledged October 31, 1861, and recorded November 1, 1861, in Book B 6 of Deeds for Morris county, pages 3 and 4—same premises as in M 1—consideration named, \$1 00.

## EXHIBIT M 3.

Alexander Whyte		429
	To James Whyte,	
To amount cash from Canada.....	\$260 00	
“ Cash to build basement.....	100 00	
“ 6½ years' a \$300 per year.....	1,950 00	
“ Cash, taxes, water rent, interest on mortgages, &c.....	500 00	
“ Cash, moneys put in store from Jan. 1 to Oct. 1, 1859.....	660 00	
“ Cash to help to pay R. N. Rogers' lumber bill.....	100 00	
“ Cash assessments, Feb. 11, 1852	207 10	
“ “ “ .....	772 46	
	<hr/>	4,549 50
	<i>Cr.</i>	
By property .....	\$8,000 00	430
Mortgage, P. Bullard... \$3,000 00		
“ D. Tillettson. 800 00		
Interest on above, say... 200 00		
	<hr/>	4,000 00
		<hr/>
		4,000 00
		549 50
By sundry goods in store, per bill of sale.....		300 00
		<hr/>
Balance due James Whyte, Sept. 28, 1859....		\$249 50

## EXHIBIT M 4.

Is certified copy of warrantee deed from Alexander Whyte to James Whyte, dated September 28, 1859, and recorded September 29, 1859, in office of Register of Deeds of city of New York, in Liber 795 of Cons., page 169, conveying three lots on 44th street, in Twenty-second ward of city of New York, and designated by numbers 129, 130, and 131 on map, &c., each of said lots being 25 feet front and rear, and 100 feet and 5 inches deep, subject to two mortgages made by party of first part, together amounting to \$3,800, and to the taxes and assessments outstanding.

## EXHIBIT M 5.

To P. H. KINGSLAND,  
Comptroller's Office,

432 Please search for taxes and assessments, and sales for  
taxes and assessments, of, upon, or affecting the premises  
exhibited on the accompanying diagram, and numbered  
And certify the result for  
NEW YORK, 186

[Diagram of lots 37, 38 and 39, on Forty-fourth street,  
between Tenth and Eleventh avenues, New York.]

	Taxes for 1849, paid.....	\$4 50
	“ 1850, “ .....	2 08
	“ 1851, “ .....	5 38
	“ 1852, “ .....	7 32
	“ 1853, “ .....	20 44
	“ 1854, “ .....	26 12
	“ 1855, “ .....	51 33
433	“ 1856, “ .....	50 33
	“ 1857, “ .....	57 91
	“ 1858, “ .....	63 00
	“ 1859, “ .....	72 57
	“ 1860, “ .....	74 57
	“ 1861, “ .....	88 07
	“ 1862, “ .....	76 30
	“ 1863, “ .....	89 53
	“ 1864, “ .....	95 04
	Curb and gutter 44th st., Nov. 20, 1851, \$207 10; paid Feb. 12, 1852, interest, \$3 22.....	210 32
	Regulating 10th ave., Sept. 13, 1852, \$3 45; 434 paid Jan. 25, 1855, interest, \$0 57.....	4 02
	Paving 44th st, July 21, 1853; paid Aug. 15, 1853,.....	59 67
	Paving 10th ave., Nov. 28, 1854; paid Jan. 25, 1855.....	29 64
	Sewer 44th st., Aug. 15, 1856, \$629 25; paid July 9, 1858, interest, \$143 15.....	772 40
	Nothing else found.	

P. H. KINGSLAND.

Feb. 8, 1865.

The above is admitted to be a list of taxes and assess-  
ments on the property in New York, alluded to in the  
foregoing case as having been deeded by Alexander Whyte  
to James Whyte.

J. E. CARY,  
Sol'r of Compl't.

The verification of this paper admitted, waiving further  
proof, but denying its materiality.

435

Dated, Mar. 10, 1865.

J. E. CARY,  
*Sol'r of Compl't.*

## COURT OF ERRORS AND APPEALS, N. J.

---

Between

WILLIAM H. ARTHUR and CHARLES  
S. WESTCOTT,  
*Complainants,*

*and*

ALEXANDER WHYTE,  
*Defendant,*

and

ALEXANDER WHYTE,  
*Complainant,*

*and*

WILLIAM H. ARTHUR and others,  
*Defendants.*

---

## STATE OF THE CASE.

436 On the 10th of April, 1862, the first above-named complainants, Arthur and Westcott, filed their bill of complaint in the Court of Chancery of New Jersey against the defendant, Alexander Whyte, and therein prayed an injunction to restrain said Whyte from cutting timber, &c., on the premises therein described.

The said Alexander Whyte filed an answer to said bill of complaint, and on the 13th day of June, 1862, filed his cross-bill of complaint against the said William H. Arthur and Catharine, his wife, Charles S. Westcott and Hamilton, his wife, and James Whyte and Emma, his wife, defendants.

437

On the 8th day of October, 1862, the defendants, Arthur and Westcott and wives, filed their answer to the cross-bill.

The bill of complaint in the original action, and the answer thereto, are not printed herewith; but the substance of said original bill is stated in the answer to the cross-bill, and the cross-bill contains substantially the same matters and allegations as the answer to the original bill.

The cross-bill and the answer thereto, and Whyte's replication to the last-named answer, are herewith printed. 438

The complainants in the original action did not file any replication to the answer in that action.

The complainant in the cross-action filed a replication to the answer of Arthur and Westcott and wives, a copy of which is herewith given.

No answer having been filed by James Whyte and Emma, his wife, to the bill in said cross-action, said bill was, by order, entered on the 1st day of April, 1863, taken as confessed by them. 439

Testimony (a copy of which is herewith presented) was taken in said cross-action, and the same was noticed and argued before the chancellor, and on the 20th day of December, 1865, he rendered the following final decree :

## IN CHANCERY OF NEW JERSEY.

Between	}		
WILLIAM H. ARTHUR and CHARLES S. WESTCOTT,		<i>Complainants,</i>	<i>On Bill, &amp;c.</i>
<i>and</i>			
ALEXANDR WHYTE,		<i>Defendant,</i>	<i>Final Decree.</i>
<i>and</i>			
ALEXANDER WHYTE,		<i>Complainant,</i>	
<i>and</i>			
WILLIAM H. ARTHUR, <i>et al.</i> ,		<i>Defendants.</i>	<i>On Cross-Bill, &amp;c.</i>
*			

- 440 This cause coming on to be heard upon bill, answer, replication, &c., in the original suit, and upon cross-bill, answer, replication, &c., in the cross-suit, in the presence of Alfred Mills, of counsel with the said William H. Arthur and Charles S. Westcott, and of J. E. Cary, of counsel with the said Alexander White; and it appearing that the said complainants in the original bill filed their said bill to enjoin the said defendant therein from committing waste upon certain premises in his possession in the township of Hanover, in the county of Morris, and State of New
- 441 Jersey, particularly described in said bill, and to which said complainants claimed a title in fee simple; and that the said defendant Alexander White, filed his cross-bill to compel the defendants therein to convey to him the prem-

ises therein described, being same premises described in said original bill, and for an assignment to him of a certain mortgage upon said premises set forth in said original bill and in said cross-bill, and to restrain the complainants in the original suit, *pendente lite*, from proceeding at law to recover possession of said premises, and from alienating or encumbering the same; and the pleadings and proofs in the cause having been read, and the arguments of counsel heard and considered; and the Chancellor being of opinion that the complainants in the original cause are entitled to the injunction and relief prayed in their said bill, and that the defendant Alexander White, the complainant in the cross-cause, is not entitled to the relief prayed in his said cross-bill. 442

It is thereupon, on this twentieth day of December, in the year of our Lord one thousand eight hundred and sixty-five, by the Honorable Henry W. Green, Chancellor of the State of New Jersey, ordered, adjudged, and decreed, and the said Chancellor by virtue of the power and authority of this court, doth hereby order, adjudge, and decree, that the said complainants William H. Arthur and Charles S. Westcott, are entitled to the injunction and relief prayed in their original bill of complaint, and that the injunction heretofore issued in the original cause enjoining the said Alexander Whyte, from cutting down or destroying the timber or other trees standing, growing, or being in or upon the premises described in said original bill of complaint, or in and upon any part thereof, and from taking and carrying away, selling or disposing of, or causing to be taken away, sold, or disposed of, any wood, timber, or cross-ties, lying or being upon said premises or any part thereof, that have been cut upon the same since the first day of November, A. D. eighteen hundred and sixty-one, and from committing or doing any further or other waste or spoil in or upon the said premises or any part thereof, be and the same is hereby decreed to be perpetual, with costs. And it is further ordered, adjudged, and decreed, that the said 443 444 445

defendant Alexander Whyte, is not entitled to the relief prayed in his said cross-bill ; and that the injunction heretofore issued in said cross-cause be and the same is hereby dissolved, and the said cross-bill is hereby dismissed, with costs.

446 And it is further ordered, adjudged, and decreed, that the said defendant Alexander Whyte, do, within twenty days after the service upon him of a copy of this decree, pay to the said complainants their costs to be taxed in the said original cause and in the cross-cause, and that in default of such payment, and upon proof thereof and of service of a copy of this decree, execution do issue therefor according to the practice of this court.

HENRY W. GREEN,  
*Chancellor.*

A true copy.

The chancellor declined assigning in writing the reasons for his decree.

On the 29th day of the same December, the said Alexander Whyte filed in the office of the clerk of said Court of Chancery his notice of appeal, as follows, and served a copy on the solicitor of the said Arthur and Westcott :

## IN CHANCERY OF NEW JERSEY.

---

Between

WILLIAM H. ARTHUR and CHARLES  
S. WESTCOTT,  
*Complainants,*

*and*

ALEXANDER WHYTE,  
*Defendant,*

and

ALEXANDER WHYTE,  
*Complainant,*

*and*

WILLIAM H. ARTHUR, *et al.*,  
*Defendants.*

---

Alexander Whyte, the defendant in the first above-entitled suit and complainant in the second above-entitled suit, hereby appeals from the final decree made in this court in the above-stated causes, and the parts thereof complained of as erroneous are that portion of said decree which adjudges that the said William H. Arthur and Charles S. Westcott are entitled to the injunction and relief prayed for in their original bill of complaint, and that the injunction heretofore issued in the original cause, enjoining the said Alexander Whyte, from cutting down or destroying the timber or other trees, standing, growing or being in or upon the premises described in said original complaint, &c., and also that portion decreeing the said injunction to be perpetual with costs and also that portion

447

448

which adjudges that the said Alexander Whyte is not entitled to the relief prayed in his said cross-bill and that the injunction heretofore issued in said cross-action be dissolved, and the said cross-bill dismissed with costs.

To the Court of Errors and Appeals in the last resort in all causes in law.

449 Dated December 27, 1865.

J. E. CARY,  
*Solicitor and of Counsel for said*  
ALEXANDER WHYTE.

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

J. E. CARY,  
*Of Counsel with said*  
ALEXANDER WHYTE.

And on the said appellant  
filed in this court his petition of appeal, as follows :

## COURT OF ERRORS AND APPEALS.

---

Between

WILLIAM H. ARTHUR and CHARLES  
S. WESTCOTT,  
*Complainants,*

*and*

ALEXANDER WHYTE,  
*Defendant,*

and

ALEXANDER WHYTE,  
*Complainant,*

*and*

WILLIAM H. ARTHUR *et al.*,  
*Defendants.*

---

450

*To the Honorable the Court of Errors and Appeals :*

The humble petition of Alexander Whyte, the appellant in the above-stated causes, respectfully shows : That your petitioner finds himself aggrieved by a final decree made in the Court of Chancery by his Honor Henry W. Green, Chancellor of New Jersey, bearing date the 20th day of December, in the year of our Lord 1865, wherein the said Alexander Whyte was defendant in the original suit, and the said William H. Arthur and Charles S. Westcott were complainants, and the said Alexander Whyte was complainant in the cross-bill and action, and the said Wil-

451

452 liam H. Arthur and Charles S. Westcott and others were defendants, in this respect, to wit, that the said decree adjudges that the said William H. Arthur and Charles S. Westcott are entitled to the injunction and relief prayed in their original bill of complaint, and that the injunction theretofore issued in the original cause enjoining the said Alexander Whyte from cutting down or destroying the timber or other trees standing, growing, or being in or upon the premises described in the said original bill of complaint, &c., is thereby decreed to be perpetual with costs.

453 And also that it adjudges and decrees that the said Alexander Whyte is not entitled to the relief prayed in his cross-bill, and that the injunction theretofore issued in said cross-action be dissolved, and the said cross-bill dismissed with costs.

And also that the said decree orders and adjudges that the said defendant, Alexander Whyte, do within twenty days after the service upon him of a copy of said decree, pay to the said complainants their costs to be taxed in said original cause and in the cross-cause, and that in default of such payment, and upon proof thereof, and of service of a copy of said decree, execution do issue therefor according to the practice of said court.

454 And your petitioner humbly appeals from those parts of the said decree of the chancellor which decrees, as aforesaid, upon the ground that the same are erroneous, for that the said defendant, Alexander White, is equitably entitled to the farm and premises in the said original bill of complaint mentioned and described, the same having been purchased with his money and for him, and conveyed by him to his son James White, the grantor of said complainants, Arthur and Westcott, in trust, to be held by him for the use and benefit of the said Alexander Whyte and the  
455 said Arthur and Westcott, having notice thereof and taking the conveyance of said premises by duress of the said

grantor and without paying any adequate consideration therefor, and the said conveyance being as against this appellant fraudulent and void ; and the said mortgage on said premises given by said Alexander Whyte to Emma Whyte, wife of James Whyte, in said original bill of complaint, and subsequent pleadings in that and the said cross-action mentioned, having been given to her by said Alexander Whyte inadvertently and unintentionally and without any consideration, and the said assignment thereof by said Emma Whyte to the said Arthur and Westcott having been made wholly without consideration, and was as to this appellant fraudulent and void. 456

Your petitioner therefore prays that the said decree of the said chancellor may be, in the particulars aforesaid, reversed, set aside, and for nothing holden, and the prayer of your petitioner in his cross-bill of complaint be granted, and that your petitioner may have such relief in the premises as to this Honorable Court shall seem meet. 457

Dated January 31, 1866.

J. E. CARY,  
*Solicitor for,*  
*and of Counsel with Appellant.*

## COURT OF ERRORS AND APPEALS, N. J.

---

Between

WILLIAM H. ARTHUR and CHARLES  
S. WESTCOTT,

*Complainants,*

*and*

ALEXANDER WHYTE,

*Defendant,*

and

ALEXANDER WHYTE,

*Complainant,*

*and*

WILLIAM H. ARTHUR *et al.*,

*Defendants.*

---

458 The answer of William H. Arthur and wife, and Chas. S. Westcott and wife, to the petition of appeal of Alexander Whyte, appellant.

These respondents not admitting all or any of the matters or things to be true as in and by the said petition of appeal are mentioned and set forth, for answer thereunto say, that they believe it to be true that such decree as is complained of was made by the Court of Chancery as in the said petition of appeal is mentioned and set forth, but as to the substance and extent thereof these respondents

459 humbly crave leave to refer thereunto, when the same shall be produced.

And these respondents humbly conceive and are advised that the said decree in the matters complained of in said petition of appeal, is correct and just, according to law,

and the proofs in said matter, and therefore humbly pray that said decree may be affirmed, and that the said appeal may be dismissed with costs.

ALFRED MILLS,  
*Solicitor for and of Counsel with Respondents.*