

NEW JERSEY
COURT OF
ERRORS AND APPEALS

IN THE LAST RESORT IN ALL CAUSES.

IN CHANCERY OF NEW JERSEY.

Between

DOUGLASS G. McCOTTER,
Complainant,

and

WILLIAM H. DeGROOT and
wife, Defendants.

} On bill, &c.

J. FLEMMING,

Solicitor of complainant.

SAMUEL D. HAINES,

Solicitor of defendant.

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1868.

N. J. Court of Errors and Appeals.

Bill of Complaint.

[Filed November 22, 1866.]

IN CHANCERY OF NEW JERSEY.

*To the Honorable Abraham O. Zabriskie, Esquire, Chancellor of
New Jersey.*

Complaining, your orator, Douglass G. McCotter, of Jersey City, in the county of Hudson, in the state of New Jersey, showeth—

1. That on the first day of November, in the year eighteen hundred and sixty-four, George R. Jaques, being indebted 10 to Ebie D. Cordts, in the sum of five hundred dollars, by his bond dated on that day, became bound to the said Ebie D. Cordts, in the sum of one thousand dollars, to be paid to him, his executors, administrators, or assigns, with a condition thereunder written, that if the said George R. Jaques should, on the first day of November, in the year one thousand eight hundred and sixty-nine, pay to the said Ebie D. Cordts, his executors, administrators, or assigns, said sum of five hundred dollars, with interest, at the rate of seven per cent. per annum, and should pay said interest quarterly, on 20 the first days of February, May, August, and November, in each and every year, then that bond should be void.

2. That in said bond, it was agreed between the parties thereto, that if said interest, or any part thereof, should not be paid within thirty days after the same should become due, then the whole principal sum secured thereby should be immediately due, at the option of the said Ebie D. Cordts, his executors, administrators, or assigns.

3. That to secure the payment of said five hundred dollars, with interest, the said George R. Jaques, by deed of mort- 30

gage, bearing date on the same day with said bond, conveyed to the said Ebie D. Cordts, and his heirs and assigns forever, in fee simple, those tracts or parcels of land, situate, lying, and being in the city of Elizabeth, county of Union, and state of New Jersey, and which are numbered and described on a certain map, on file in the office of the clerk of the county of Essex, in the said state of New Jersey, entitled map of building lots belonging to John Peters, as and by the numbers twenty (20), twenty-one (21), twenty-two (22), 10 twenty-three (23), and twenty-four (24), being part of premises conveyed to the said George R. Jaques by Ebie D. Cordts, and Mary H., his wife, by deed bearing even date with the said mortgage. The said mortgage was given to secure a part of the purchase money for the premises described therein, and was executed and delivered at the same time as the deed conveying the said lots to the said George R. Jaques, and Henrietta S., the wife of said Jaques, did not join in the said mortgage with her husband, and your orator charges and insists that any dower, or right of dower, 20 the said Henrietta Jaques may have in the said lots of land and premises, is subject to your orator's said mortgage.

4. The said mortgage contained a condition that the same should be void, upon payment of said sum of five hundred dollars, with interest at the rate, at the times, and in the manner in the condition of said bond set forth.

5. That said mortgage contained an agreement of the same effect as that in the bond above set forth, in paragraph two, that the whole of the principal should become due, if any part of the interest due remained unpaid for thirty days.

30 6. That said mortgage was, on the second day of November, eighteen hundred and sixty-four, duly registered in the office of the clerk of the county of Union, in Book 4, of Mortgages, page 348, the execution of the same having been first acknowledged, and such acknowledgment certified thereon, as required by law.

7. That said bond and mortgage, and an assignment, to which your orator refers for certainty, are in his possession, ready to be produced and proved.

8. That the said Ebie D. Cordts, on or about the seven- 40 tenth day of April, eighteen hundred and sixty-five, by

writing, under his hand and seal, dated on that day, assigned said bond and mortgage to your orator, which assignment was duly acknowledged by the said Ebie D. Cordts, on the seventeenth day of April, in the year last aforesaid, and recorded in the clerk's office of Union county, in Liber Two, of Assignments, page 619, on the fourteenth day of June, eighteen hundred and sixty-six.

9. That the said George R. Jaques, and Henrietta, his wife, on the first day of March, eighteen hundred and sixty-five, by their deed, dated on that day, conveyed the said 10 mortgaged premises, in fee, to William B. McSherry, which deed was accepted by the said William B. McSherry, and that it was stipulated in said deed, that the said lands were conveyed subject to said mortgage to Ebie D. Cordts, now held by your orator; and the same was assumed to be paid by the said William B. McSherry, as part of the consideration money of said deed; by which stipulation and acceptance the said William B. McSherry became bound in law to said Ebie D. Cordts, and in equity to your orator, to pay the amount due, and to become due on said mortgage. 20

10. That the said William B. McSherry, on the thirty-first day of March, in the year eighteen hundred and sixty-five, by his deed, dated on that day, conveyed the said mortgaged premises to William H. DeGroot, in fee; and his wife, Alice E., claims an inchoate right of dower in said premises; which deed was accepted by said William H. DeGroot, and Alice E. DeGroot, his wife, and that it was stipulated in said deed that said lands were conveyed, subject to said mortgage, to said Ebie D. Cordts, and that the same was assumed to be paid by the said William H. DeGroot, as part of the consid- 30 eration of said deed; by which stipulation and acceptance the said William H. DeGroot became bound to said William B. McSherry at law, and in equity to your orator, to pay the amount due, and to become due on said mortgage. The wife of said William H. DeGroot is named Alice E. DeGroot, and claims in said mortgaged premises an inchoate right of dower, but your orator charges, her right is subject to his mortgage.

11. That on the first day of February, eighteen hundred and sixty-six, the sum of eight dollars and seventy-five cents, 40

being three months interest on said bond, became due, and on the first day of May then next ensuing, the sum of eight dollars and seventy-five cents became due, being three months interest on said bond, and on the first day of August, in the year last aforesaid, the sum of eight dollars and seventy-five cents, being another three months interest on the principal sum of five hundred dollars, secured by said bond and mortgage, given by said George R. Jaques to Ebie D. Cordts, became due, and that the said several sums have not
 10 been paid, and has remained unpaid for more than thirty days after the same became due, as above specified, and your orator has elected, and hereby elects, that the whole of said principal shall be due; and that on the first day of November, eighteen hundred and sixty-six, the sum of eight dollars and seventy-five cents, three months interest on the said bond, became due, and is still due and owing, and with the other sums above mentioned, unpaid to your orator.

12. That the whole of said principal sum of five hundred dollars, with interest thereon, from the first day of November,
 20 ber, eighteen hundred and sixty-five, is due and payable to your orator.

13. That the said Ebie D. Cordts, or your orator, have never had possession of said mortgaged premises, or received any of the rents or issues thereof.

14. That your orator has requested the said William H. DeGroot, and Alice E., his wife, who are the defendants in this suit, to pay him the principal and interest, so due on his said bond and mortgage, or to convey and release to him
 30 said mortgage debt, with which requests they and all of them refused and neglected to comply.

In tender consideration whereof, and inasmuch as your orator is remediless in the premises, in the courts of law, and can only have adequate relief in a court of equity, and to the end—

1. That the defendants, and each of them, may answer upon their respective oath or affirmation, according to the best of their respective knowledge, information, and belief, all and singular the premises, and each fact above stated;
- 40 2. That an account may be taken, under the direction of

this court, of the amount due upon your orator's said mortgage;

3. That the defendants, or some of them, may be decreed to pay to your orator the amount so found due, with interest thereon, and your orator's costs of suit, by a short day, to be appointed by this court; and that in default thereof, said defendants, and each of them, do stand debarred and foreclosed of all equity of redemption in said mortgaged premises;

4. That said premises may be sold by the order of this court, and out of the proceeds of said sale, your orator may be paid the amount so found due upon his said mortgage, with interest thereon, and his lawful costs in this suit ;

5. That if the proceeds of said sale shall not be sufficient to pay said amount, with interest and costs, that the said William H. DeGroot may be decreed to pay the deficiency ;

6. That your orator may have such other relief as the nature of his case requires, and as may be agreeable to equity.

May it please your Honor, to grant unto your orator the state's writ of subpœna, issuing out, and under the seal of this court, to be directed to the said William H. DeGroot, and Alice E., his wife, commanding them, on a certain day, and under a certain penalty therein expressed, to be and appear before your Honor, in this court, then and there to answer the premises, in manner aforesaid, and to stand to, abide by, and perform such order and decree, as your Honor shall make therein.

J. FLEMMING,

Solicitor for and of counsel with complainants.

Answer.

[Filed March 6, 1867.]

IN CHANCERY OF NEW JERSEY.

The answer of William H. DeGroot, and wife, defendants, to the bill of Douglass G. McCotter, complainant.

These defendants, now and at all times hereinafter, saving and reserving unto themselves all benefits and advantages which can or may be had or taken to the many errors and uncertainties, and other imperfections in the said complainant's bill of complaint contained, for answer thereunto, or
10 unto so much, and such parts thereof, as these defendants are advised, is or may be material or necessary for them to make answer unto, these defendants answering, say—

1. That they admit that there was a bond and mortgage made by George R. Jaques, to Ebie D. Cordts, and that the said mortgage was given to secure a part of the purchase money, for the premises described in said mortgage, as in said bill stated; and these defendants further admit, that the whole of the principal should become due, if any part of the
20 interest due remained unpaid for thirty days, as in said mortgage mentioned; and these defendants further admit, that on or about the seventeenth day of April, one thousand eight hundred and sixty-five, the said Ebie D. Cordts assigned the said mortgage, with the said bond, to the complainant; and these defendants further admit, that the said premises were conveyed to the said William H. DeGroot, as in said bill stated.

2. And these defendants further say, that at the time herein mentioned, they were, and now are, residents of the state
30 of New York; and the said defendants further say, that all the interest in the said bill mentioned, is not due as therein stated, nor is any part of said interest due, as therein stated; that Douglass G. McCotter, the complainant, made an agreement with the defendant, William H. DeGroot, on or about the first day of May, one thousand eight hundred and sixty-

five, at number 142 Fulton street, in the city of New York, in said state of New York, and that agreement was that the said Douglass G. McCotter should call at the office of the said William H. DeGroot, at said number 142 Fulton street, in said city, to receive his interest on the said mortgage, as it became due thereon, and that there never has been any other agreement existing between them, as to what place said interest should be paid; and the said defendants say that said complainant did call at said office, and receive his interest, from the time the first interest fell due, after the 10 said conveyance of the said premises to the said defendant, William H. DeGroot, up to the first day of February, one thousand eight hundred and sixty six, but not afterwards, except as hereinafter stated.

3. And these defendants further say, that at the said time and place, at the making of said agreement, as aforesaid, the defendant, William H. DeGroot, requested the said Douglass G. McCotter, the above complainant, to give these defendants his address, and further, asked the complainant where his place of residence was, and he, the said complainant, de- 20 clined to give his address, or place of residence, and told these defendants that he would call at said number 142 Fulton street, in said city of New York, to get his interest on said mortgage, as the said interest became due thereon.

4. And these defendants further say, that when the interest on said mortgage became due, on the first day of May, one thousand eight hundred and sixty-six, and when the complainant did not call for that interest, these defendants, then and thereafter, made diligent inquiry and search for the address and residence of the said complainant, but were unable 30 to find his address, or his place of residence, or obtain any knowledge as to his whereabouts, address, or place of residence, except as hereinafter stated.

5. And these defendants further say, that immediately after the expiration of thirty days, from the time the interest became due on said mortgage, on the first day of May, one thousand eight hundred and sixty-six, the said complainant called on the defendant, William H. DeGroot, at his office, number 142 Fulton street, in said city, and the said William H. DeGroot then asked him, the complainant, why he had 40

not been to get his interest, according to their said previous agreement aforesaid; the complainant said, by way of pretended excuse, that he had been away; the defendant, William H. DeGroot, then tendered him the interest, eight dollars and seventy-five cents, due on said mortgage, and the complainant refused to accept the said interest, because, he said, he wanted the principal of the mortgage. The defendant, William H. DeGroot, then told said complainant, that the complainant's interest on said mortgage was always
10 ready for him, when due, at said office, number 142 Fulton street, aforesaid, according to agreement; that the complainant replied, that he did not want the interest, but he wanted the principal.

6. And these defendants further say, that on or about the first day of August, one thousand eight hundred and sixty-six, the defendant, William H. DeGroot, by chance, saw the said complainant, in an eating saloon, and tendered to him the interest, eight dollars and seventy-five cents, due for the quarter ending on the said first day of August, one thousand
20 eight hundred and sixty-six; but he refused to receive it, and upon inquiry, by the said defendant, William H. DeGroot, the complainant made it known to him that he had commenced this suit, of which the said William H. DeGroot had not, nor had these defendants theretofore, had notice.

7. And these defendants further say, that the complainant neglected to call, as aforesaid, at said office, number 142 Fulton street, in said city, for his said interest, pursuant to said agreement, and as he had, theretofore, always done, and kept himself out of the reach, and from the knowledge of
30 these defendants, as aforesaid, with the fraudulent intent of claiming upon these defendants that the defendant, William H. DeGroot, had made default in the payment of interest on said mortgage, as stated in his bill therein, and so thereby fraudulently, and by trick, and artifice, as above stated, to demand and compel the payment of the whole of said principal sum of said mortgage.

8. And these defendants further say, that as they are advised by counsel, the whole of the principal in said mortgage named is not due, (nor is any part thereof due), as in said
40 bill of complaint stated; that the defendant, William H. De-

Groot, was always ready and willing to pay the interest, at said number 142 Fulton street, and is now ready and willing to pay the interest on said mortgage, according to said agreement; and the said interest is now subject to the order of the court; but by reason of the refusal of the complainant to call at said office, to receive his interest according to said agreement; and by reason of the complainant's refusal to give his address, or place of residence, so that the defendant, William H. DeGroot, could pay the said interest to him as it fell due; and by reason of his fraudulent contrivances 10 aforesaid, to prevent the payment to him of the interest within the thirty days, as provided in said mortgage, this defendant, William H. DeGroot, was, and these defendants were not, able to pay the sum to said complainant, nor to any person or persons for him.

9. All of which matter and things these defendants are ready to aver, maintain, and prove as this honorable court shall direct; and humbly prays to be hence dismissed with his reasonable costs and charges in this behalf most wrongfully sustained.

SAM'L. D. HAINES, *Solicitor.*

20

W. J. MAGIE,

Of counsel with defendants.

New Jersey ss.—William H. DeGroot, one of the above-named defendants, being duly sworn, on his oath saith—that the matter and things set forth in the above answer, so far as relates to his own acts, are true, and so far as relates to the acts of others, he believes them to be true.

WM. H. DEGROOT.

Sworn and subscribed this 5th day of March, A. D. 1867, 30
before me, at Jersey City.

CHAS. H. VOORHIS, *M. C.*

Replication.

[Filed April 5, 1867.]

This repliant, saving and reserving to himself all, and all manner of advantage of exception to the manifold insufficiencies of the said answer, 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 uncertain, untrue, and insufficient to be replied unto by this repliant, without that, 10 that any other matter or thing whatsoever, in said answer contained, material or effectual in the law to be replied unto, confessed, avoided, 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 bill, he has already prayed.

J. FLEMMING,*Solicitor for and of counsel with compl't.*

Evidence.

[Filed February 5, 1867.]

Depositions, &c., in above cause, taken before Washington B. Williams, esq., an examiner of said court, at his office, in Jersey City, on Friday, the third day of May, 1867, at 10 A. M., on the part of complainant, on notice duly given, and service whereof is admitted, and in presence of James Flemming, esq., solicitor for complainant, and of William Voorhies and Samuel D. Haines, esq., solicitor and counsel for defendant.

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Douglass G. McCotter, the complainant, being duly sworn, on oath saith—Being shown bond marked *Exhibit C 1*, says—the subscribing witness, John Andrews, resides, I believe, in the city of New York; I don't think he resides in New Jersey; I know his handwriting; this signature is genuine, as subscribing witness to said bond. (Bond *C 1*, offered); (Mortgage marked *C 2*, offered); (assignment *C 2*, offered.)

Quest. Are the payments of interest on that bond correctly stated?

Ans. I think so.

20

Quest. Are there payments of interest in default, according to the terms of that bond?

Ans. Yes, sir.

Quest. What payments are in default?

Ans. The interest is payable quarterly; I think it is due November 1st, 1865.

Quest. Has anything of principal or interest, since that time, been paid to you?

Ans. No, sir; I have paid a year-and-a-half insurance.

On cross-examination he says—

30

Quest. Do you know George R. Jaques?

Ans. Yes.

Quest. How long have you known him?

Ans. I think my first acquaintance with him was about

the time this arrangement was made about the exchange of this property, previous to November, 1864, I can't give the date.

Quest. Have you ever seen Mr. G. R. Jaques sign his name?

Ans. Yes, sir.

Quest. Are you well acquainted with his style of writing?

Ans. I have seen Mr. Jaques write, but I am not much acquainted with him or his style of writing; I have seen him write.

Quest. Can you swear positively, that the signature of 10 of George R. Jaques was made by him, in his own handwriting, the signature to the bond?

Ans. It looks like it.

Quest. Is that all you have to say in answer to the above question?

Ans. That is all—it looks like his signature.

Quest. To what date was the interest last paid?

Ans. I think the last payment was November 15th, 1865.

Quest. Has there not been any interest paid since that time?

20 *Ans.* I think not, if there has been the receipts will show.

Quest. Have you ever given any receipts which were not endorsed on the bond, and if so, what are they?

Ans. I don't think I have; if any interest was paid me, I intended to endorse it on the bond.

Quest. Did you always endorse upon the bond the receipt for interest which you received?

Ans. I intended to.

Quest. Cannot you tell to a certainty, or is your memory defective as to this fact?

30 *Ans.* My impression is that every dollar of interest paid me has been endorsed on the bond.

Quest. Then do you swear merely from impression or from actual knowledge of facts?

Ans. Knowing the man I had to deal with, I was very particular how I transacted my business with him.

Quest. What was your arrangement with the defendant as to the time and place where the interest was to be paid?
[Objected to as incompetent.]

40 *Ans.* There was no arrangement made or spoken of as to time and place, not a word, with Mr. DeGroot, or any one.

Quest. Where is your place of business?

Ans. 141 Broadway.

Quest. Were you there at the time you were receiving interest on the mortgage?

Ans. No, sir.

Quest. Where were you at the time you received interest on the mortgage?

Ans. I resided at 222 South Fourth street, Jersey City.

Quest. Did you receive your interest there?

Ans. No, sir. 10

Quest. Where did you receive your interest?

Ans. I received it in Mr. DeGroot's office, about 142 Fulton street, New York; I met Mr. DeGroot on the street and I asked him for the interest, and he asked me if I wouldn't, to oblige him, step into the office some day, and he would hand it to me.

Quest. Did you not always receive your interest at the office of Mr. DeGroot?

Ans. Yes, sir, all the interest that has been paid, I received at his place. 20

Quest. Were you ever refused the interest when you called at DeGroot's office for it?

Ans. I called several times for the interest, and there was no one there to pay it, and once Mr. DeGroot requested me to call again and he would pay it.

Quest. When was that?

Ans. I think about the second payment; I think I met him in the street, and asked him for the interest, and it wasn't convenient to pay it then, he hadn't it by him, or something, and wanted I should call again; I had then called two or three 30 times for that interest.

Quest. Who were the parties you were to call on for the interest?

Ans. I was not obliged to call on them at all for interest.

Quest. Did not Mr. DeGroot request you to give him your address so that he could go and pay his interest at some place?

Ans. He knew where I resided, I don't remember that he did request me.

Quest. Did you not refuse to give your address? 40

Ans. No, sir,

Ques. Did he not offer to pay you the interest when you met him in the street, in New York?

Ans. He had'nt it by him—it wasn't convenient.

Ques. Did you not say to him that you did not want the interest, but wanted the whole principal?

Ans. Not at that time; I have since, when the interest has run over some five or six weeks past the time it was due; I had, previously, called several times for the interest; I then demanded the interest and principal, from Mr. DeGroot, himself.

Quest. Did you call from February until the first of June, eighteen hundred and sixty-six, for interest?

Ans. I don't remember the date; about six weeks after the interest was due was the last time I called, and demanded principal and interest.

Quest. After you called for the February interest, did you not omit to call for any interest until June 1st?

Ans. After the interest was due I called two or three times for the interest, and I called the last time about six weeks after the interest fell due. I am speaking of the February interest. I called the last time about six weeks after the first of February. What I mean is, that I last called for interest about six weeks after the first interest fell due, which has not been paid. I think the entry on the bond is the last payment made, and is correct; if it is correct, then it was six weeks after February first that I called. I fix the date only from the entries on the bond.

Complainant's counsel here calls for the production of the receipts for interest.

Quest. When did you receive your last interest? (Objected to as having been asked and answered before; and complainant's counsel calls again for the receipts.)

(Complainant's counsel advises witness not to answer unless the receipts are produced, or he can remember himself definitely.)

Ans. I wouldn't say positively there has been any other payment made than what is endorsed on the bond, and don't

think there has. If there has, the receipts will show it, as I always gave receipts.

(Counsel for defendants says, that all receipts and documentary evidence in relation to this case will be introduced on the part of the defence.)

Quest. Did you not endeavor to avoid the payment of interest on that mortgage for the purpose of getting the principal—speak the truth?

Ans. I never avoided anything of the kind; never thought of it. 10

Quest. Did you want the principal?

Ans. The last time I called I demanded the principal and interest; it was about six weeks after interest was due.

Re-examined in chief.

Quest. From your knowledge of Mr. Jaques' handwriting, is that his signature to the bond, marked *Exhibit C 1*?

Ans. I should think it was, as near as I can tell; I have seen him write.

Quest. At the time you demanded the principal and interest from Mr. DeGroot, or since then, has he tendered to you the 20 principal and interest due on your bond?

Ans. No, sir, he has not.

Quest. Why was DeGroot liable to pay the principal and interest on that mortgage?

Ans. There was a thirty-day clause in the bond, and it ran over the time, and was due on the terms of the bond.

Quest. Did he or not admit that he was the owner of the property?

Ans. He did.

Re-cross-examined. 30

Quest. Were you not a former resident of the city of New York? (Objected to as not cross-examination.)

Ans. Yes.

Quest. How long did you reside there?

Ans. Several years, off and on.

Quest. When did you leave New York and go to Jersey City to reside?

Ans. I think two years ago this May.

Quest. Since Ebie D. Cordts assigned the mortgage to you?

Ans. I can't say for a certainty.

Quest. Were you always on hand to receive the interest when it was due?

Ans. When they offered it to me I never refused it.

D. G. McCOTTER.

Subscribed and sworn to, before me, at Jersey City, May 3d, 1867.

W. B. WILLIAMS, *M. C.*

10 The complainant's solicitor declares that his testimony is closed.

May 3d, 1867.

W. B. WILLIAMS, *M. C.*

Testimony for Defendants,

Taken on notice admitted, in presence of both parties and their solicitors.

William H. DeGroot, being duly sworn, on oath saith— I live in New York city; the complainant in this case holds a mortgage against some property that I purchased; I paid the first interest in May, 1865; just after Mr. McCotter had
 20 had this mortgage assigned to him; that interest was endorsed on the bond May 15, 1865, \$8.75—being one quarter's interest; interest was payable quarterly; this was the first of my knowing that Mr. McCotter had this mortgage assigned to him; interest is endorsed also August 1, 1865, for same sum, \$8.75; I have receipt for that; this is it. (Receipt produced, dated August 1, 1865, marked *Exhibit D 1*.) After this I paid interest; in November, 1865, another quarter became due, and I paid it; I have it November 1st, in this receipt; it is on the bond November 1. (Receipt produced, dated
 30 November 1, 1865, marked *Exhibit D 2*.) I paid the interest also on February 2, 1866; here is the receipt. (Receipt produced, dated February 2, 1866, marked *Exhibit D 3*.) When the May quarter was due, Mr. McCotter did not call for it until about the 2d or 3d of June. I then asked him why he

hadn't called for his interest; he said he had been away; I then tendered him the \$8.75, which was due the 1st May, 1866; he refused to take it, saying that he wanted the principal as well as the interest; I told him he knew the principal was not due, it had some years yet to run; he asked me if I didn't know there was a clause in the bond that if the interest was not paid in thirty days the whole of the principal and interest became due; I says, Douglass, you know you was to call here for your interest according to the agreement made when you got your first interest; he replied that 10 Mr. Cordts had taken advantage of him in the same way, and that he, McCotter, had only borrowed the money of a friend for ten days, and that he wanted to pay this man again, was the reason why he wanted to get hold of the principal; I said, I wouldn't have thought that of you, Douglass, to undertake to spring a trap this way, by keeping out of the way till the thirty days past, then coming to demand the principal which was not due. He says then, won't you let me have half of it, as I want to pay this money back so. I told him that I calculated to pay it when it became 20 due and not before, and that the interest was always ready for him. That was all at that time. I told him I thought he might be sick, and I had inquired of his father where he, Douglass, lived in Jersey City, and he was not able to tell me; I also inquired of George R. Jaques. [Objected to.] Jaques could not tell me.

1 *Quest.* Did you ever inquire of McCotter his address?

Ans. I did, and he refused to give it to me, any more than that he lived in Jersey City, and that it would be hard for me to find his place; it was some distance from the ferry, 30 and that he would always call at my office, 142 Fulton street, when his interest became due, as he was often in New York on business. This was agreed on between us, that he was always to call on me for interest; made that the place of payment. These four payments, as you see by the receipts, were all paid in that office, he calling on the day the payment became due; on one instance the day after; perhaps it was on Sunday, which was the reason he did not call on the day it was due.

2 *Quest.* Was there any other persons by at the time you 40

made the agreement with McCotter as to the time and place of the payment of interest?

Ans. There was; Thomas Reid was present and Theodore R. B. DeGroot; they are in court.

3 *Quest.* Did Mr. McCotter call for his interest when it became due every quarter?

Ans. He did, up to the first of February, 1866—from the first of May, 1865.

4 *Quest.* After you found that he did not call to receive his
10 interest, did you make any effort to find him, so that you could pay the interest on that mortgage?

Ans. I did, sir. I inquired of his own father, Mr. Alexander McCotter, where Douglass McCotter, his son, lived; he said he didn't know where his son lived. I also called on George R. Jaques, maker of this mortgage, to see if he could give me any information as to where I could find Douglass McCotter was; I told him he hadn't called for this interest, and I wanted to pay it on his (Jaques) bond, and he couldn't give me any information; he said he would
20 make inquiries, and let me know. I called on him the second time, and he couldn't give me any information. I still kept trying to look him up, until he called the second or third of June, 1866, and I asked him why he hadn't been here after his interest; he stated that he had been away; I then tendered him his interest, \$8.75, which was all that was due at that time; he refused to take the \$8.75, saying the the thirty days had elapsed mentioned in the bond, and that he wanted the principal and interest both; I told him that he knew the principal was not due for three or four years.

30 5 *Quest.* After that interview with Mr. McCotter, did you ever have any conversation with him about this matter?

Ans. I did, sir.

6 *Quest.* Did you tender him his interest?

Ans. Not after this; I requested him to take it again; I met him at an office in Wall street; I don't remember where; I said to him, Douglass, it is not fair for you to act in this way; this was before the August quarter became due; I said, if you will take the interest, I will pay you both quarters.

40 7 *Quest.* What did he say?

Ans. He said he would not take it ; he was going to have the whole ; he had advised with a lawyer, who told him he could get it.

8 *Quest.* Did you have any notice from him before this suit was commenced ?

Ans. No, sir, I did not ; neither he nor his lawyer ever sent me a letter that the suit was about to be commenced.

9 *Quest.* Has the interest money always been ready, and is it now ready to be paid ?

Ans. It has always been ready, and I have more than 10 enough in my pocket to pay it now.

(Questions and evidence in relation to tender and offer to pay objected to—objection noted here by consent.)

Cross-examined.

1 *Quest.* What day in June, 1866, was this that McCotter called at your office ?

Ans. It was the second or third after the thirty days were up ; I said to him, you have just dodged in after the thirty days were up.

2 *Quest.* Did you tender or show any money to him at that 20 time—if so, what was the amount and kind ?

Ans. I did ; \$8.75 was the amount—in United States currency.

3 *Quest.* When and where after that did you show and tender McCotter any money ?

Ans. I saw him in an office in Wall street, between New and Broadway, sometime in July, 1866, and there offered to pay him the two quarters together.

4 *Quest.* Did you show and tender to him any money at that time—if so, state the amount ?

30

Ans. I took my pocket-book out, and opened it, but did not count out the bills, urging upon him to take the amount for both quarters.

5 *Quest.* Did you, from that time till now, show and tender to Mr. McCotter any money ; if so, state when, where, and the amount ?

Ans. I recollect now seeing him in an eating-house in Fulton street, nearly opposite my office, just before the first November, and there I requested him again to take the

amount of his interest, making the three quarters; and at that time I showed and tendered him the money for three quarters. It was bankable money in the city of New York.

6 *Quest.* Give the amount and denomination of the bills?

Ans. I couldn't give the denomination of the bills; probably they run in tens, or twos or threes; the amount would be \$26.25, wouldn't it?

7 *Quest.* From that time to this, have you shown and tendered to Mr. McCotter any money—if so, when, where, and
10 what amount?

Ans. I have not since then seen him until to-day in this room, and I am ready to pay now—to pay the amount. (Objected to as to the latter part of answer.)

8 *Quest.* What month and day was it you saw Mr. McCotter in the eating house?

Ans. October; I can't tell the day; the latter part; it may possibly have been in November.

9 *Quest.* Was it not after this suit had been commenced?

Ans. I had not received any notice of the suit; I do not
20 know the date it commenced.

10 *Quest.* Did or not Mr. McCotter inform you at that interview that a suit had been commenced on the mortgage?

Ans. He either said it was, or that he was going to commence a suit; that he was going to have the whole of the money—principal and interest.

11 *Quest.* Did you not ask Mr. McCotter, at that time, where my office was?

Ans. No, sir; I never heard of you till to-day, until I saw your name in the paper; I recollect going to Mr. Jaques'
30 after I got the paper to find out where your office was.

12 *Quest.* What part of the saloon were you when you first saw Mr. McCotter?

Ans. I was on the west side of the saloon, about two-thirds of the way back; he was at the middle row of tables, a little further down still than I was.

13 *Quest.* Did you not, very soon after that interview, consult with Mr. Haines in reference to the suit?

Ans. I think it was some weeks after that; as soon as I got the complaint served on me.

40 14 *Quest.* When was a complaint served on you?

Ans. I can't say.

15 *Quest.* Who served a complaint on you?

Ans. I don't recollect; I think it was handed to me by some person in the office.

16 *Quest.* What did you do with it?

Ans. Whatever papers I got I took to Mr. Haines.

17 *Quest.* Where?

Ans. At Elizabeth, N. J.

18 *Quest.* Had you consulted any one before him in relation to the suit? 10

Ans. I had—Mr. Haines' brother, E. Haines.

19 *Quest.* Did you request E. Haines to call on me? (Objected to.)

Ans. I don't recollect whether I requested him to, or whether he told me he would.

20 *Quest.* Was this before you had seen Mr. S. D. Haines?

Ans. That I can't say; I begin to recollect more about this now; I remember we had to take a good deal of trouble to find out whether a suit had commenced or not.

21 *Quest.* Had you not seen Mr. E. Haines about this suit 20 before you saw Mr. McCotter in the saloon? (Objected to as immaterial.)

Ans. He knew about Douglass not taking this interest from from the first; he was talked to about it the same as any other business, but no action taken; I had not seen him about the suit before I saw McCotter in the saloon, because I did not know the suit had been commenced.

22 *Quest.* Did you not, at the interview in the saloon, threaten Mr. McCotter, if the suit was not withdrawn? 30

Ans. No, sir.

23 *Quest.* Did you not tell McCotter that you had a man watching him who would thrash him, if the suit was not withdrawn, or words to that effect?

(Objected to as immaterial; but witness is advised by Mr. Voorhees to answer the question, if counsel insists upon it.)

Ans. I did not.

24 *Quest.* During the spring of 1866, where did Mr. Douglass McCotter do business?

Ans. I never knew where he did business for the last eight years. 40

25 *Quest.* Where has been your place of business?

Ans. At 142 Fulton street, N. Y.; prior to that, at 84, 86, 88 Fulton street.

26 *Quest.* When was it Douglass McCotter's father told you Douglass lived in Jersey City?

Ans. I don't recollect that he ever told me that; he told me he lived in Jersey, but he didn't know where.

27 *Quest.* Did you see the bond when these receipts were put on it?

10 *Ans.* I don't recollect of seeing the bond but once; that was when the first interest was put on it; he came without the bond first, and I requested him to bring it, so as to show me that he was entitled to receive it, and he did so.

28 *Quest.* Was Mr. Darling in your office in the spring of 1866?

Ans. He often comes there, or used to; he used to have an office there, but in the spring of 1866 he had moved away; he has some things there yet.

29 *Quest.* Did you not see him almost daily in the spring
20 of 1866?

Ans. No, sir.

30 *Quest.* Do you know Watson Wilson, the son-in-law of A. McCotter?

Ans. Yes.

31 *Quest.* Did you see him in the spring of 1866?

Ans. I do not know.

32 *Quest.* Where is Douglass McCotter's father's office?

Ans. At 142 Fulton street, on the same floor with my office. He hires of me. Persons pass through my office to
30 go to Mr. McCotter's.

33 *Quest.* Was he in attendance at his office during the spring of 1866?

Ans. He is not there very frequent. Sometimes he comes in on Friday and goes out on Saturday; sometimes not there for several weeks. In the spring of 1866 he came in occasionally; he lived at Holbrook, L. I., and did not come in every week; when he came in he would only stay a day or two; so he might not have been there for three or four weeks at a time; he is quite an old man; he must be 75 years old,
40 or near 80.

(This course of examination upon the part of complainants objected to as immaterial.)

WM. H. DEGROOT.

Subscribed and sworn to before me, at Jersey City, May 3d, 1867.

W. B. WILLIAMS, *M. C.*

Theodore R. B. DeGroot being duly sworn, on oath saith—
I reside in New York city; during the year 1865 I resided in New York city.

Quest. 1. Was you present at your father's office, 142 Fulton 10 street, New York, in the month of May, 1865, when the interview took place between your father and Douglass McCotter? And what took place?

Ans. I was; Mr. McCotter said he held the bond of \$500 against my father, Wm. H. DeGroot, and requested the interest to be paid him, amounting to \$8.75. He was asked by my father where the interest should be sent when due; he said he had no place of business in New York; he resided in Jersey City, and would call for the interest when due, at 142 Fulton street, which, I believe, he has done every time 20 it was due till May, 1866.

Quest. 2. Did he ask him, McCotter, where he resided?

Ans. He did; he told him he resided in Jersey City, and would always call himself at the office.

Quest. 3. Was his, McCotter's, place of residence inquired after?

Ans. It was.

Quest. 4. What was the answer?

Ans. He said he lived in Jersey City, and it would make no difference, as he would always call at the office and get 30 the interest; he did call, and got it when he called.

Quest. Were you always ready at that office to pay that interest. (Objected to as immaterial and incompetent.)

Ans. Yes.

(Complainant's counsel having come in, his objection to the evidence in relation to a parol agreement, as immaterial, is entered here by consent.)

THEO. R. B. DEGROOT.

Subscribed and sworn to before me, at Jersey City, May 3d, 1867.

W. B. WILLIAMS, M. C.

Thomas Reid being duly sworn, on oath saith—In 1865 I lived in New York; I was present at an interview between Mr. DeGroot and Douglass McCotter; it was in the beginning of May, 1865, at 142 Fulton street, New York. He asked Mr. DeGroot for the interest of \$500 on a mortgage in Elizabeth; Mr. DeGroot paid him \$8.75; Mr. DeGroot asked him where he lived; Mr. McCotter's answer was, in Jersey City; no street or number was stated. Mr. DeGroot asked him what part of Jersey City he lived; he said it didn't make any matter what part, he would call in the office after his interest when due. Nothing more was said at that time. (Evidence as to agreement to call for interest objected to.) He came back a second time, in the beginning of June, 1866. Mr. DeGroot counted to him \$8.75 on the desk; he, Mr. McCotter would not take it; he wanted the full amount; he said it was so long past the time that he expected the full amount.

Cross-examined.

He did not say how long past the time it was; I work for Mr. DeGroot; do errands and attend around the building. Mr. DeGroot and I have not talked about this matter since; he has never said anything to me about it from that day to this. I have not heard Mr. DeGroot say anything about it, only what passed as I have said; I have not heard him say anything about a suit in New Jersey; he never said anything to me about a suit in New Jersey; he asked me to come over here to-day; didn't tell me what for; he did not say anything about my being a witness in this suit; I am still in his employ, and was so in spring and summer of 1866. I saw Mr. McCotter's father about there in the spring of 1866; he would be writing there in his office, and attending to his friends when they called. He was not there steady; some weeks he wouldn't be there. I saw Mr. McCotter's sisters there in the spring of 1866; also Mr. Wilson, his brother-in-law. Mr. Darling was there back and forward once in a

while; he had before that an office there; he moved before 1866.

THOMAS REID.

Subscribed and sworn to before me, at Jersey City, May 3d, 1867.

W. B. WILLIAMS, *M. C.*

Defendant's solicitor declares the testimony for defence closed.

W. B. WILLIAMS, *M. C.*

May 3, 1867.

10

May 31, 1867.—Both parties appeared, and complainant's testimony proceeded in rebuttal.

Anna Barrett being duly sworn, on oath saith—I live in New York; occupation, waiting in saloon; I know Mr. McCotter by seeing him come into saloon and waiting on him. The saloon, I think, is 144 or 145 Fulton street, north side, about three doors from Broadway, east, on the north side; I know Mr. DeGroot only by seeing him; he is now present; I was in the saloon when DeGroot and McCotter were present about three months ago.

20

Quest. State what occurred at that time.

Ans. I saw that gentleman (the defendant, W. H. DeGroot,) I heard them speaking very loud; I don't know what they were talking about; I heard this gentleman (referring to defendant) speaking very loud; that is all I know about it.

Quest. What attracted your attention?

Ans. I heard Mr. DeGroot speaking very loud, that is what attracted my attention; there were other persons around; I didn't hear what they were talking about.

Quest. What part of the saloon was this?

30

Ans. The lower end.

Quest. Where were you when you first noticed the altercation?

Ans. I was near Mr. McCotter, receiving his order.

Quest. Did Mr. DeGroot address McCotter angrily? (Objected to.)

Ans. He did; that is what drew my attention.

Quest. Did Mr. DeGroot at that time offer to pay or show any money to Mr. McCotter?

Ans. No, sir.

Quest. What afterwards became of Mr. DeGroot and Mr. McCotter?

Ans. Mr. McCotter went up one side of the table and Mr. DeGroot went up the other side as far as the bar; that is all I saw of them.

Quest. While they were going to the bar did Mr. DeGroot
10 offer to pay any money?

Ans. Not that I seen, sir.

Quest. What was the manner of Mr. DeGroot?

Ans. He was speaking very loud to Mr. McCotter, and slapping his hands.

Quest. Was this interview since last New Years?

Ans. Yes, sir; it was—it was about three months ago; I cannot remember exactly.

Quest. Was or not this interview since last New Years?

Ans. Yes, sir.

20 *Quest.* Was there a crowd collected about these gentlemen?

Ans. Yes, sir; there was a good many at both sides of the table.

Cross-examined.

Quest. How long have you lived in New York?

Ans. Four years.

Quest. What has been your business?

Ans. I have always lived out till the last fourteen months; I worked in the saloon.

30 *Quest.* Do you know William H. DeGroot?

Ans. To see him I know him; I don't know his name.

Quest. When did you first become acquainted with him?

Ans. I never was acquainted with him, only to see him coming into the saloon.

Quest. How do you know then that this is Mr. DeGroot, (referring to Mr. DeGroot now present)?

Ans. I know that is the gentleman who was making the noise that day; I was never introduced to him. I have known Mr. McCotter ten or eleven months; he asked me to

come over here two weeks ago ; he said what for ; he asked me what I knew about what that gentleman was speaking about ; the gentleman was making the noise that day in the saloon ; I can't say exactly what day, but it was the day they had the dispute there ; they drew everybody's attention to it as well as mine.

Quest. Did he say anything farther to you about this suit?

Ans. Only to ask me if I wouldn't come.

Quest. Did Mr. McCotter point him out to you to-day?

Ans. I saw this gentleman on the boat ; I knew him when he came in ; Mr. McCotter said as he came along, that is the gentleman ; when McCotter and DeGroot went up towards the bar, I went in towards the steam-table ; I don't know what they did when they went up to the bar ; I couldn't see what they were doing there ; I was in the same room, but it was crowded around the bar.

Re-examined in chief.

Quest. From the time DeGroot came up where McCotter was until they went up to the bar, was any money tendered or shown by DeGroot to McCotter ?

20

Ans. No ; I was there all the time ; they were only there talking about three minutes, and I don't think any money could have been shown without my seeing it ; there was none shown that I saw.

Re-cross-examined.

When they were standing at the bar I was busy then.

ANNA ^{her} ~~X~~ BARRETT.
mark.

Subscribed and sworn to, before me, at Jersey City, May 13, 1867.

W. B. WILLIAMS, M. C. 30

Henry Bonnell, being by me duly sworn, on oath saith—
I reside in Brooklyn ; my business is at present dealing in wood and lands in the vicinity of Washington ; I know Mr. DeGroot and Mr. McCotter ; I was present about three months ago, since last January, in an eating saloon, at 145 Fulton street, New York ; there was several there, perhaps a hundred at the time ; these two gentlemen and myself were there ; when they got to the bar, they were paying their bill,

or Mr. DeGroot was, I know; they renewed their loud conversation there; I had previously heard their loud talking, but didn't distinguish what it was, until they came to the bar; the first that attracted my attention was, I heard Mr. DeGroot had made some remark, and Mr. McCotter said, it will take a bigger man than you to do it; I thought there might be trouble there, and I went up and led Mr. McCotter off; I saw nothing further of DeGroot; I was at the bar from the time they came up till they left; till I took McCotter away; all the time from the time they were down there I saw them.

Quest. Did you hear Mr. DeGroot say anything like this, that I have a great mind to whip you (referring to McCotter) myself, or something similar? (Objected to.)

Ans. They talked of whipping, and that was the way the remark came around; I could not state how it was said, and, therefore, would not wish to make a reply.

Quest. Who talked of whipping?

Ans. Why, of course, DeGroot said it first; that's what brought the reply.

Quest. From the time you first saw Mr. DeGroot and Mr. McCotter till you took Mr. McCotter away, did DeGroot show or offer any money to McCotter?

Ans. Not that I saw; they were not doing that kind of business.

Quest. Did you hear DeGroot request McCotter to take interest, or words to that effect?

Ans. No, sir, I did not.

Quest. Did you see them all the time from the time they were at the table till they got to the bar?

Ans. I saw them both at the table at the lower end of the saloon, and I saw them at the bar, but was not watching every step they took.

Quest. Could DeGroot have tendered McCotter any money while they were at the bar without your seeing it?

Ans. I don't think they could, for I was afraid there would be some trouble, and I was watching them; I took McCotter out, and we walked to Broadway together, and left DeGroot in front of the saloon.

Cross-examined.

Quest. Who did you go with to the saloon in question ?

Ans. I went alone ; I dine there every day when in town ; I was then at times accustomed to assist my brother-in-law in the saloon ; I was not doing so that day ; I noticed DeGroot and McCotter first in the saloon ; I can't say how long they had been there ; my attention was first attracted to them by the noise.

Quest. Might not DeGroot have made a tender to McCotter in money before you came in ?

10

Ans. He might.

Quest. Have you ever had any interest with McCotter in the mortgage in question ? (Objected to as immaterial.)

Ans. All the way I've got an interest in it, when I pay up certain moneys I may get it.

Quest. What moneys have you reference to ? (Objected to.)

Ans. We have traded together ; he offered to give me this mortgage when I consummate my part of the trade ?

Quest. When did you first have an interest in it ?

Ans. I've got no interest in it ; the first we commenced our trade was two years ago, I should think.

Quest. Was or was not that before DeGroot had the property ?

Ans. It was.

Quest. Did not the deed come from you ?

Ans. I never had my name on the deed.

Quest. Did that property come from you—that property in Elizabeth upon which this mortgage was given ? (Objected to as immaterial.)

Ans. I had an interest—an equity in that property, and traded it with other stock ; the deed never was in my name ; I never had any interest in the mortgages—only in the way of trade, I had an equity in them ; I never had title to them, but it was to come after awhile.

Quest. You and McCotter are operating together in this matter, are you ?

Ans. No ; I am not operating with him.

Quest. Is this mortgage to come to you ?

Ans. McCotter is to give it to me, if I perform certain things.

40

Quest. What are those things?

Ans. Money payments; I forget the amount—something between one hundred and seventy and three hundred dollars.

I saw McCotter about a minute to-day, and he asked me to come over here; he wanted to know whether I saw any money offered to him in payment.

HENRY BONNELL.

Subscribed and sworn to before me, at Jersey City, May 10 31, 1867.

W. B. WILLIAMS, *M. C.*

Douglass G McCotter, being recalled on his own behalf—

Quest. Did you ever agree to call at Mr. DeGroot's office for the interest on this bond?

Ans. Never; not a word was mentioned about it.

Quest. Where have you resided since you owned this mortgage?

Ans. Two years ago this May I removed to Jersey City, and have resided here since, in the same house—at 222 South 20 4th street.

Quest. Did Mr. DeGroot, from the time that you removed to Jersey City, know that you lived in Jersey City?

Ans. Yes; he was well aware of it; he asked me where I resided, and I told where I did reside.

Quest. Was your name in the Jersey City Directory for the years ending May, 1866, and May, 1867?

Ans. It is in both; I have here a copy of the Directory for each of those years, and I find my name and residence in it, stated correctly in both.

30 (Complainant offers the said copies of the Jersey City Directory.)

Quest. From May, 1866, to this time, has Mr. DeGroot, the defendant, tendered you any money for interest on this bond, *Exhibit C 1*?

Ans. He never has, at any time since then, tendered me any money for interest—not once.

Quest. Did you ever meet him in an office in Wall street—if so, what took place there?

Ans. I remember seeing him once in a basement office in Wall street; I had business with the gentleman who occupied the rear office; I passed by Mr. DeGroot, and did not even speak to him, or bow to him in passing; not a word passed between us at that interview; I transacted my business, left, and did not notice Mr. DeGroot as I came out, whether he was there or not; not a word passed between us; he did not offer me any money.

Quest. When was the altercation in the saloon; where and what occurred? 10

Ans. About the latter part of last February; I remember as I passed into the saloon at, I think, 145 Fulton street, N. Y., to take dinner, as usual, I noticed Mr. DeGroot sitting on the west side of the saloon, about the centre, on the wall side; after he finished his meal he came down and stood opposite me on the other side of the table; I sat where I usually sat, at the lower end of the saloon, about the third chair from the lower end of the table; Mr. DeGroot spoke to me, and asked the address of my attorney; I gave it to him; he then said that if I did not withdraw that foreclosure of 20 the mortgage, or if he was put to any expense on account of it, he had already engaged a man to thrash me; that is about word for word what he said, as near as I can remember, "to give me a sound thrashing—that he was on the watch for me;" he used those words also. I replied that it was well he had let the job out; he made several threats there, for two or three minutes, and high words passed between us; I got up, and we passed along toward the bar, at the front of the saloon, and handed in our checks; at the bar Mr. DeGroot made further threats, and I turned and left and went out of 30 the door; Mr. DeGroot followed me outside the door, and there made further threats; he said, I have a great notion to whip you myself; and if you will step around the corner I will do it; I left him standing there, and went down to my office in Broadway.

The saloon was quite full; Henry Bonnell was there, and this girl, Anna, waited on the table; I should judge 75 to 100 people were there.

I say positively DeGroot did not tender me any money in the saloon; he said to me, "you are foreclosing that mort- 40

gage; I would like the address of your lawyer, I would like to see him;" that conversation was months after the foreclosure commenced.

I demanded the principal money on the bond from Mr. DeGroot about six weeks after the expiration of the thirty days after the first interest in default came due; I called on him and told him I wanted the principal and interest on that bond and mortgage; he declined to pay it; I then told him I should foreclose the mortgage, and immediately put it in
10 the hands of Mr. Flemming to foreclose.

From the time the first interest in default came due till the foreclosure, I was home as usual, at my house, evenings, and at my office in New York in the day time; I have not been absent from my house but two nights in two years.

I was in the habit of dining at this saloon almost daily, Sundays excepted; it is almost directly opposite Mr. DeGroot's office; I had seen him dining there several times, and others in the same office with him; I often sat for weeks and months at the same table with parties in the same office
20 with him; my father has an office adjoining Mr. DeGroot's; my brother-in-law calls there on an average certainly once a week to see my father on business.

From February to June, 1866, and now my father had and has his office next to Mr. DeGroot's; you pass through Mr. DeGroot's office to go into father's.

Cross-examined.

I say positively and decidedly that there never was any agreement made by me to receive that interest at DeGroot's office; I did not expect to hold that mortgage over ten days.

30 *Quest.* When the interest came due on the mortgage, where did you receive it?

Ans. At DeGroot's office, 142 Fulton street.

Quest. Did you call there purposely for the interest?

Ans. I called there on other business as well as that; I had business with Mr. Darling in the same office; also Mr. DeGroot.

Quest. How many times did you call at 142 Fulton street to receive your interest?

Ans. Several times.

Quest. How came you to call there for it?

Ans. It never was paid on the day it was due; generally about a fortnight afterwards; I have known Mr. DeGroot several years; I can't say I have been on intimate terms with him; nor friendly terms—not what I call friendly; I have tried to treat him like a gentleman.

Quest. How long since he has been an enemy of yours?

Ans. It is many years ago since he became an enemy of mine.

Quest. Was he an arbitrator in a suit? 10

Ans. Yes.

Quest. Did you choose him as such?

Ans. No.

Quest. The suit was with your father, was it not?

Ans. It was a settlement of our book accounts of many years' standing.

Quest. Did the arbitrators decide against you?

Ans. No, sir.

Quest. Did you withdraw your arbitrator?

Ans. No; he became so disgusted with DeGroot's actions 20 in it, and foul play, that he threw it up.

The suit with my father was not referred to Judge Cowles, I think.

I have asked George H. Britton if he was willing to testify in this suit that Mr. DeGroot was not a man of truth and veracity; he said DeGroot was not; and many other men in New York will testify the same; he was an intimate friend of DeGroot's; and he went on to state how DeGroot had wronged and robbed him.

Quest. Did you not ask Britton if he would not come over 80 to Jersey City and testify that DeGroot was not a man to be believed under oath? (Objected to.)

Ans. I did ask him that.

Quest. What did he say?

Ans. He said, "what's the use; there are plenty of men that would testify so, respectable men."

Quest. Did he come?

Ans. I did not subpoena him, or ask him any further to come; he would have come if I had subpoenaed him; he said, "I tried that myself, and proved my case by several 40

witnesses; you might as well let it go, for he will get as many witnesses as you will to swear they would believe him under oath."

D. G. McCOTTER.

Subscribed and sworn to, before me, at Jersey City, May 31, 1867.

W. B. WILLIAMS, *M. C.*

Both parties here declare the testimony closed.
May 31, 1867.

W. B. WILLIAMS, *M. C.*

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Opinion.

This suit was brought to foreclose a mortgage upon lands in Elizabeth City, given by G. R. Jaques, of Rahway, to E. D. Cordts, of New York. The mortgage was dated November 1, 1864, and was for the payment of five hundred dollars, in five years from the date—the interest to be paid quarter yearly, with the usual interest clause, that the whole principal should be due if the interest should not be paid in thirty days after it became due. Cordts assigned the mortgage to the complainant, and the defendant purchased the 20 premises, subject to the mortgage, they were conveyed to him by Jaques.

The complainant claims that the mortgage is due, and that he is entitled to foreclose, on the ground that the interest due on the first days of May and August, in 1866, were not paid within thirty days after they became due respectively.

The bill was filed November 22, 1866.

The defendant does not deny that the interest was unpaid for more than thirty days, but contends that the money is 30 not due, because the complainant, shortly after the assignment of the mortgage to him, called at the office of the defendant, in New York, and agreed to call there for the interest when it became due, and did not call, and alleges

that he tendered the interest to him after the thirty days had expired.

The proof shows that the complainant, soon after the assignment to him, which was in April, 1865, called at the defendant's office, in New York, and when inquired of as to the locality of his residence in Jersey City, where he lived, said it was of no consequence—that he would call at defendant's office, in New York, for the interest when it became due. No other agreement was proved, except that sworn to by the defendant himself, which was denied by the complainant in his testimony. 10

This does not amount to a binding agreement, so as to make the defendant's office ever afterwards the only legal place for payment.

It has no mutuality, and is without consideration, and is not, in form or legal effect, an agreement so as to affect the bond.

But in a case like this, when the defendant has been misled by it, and waited for the complainant to call for his interest, it will be an excuse for not paying his interest within 20 the time, and equity will relieve him from the forfeiture of his credit by such neglect. No man will be allowed in equity to take advantage of an omission or default caused by himself. This is the rule, even when the party is misled without any bad faith of the other party.

It is, therefore, unnecessary to consider whether there was not bad faith on the complainant's part, which might possibly be inferred from the evidence.

But this excuse only applies to the interest, which became due on the first day of May, 1866. 30

In the beginning of June, the complainant, after the thirty days had elapsed, claimed that the whole money was due, although he had not called, as promised, refused to accept the quarter's interest, and insisted on payment of the principal. This was plain notice that he did not mean to be bound by his promise, or intend to call for the principal.

The defendant proves no tender within thirty days after the first day of August of the interest which then became due.

There is some proof that before that day he offered to pay 40

complainant the amount due on the first of May, and the amount to become due on the first of August, and that the complainant refused, and insisted on the principal. If the proof was plain, it would not relieve the defendant from tendering the August interest after it was due.

The complainant's refusal was not on the ground that he was not bound to accept the August interest, but on the ground that the previous default had entitled him to payment of the principal. If the August interest had been
10 tendered him by itself, after it became due, he might have accepted it. At all events, he was entitled to have this proposition presented to him.

The complainant is entitled to a decree.

Interlocutory Decree.

[Filed February 13, 1868.]

This cause coming on to be heard before the Chancellor, upon bill, answer, replication, and proofs, in the presence of James Flemming, of counsel with the complainant, and of Samuel D. Haines, of counsel with the defendants, and the pleadings and proofs having been read, and the arguments of counsel heard, and the Chancellor having taken time to consider the same—

It is now, on this thirteenth day of February, A. D. eighteen hundred and sixty-eight, ordered, adjudged, and decreed, that the said complainant is entitled to the relief prayed in his said bill of complaint, and to have the whole of the principal debt, secured by his bond and mortgage, in the said bill set forth, together with all arrears of interest thereon, raised and paid out of the mortgaged premises in the said bill set forth and described, and also his costs of this suit; and that it be referred to Washington B. Williams, esq., one of the Masters of this Court, to ascertain and report the amount due to the said complainant, for principal and interest upon his said mortgage, and whether the whole or a part only of the said mortgaged premises should be sold to pay and satisfy the said debt, interest, and costs, of the said complainant, and whether the same should be sold together or in parcels, and if in parcels, in what order; and that the said Master do make his report thereon with all convenient speed.

A. O. ZABRISKIE, C.

Appeal.

The appellants hereby appeal from so much of the order and decree made by the court in the above stated cause, as declares that the said appellee is entitled to the relief prayed for in the said bill of complaint, and to have the whole of the principal debt secured by the bond and mortgage in the bill in said cause set forth, raised and paid out of the mortgage premises, to the Court of Appeals in the last resort in all causes at law.

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SAMUEL D. HAINES,

Solicitor, &c.

W. J. MAGEE,

Of Counsel with Appellants.

Dated March 20th, 1868.

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

W. J. MAGEE,

of Counsel with Appellants.

Answer.

[Filed May 26, 1868.]

The respondent, Douglass G. McCotter, not confessing or acknowledging all or any of the matters to be true, as in and by the said petition of appeal are contained and set forth, for answer thereunto says—that he believes to be true that such decree as is complained of by the appellants was made by the Court of Chancery, as in the said petition of appeal is set forth, but as to the date, substance, and contents thereof, this respondent humbly craves leave to refer thereto when 10 the same shall be produced; and this respondent is advised and believes that the said decree is agreeable to equity and justice, and he therefore humbly prays that the same may be affirmed, and that the said petition of appeal may be dismissed by this honorable court, with costs to be adjudged to this respondent.

J. FLEMING,*Solicitor for and of counsel with respondent.*

Appellant's Exhibits.

EXHIBIT D 1.

\$8.75.

New York, August 1st, 1865.

Received of William H. DeGroot, eight dollars and seventy-five cents, being amount of interest due on bond and mortgage of five hundred dollars of George R. Jaques to Mr. Cordts, for three months' interest.

D. G. McCOTTER.

EXHIBIT D 2.

10 \$8.75.

New York, November 1st, 1865.

Received of Wm. H. DeGroot, eight dollars and seventy-five cents, being amount of interest on bond of five hundred dollars of Geo. R. Jaques to Mr. Cordts, for three months' interest.

D. G. McCOTTER.

EXHIBIT D 3.

Received, New York, February 2, 1866, from T. R. B. DeGroot, eight dollars and seventy-five cents, for three months' interest on property at Elizabeth.

20 \$8.75.

D. G. McCOTTER.

Respondent's Exhibits.

EXHIBIT C 1.

Know all men by these presents, that I, George R. Jaques, of Rahway, New Jersey, am held and firmly bound unto Eibe D. Cordts, of the city, county, and state of New York, in the sum of one thousand dollars, lawful money of the United States of America, to be paid to the said Eibe D. Cordts, his executors, administrators, or assigns; for which payment well and truly to be made, I bind myself, my heirs, executors, and administrators, firmly by these presents. Sealed 10 with my seal, dated the first day of November, one thousand eight hundred and sixty-four. The condition of the above obligation is such, that if the above bounden George R. Jaques, his heirs, executors, or administrators, shall well and truly pay, or cause to be paid, unto the above named Eibe D. Cordts, his executors, administrators, or assigns, the just and full sum of five hundred dollars, lawful money as aforesaid, on the first day of November, which will be in the year one thousand eight hundred and sixty-nine, and the interest thereon to be computed from the first day of November, 20 1864, at and after the rate of seven per cent. per annum, and to be paid quarterly, on the first days of February, May, August, and November, in each and every year, then the above obligation to be void, else to remain in full force and virtue.

And it is hereby expressly agreed, that should any default be made in the payment of the said interest, or of any part thereof, on any day whereon the same is made payable, as above expressed, and should the same remain unpaid and in arrear for the space of thirty days, then and from thenceforth, that is to say, after the lapse of the said thirty days, 30 the aforesaid principal sum of five hundred dollars, with all arrearages of interest thereon, shall, at the option of the said Eibe D. Cordts, his executors, administrators, or assigns, become and be due and payable immediately thereafter, although the period above limited for the payment thereof may

not then have expired, any thing herein before contained to the contrary thereof in any wise notwithstanding.

GEO. R. JAQUES.

Sealed and delivered in the presence of

JOHN ANDREWS.

Received, May 1st, 1865, from T. R. B. DeGroot, eight $\frac{7.5}{100}$ dollars, three months' interest on within bond, due May 1st, 1865.

Received, August 1st, 1865, from T. H. B. DeGroot, eight $\frac{7.5}{100}$ dollars, three months' interest on within bond, due August 1st, 1865.

Received, November 1st, 1865, from T. R. B. DeGroot, eight $\frac{7.5}{100}$ dollars, three months' interest on within bond, due November 1st, 1865.

EXHIBIT C 2.

This indenture, made the first day of November, in the year one thousand eight hundred and sixty-four, between George R. Jaques, of Rahway, in the state of New Jersey, of the first part, and Eibe D. Cordts, of the city, county, and state of New York, of the second part; whereas, the said George R. Jaques is justly indebted to the said party of the second part, in the sum of five hundred dollars, lawful money of the United States, secured to be paid by his certain bond or obligation, bearing even date with these presents, in the penal sum of one thousand dollars, lawful money as aforesaid, conditioned for the payment of the said first mentioned sum of five hundred dollars, lawful money as aforesaid, to the said party of the second part, his executors, administrators, or assigns, on the first day of November, which will be in the year one thousand eight hundred and sixty-four, and interest thereon, to be computed from the first day of November, eighteen hundred and sixty-four, at and after the rate of seven per cent. per annum, and to be paid quarterly on the first days of February, May, August, and November,

in each and every year. And it is thereby expressly agreed, that should any default be made in the payment of the said interest, or of any part thereof, on any day whereon the same is made payable, as above expressed, and should the same remain unpaid and in arrear for the space of thirty days, then and from thenceforth, that is to say, after the lapse of the said thirty days, the aforesaid principal sum of five hundred dollars, with all arrearage of interest thereon, shall, at the option of the said party of the second part, his executors, administrators, or assigns, become and be due and payable 10 immediately thereafter, although the period above limited for the payment thereof may not then have expired, anything thereinbefore contained to the contrary thereof in anywise notwithstanding: as by the said bond or obligation, and the condition thereof, reference being thereunto had, may more fully appear.

Now this indenture witnesseth, that the said party of the first part, for the better securing the payment of the said sum of money mentioned in the condition of the said bond or obligation, with interest thereon, according to the true 20 intent and meaning thereof, and also for and in consideration of the sum of one dollar to him in hand paid by the said party of the second part, at or before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, has granted, bargained, sold, aliened, released, conveyed, and confirmed, and by these presents does grant, bargain, sell, alien, release, convey, and confirm unto the said party of the second part, and to his heirs and assigns forever, all those five certain lots, pieces, or parcels of land situate, lying, and being in the city of Elizabeth, county of 30 Union, and state of New Jersey, and which are numbered and described on a certain map on file in the office of the clerk of the county of Essex, in the said state of New Jersey, entitled "map of building lots belonging to John Peters," as and by the numbers twenty (20), twenty-one (21), twenty-two (22), twenty-three (23), and twenty-four (24), being part of premises conveyed to the said George R. Jaques by Eibe D. Cordts and Mary H., his wife, by deed bearing even date with these presents, to which reference being had, will more particularly appear, this mortgage being given to se- 40

cure the payment of a part of the purchase money or consideration thereof, together with all and singular the tenements, hereditaments, and appurtenances thereunto belonging, or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof; and also, all the estate, right, title, interest, property, possession, claim, and demand whatsoever, as well in law as in equity, of the said party of the first part, of, in and to the same, and every part and parcel thereof, with the appurtenances; to have and to hold the above granted, bargained and described premises, with the appurtenances, unto the said party of the second part, his heirs and assigns, to his or their own proper use, benefit, and behoof forever. Provided always, and these presents are upon this express condition, that if the said party of the first part, his heirs, executors, or administrators, shall well and truly pay unto the said party of the second part, his executors, administrators, or assigns, the said sum of money mentioned in the condition of the said bond or obligation and the interest thereon, at the time and in the manner mentioned in the said condition, according to the true intent and meaning thereof, that then these presents, and the estate hereby granted, shall cease, determine, and be void. And the said George R. Jaques, for himself, his heirs, executors, and administrators, doth covenant and agree to pay unto the said party of the second part, his executors, administrators, or assigns, the said sum of money and interest as mentioned above and expressed in the condition of the said bond. And if default shall be made in the payment of the said sum of money above mentioned, or the interest that may grow due thereon, or of any part thereof, that then and from thenceforth it shall be lawful for the said party of the second part, his executors, administrators, and assigns, to enter into and upon all and singular the premises hereby granted or intended so to be, and to sell and dispose of the same, and all benefit and equity of redemption of the said party of the first part, his heirs, executors, administrators, or assigns therein, at public auction, according to the act in such case made and provided. And as the attorney of the said party of the first part, for that purpose by these presents duly authorized, constituted and appointed, to make and

deliver to the purchaser or purchasers thereof, a good and sufficient deed or deeds of conveyance in the law for the same, in fee simple, and out of the money arising from such sale, to retain the principal and interest which shall then be due on the said bond or obligation, together with the costs and charges of advertisement and sale of the said premises, rendering the overplus of the purchase money, (if any there shall be,) unto the said George R. Jaques, of the first part, his heirs, executors, administrators or assigns; which sale so to be made, shall forever be a perpetual bar, both in law and 10 equity, against the said party of the first part, his heirs and assigns, and all other persons claiming or to claim the premises or any part thereof, by, from, or under him, them, or either of them.

And it is expressly agreed by and between the parties to these presents, that the said party of the first part, shall and will keep the buildings erected and to be erected upon the lands above conveyed, insured against loss and damage by fire, by insurers, and in an amount approved by the said party of the second part, and assign the policy and certifi- 20 cates thereof to the said party of the second part; and in default thereof, it shall be lawful for the said party of the second part to effect such insurance, and the premium and premiums paid for effecting the same shall be a lien on the said mortgaged premises, added to the amount of the said bond or obligation, and secured by these presents, and payable on demand with interest at the rate of seven per cent. per annum.

In witness whereof, the parties to these presents have hereunto interchangeably set their hands and seals, the day and 30 year first above written.

GEO. R. JAQUES. [L. S.]

Scaled and delivered in the presence of

CHARLES E. PATTERSON.

State of New York, city and county of New York, ss.—
Be it remembered, that on the second day of November, one thousand eight hundred and sixty-four, before the subscriber, a commissioner for the state of New Jersey, for taking the acknowledgment and proof of deeds, personally came Geo.

R. Jaques, known to me to be the grantor in the within deed of indenture named, and the contents thereof being by me first made known to him, he acknowledged he signed, sealed, and delivered the same as his voluntary act and deed.

All which I certify under my hand and official seal.

CHARLES E. PATTERSON, [L. S.]

Commissioner for New Jersey in New York.

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State of New York, city and county of New York, ss.—
Be it remembered, that on the second day of November, one thousand eight hundred and sixty-four, before the subscriber, a notary public of the state of New York, residing in the city of New York, duly commissioned by executive authority, and sworn, and as such empowered to take the acknowledgment and proof of deeds to be used and recorded in the state of New Jersey, personally came George R. Jaques, known to me to be the grantor in the within deed of indenture
20 named, and the contents thereof being by me first made known to him, he acknowledged he signed, sealed, and delivered the same as his voluntary act and deed.

All which I certify under my hand and official seal.

CHARLES E. PATTERSON, [L. S.]

Notary Public, city and county of New York.

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State of New York, city and county of New York, ss.—
I, William C. Conner, clerk of the city and county of New York, and also clerk of the Supreme Court for the said city
and county, the same being a court of record, do hereby certify, that Charles E. Patterson, whose name is subscribed to
the certificate of the proof or acknowledgment of the annexed instrument, and thereon written, was, at the time of
taking such proof or acknowledgment, a notary public in
and for the city and county of New York, dwelling in the
said city, commissioned and sworn, and duly authorized to
take the same. And further, that I am well acquainted with
the handwriting of such notary, and verily believe that the
signature to the said certificate of proof or acknowledgment
is genuine. I further certify that said instrument is executed
and acknowledged according to the law of the state of New
York.

In testimony whereof, I have hereunto set my hand, and affixed the seal of the said court and county, the third day of March, 1865.

W. C. CONNER, [L. s.]
Clerk.

New Jersey, Hudson county, ss.—Be it remembered, that on this twelfth day of June, eighteen hundred and sixty-six, before the subscriber, a master of the Court of Chancery of New Jersey, personally appeared George R. Jaques, who, I am satisfied, is the grantor named in, and who executed the 10 within mortgage, and I having made known to him the contents thereof, he thereupon acknowledged that he signed, sealed, and delivered the same as his voluntary act and deed.

JAMES FLEMMING,
Master in Chancery of N. J.

Received in the clerk's office the second day of November, A. D. eighteen hundred and sixty-four, at six o'clock in the afternoon, and registered in Book 4 of Mortgages for Union county, page 348.

HENRY R. CANNON, *Clerk.* 20

EXHIBIT C 3.

Know all men by these presents, that I, Eibe D. Cordts, of the city, county, and state of New York, of the first part, in consideration of the sum of five hundred dollars, lawful money of the United States of America, to me in hand paid by Douglass G. McCotter, of the second part, at or before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, have granted, bargained, sold, assigned, transferred, and set over, and by these presents do grant, bargain, sell, assign, transfer, and set over, unto 30 the said party of the second part, a certain indenture of mortgage, bearing date the first day of November, one thousand eight hundred and sixty-four, made by George R. Jaques, of Rahway, New Jersey, on property in the city of Elizabeth, New Jersey, to secure the payment of five hundred dollars, which mortgage is recorded in Book 4 of Mortgages for

Union county, on page 348; together with the bond or obligation therein described, and the money due and growing due thereon, with the interest, to have and to hold the same, unto the said party of the second part, his executors, administrators, or assigns, for his or their own use, benefit, and behoof, forever, subject only to the proviso in the said indenture of mortgage mentioned. And I do hereby make, constitute, and appoint the said party of the second part my true and lawful attorney, irrevocable, in my name, or otherwise, but at
 10 his proper costs and charges, to have, use, and take all lawful ways and means for the recovery of all the said money and interest; and in case of payment, to discharge the same as fully as I might or could do, if these presents were not made.

In witness whereof, I have hereunto set my hand and seal, the _____ day of April, one thousand eight hundred and sixty-five.

EIBE D. CORDTS. [L. S.]

Signed, sealed, and delivered in the presence of

CHARLES E. PATTERSON.

20 State of New York, city and county of New York, ss.—
 Be it remembered, that on this seventeenth day of April, in the year one thousand eight hundred and sixty-five, before me, the undersigned, a commissioner for the state of New Jersey, duly appointed to take the acknowledgment and proof of deeds to be used therein, personally appeared Eibe D. Cordts, who, I am satisfied, is the grantor in the within indenture named, and I having first made known to him the contents thereof, he did acknowledge that he signed, sealed, and delivered the same as his voluntary act and deed, for the
 30 uses and purposes therein expressed.

In witness whereof, I have hereunto set my hand and affixed my official seal, the day and year above written.

CHARLES E. PATTERSON, [L. S.]

Commissioner for New Jersey in New York.

Received in the clerk's office the fourteenth day of June, A. D. 1866, and recorded in Book 2 of Assignments of Mortgage, for Union county, page 619.

HENRY R. CANNON, *Clerk.*

*From Jersey City Directories
 as from May 1. 1865 to May 1 1866
 other Douglas G. Commission to 222 S. 4*