

*Clerk of the Court  
of Errors and Appeals*

NEW JERSEY COURT OF APPEALS

IN THE LAST RESORT IN ALL CAUSES OF LAW.

Between		
FRANCIS PRICE,	<i>Appellant,</i>	On Appeal from a decree of the Chancellor.
and		
ABRAHAM L. VAN BOSKERCK and		State of the case.
ABEL I. SMITH, Executors of		
Philip Earle, deceased,	<i>Respondents.</i>	

A bill in Chancery was filed on the 6th of April, 1841, by Abraham L. Van Boskerck and Abel I. Smith, Executors of Philip Earle, deceased, against Francis Price, Abel I. Smith and "the Morris Canal and Banking Company," for the foreclosure of certain mortgaged premises, situate in the township of North Bergen, in the County of Hudson, under a certain Indenture of Mortgage, bearing date the 15th of June, 1835, and given by the said Francis Price, to the said Philip Earle, in his life time, to secure the payment of seven thousand dollars, due on a certain bond or obligation, bearing even date with the said Indenture of Mortgage, and executed by the said Francis Price to the said Philip Earle, and which said sum of seven thousand dollars, so intended to be secured by the said Bond and Mortgage, was part of the consideration money for the premises so mortgaged, and which the said Philip Earle in his life time had conveyed by deed bearing even date with the said Indenture of Mortgage, to the said Francis Price, for the consideration of twelve thousand dollars.

The bill of complaint sets forth that the said Francis Price on or about the 15th day of June, 1835, was indebted to the said Philip Earle in his life time in the sum of seven thousand dollars, and in order to secure the payment of the said sum of money with interest, did make and execute under his hand and seal, and deliver unto the said Philip Earle in his life time, a certain bond

or obligation, bearing date the same day and year last aforesaid, in the penal sum of fourteen thousand dollars, conditioned for the payment of seven thousand dollars, in two years from the date thereof, with interest, and in order more effectually to secure the payment of the said sum of seven thousand dollars, with the interest that should accrue thereon, the said Francis Price executed and delivered unto the said Philip Earle in his life time, a certain Indenture of Mortgage, bearing even date with the said bond, made by the said Francis Price of the first part, and the said Philip Earle of the second part, by which said Indenture of Mortgage the said Francis Price did grant, bargain and sell unto the said Philip Earle, and to his heirs and assigns for ever, all that tract or parcel of land and premises, in the township of Bergen, in the County of Hudson, (formerly County of Bergen), in the State of New Jersey; "Beginning at the Northeast corner of the land, now or late belonging to William Myers, and at the junction of his line with the Turnpike leading from Hackensack to Hoboken; thence running Southerly with said Turnpike on the South and West thereof, to the lands now or late of John Stevens, Esquire; thence Westerly along his line of lands, and Northerly along his line also, to the line of the aforesaid William Myers; thence continuing Northerly along said Myers' line to the place of beginning, being the junction of said line with said Turnpike, containing about nine acres, be the same more or less;" being the tract or lot of land and premises on which the Weehawken Mountain House stands, and being part of the tract of land designated as Tract No. One, in the Deed conveying said premises to the said Philip Earle, made by William S. Pennington, Master in Chancery of New Jersey, bearing date June 3d, A. D. 1822; recorded in the Clerk's Office of the County of Bergen, in Lib. T 2 of Deeds, pages 75, 76, 77, 78, and which was conveyed by Philip Earle, to the said Francis Price, by Deed bearing even date with the said Indenture of Mortgage: together with all and singular the tenements, hereditaments and appurtenances thereunto belonging, and all the estate, right, title and interest of the said Francis Price, of, in, and to the same. Provided however, and the said Indenture of Mortgage was declared to be upon the condition, that if the said Francis Price, his

heirs, executors or administrators should pay unto the said Philip Earle, his executors, administrators or assigns, the sum of money mentioned in the condition of the therein described bond or obligation, with the interest thereon, at the time and in the manner mentioned in the condition thereof, then that the said Indenture of Mortgage, and all the estate thereby granted should cease and be void. And which said Indenture of Mortgage was in due form of law acknowledged, and duly recorded in the Clerk's Office of the County of Bergen, in Lib. H of Mortgages, page 278, on the 13th day of July, 1835.

The Bill further sets forth that the said Philip Earle departed this life about the month of November, 1835, leaving a last will and testament duly executed and published, and appointing the said Abraham H. Van Boskerck and Abel I. Smith, Executors thereof, and that letters testamentary were duly granted to them by the Surrogate of the County of Bergen, on the 21st day of November, 1835, and that they took upon themselves the execution of the said last will and testament, and thereby became entitled to receive the amount due on the said Indenture of Mortgage.

The Bill further sets forth that the said Philip Earle, on or about the 7th day of December, 1833, mortgaged to Abel I. Smith, all that same identical tract or parcel of land and premises hereinbefore described, and contained in the same Indenture of Mortgage given by the said Francis Price to the said Philip Earle, to secure the payment of One Thousand Dollars, with interest, in one year from the date thereof, and which Indenture of Mortgage given by Philip Earle to Abel I. Smith was duly acknowledged and recorded the 17th day of April, 1834, in Lib. H. of mortgages for Bergen County, page 132, and that the same is a prior lien on the premises contained in the said Indenture of Mortgage first mentioned and is entitled to be first paid out of the mortgaged premises.

The bill further sets forth that on or about the 29th of August, 1837, the said Abraham Van Boskerck and Abel I. Smith as Executors of Philip Earle, and Trustees of his real estate, did by a certain release, executed by them, and for the consideration therein expressed, remise, release, and quit claim all the lien or

incumbrance created by the mortgage which was executed by the said Francis Price to the said Philip Earle, on all that certain parcel or piece of land, commencing at a point on the Hoboken and Hackensack turnpike road, being on the division line between the residences and premises of the said Francis Price, and John Ehlers, thence running South thirty-eight degrees West along said line, four hundred and fifty feet to the Southerly line of the land of said Ehlers, thence Easterly at right angles to said division line, thirty-three feet, thence North, forty degrees thirty minutes East, four hundred and nineteen feet to said road, thence North twenty-five degrees West, sixty-six feet, along said road to the place of beginning, containing four hundred and eighty-six one-thousandth part of an acre, be the same more or less, unto the said Francis Price, his heirs and assigns, and that the said Abel I. Smith, on the same 29th day of August, 1837, did also by a certain release executed by him, and for the consideration therein expressed, remise, release, and quit claim unto the said Francis Price, his heirs and assigns forever, all the lien and incumbrance created by the Indenture of Mortgage, which was executed and given by the said Philip Earle to the said Abel I. Smith, bearing date the 7th day of December, 1833, all that same certain piece or parcel of land situate in the then township of Bergen aforesaid, and which said parcel or piece of land is part and parcel of the same identical tract of land and premises in the said Indenture of Mortgage described, and the very same part and parcel, that was released by the Complainants to the said Francis Price as lastly above set forth.

The bill further sets forth, that a judgment was obtained in the Circuit Court of the County of Hudson, by the Morris Canal and Banking Company against the said Francis Price, for the sum of one hundred and fifty dollars and fifty-two cents, in the term of December, 1840, which remains uncanceled of record. And the bill further sets forth that a large part of the principal money secured by the bond and mortgage of the said Francis Price, still remains due, and that a large amount of interest is now due and owing, and that since the execution of the said Indenture of Mortgage, he hath possessed and enjoyed the said mortgaged premises, and received the rents, issues and profits thereof.

And the bill further sets forth that the said mortgaged premises are a slender and scanty security for the principal money and arrears of interest now due on the said bond and mortgage of the said Francis Price.

And the bill prays a decree of foreclosure, and that the said mortgaged premises may be sold, and that out of the monies arising therefrom the Complainants may be paid the amount due to them on the said bond and Indenture of Mortgage of the said Francis Price, so given to the said Philip Earle as aforesaid.

Francis Price, one of the Defendants to the Bill of Complaint of Abraham Van Boskerck and Abel I. Smith, Executors of Philip Earle deceased, by his separate answer, filed January, 18th, 1842, admits that he executed and delivered the bond and mortgage to the said Philip Earle, deceased, as set forth in the said bill, and that the said Indenture of Mortgage was in due form of law acknowledged and recorded as therein stated.

He further admits that the said Philip Earle departed this life at the time set forth in the said bill, and that he constituted and appointed Abraham H. Van Boskerck and Abel I. Smith Executors of his last will and testament, and that they, as such Executors, duly proved the said will, at the time and in the manner set forth in the said bill, and that letters testamentary were granted to them, and they took upon themselves the execution of the said will as stated in said Bill.

He further admits, that the said Philip Earle, in his life time, did execute unto Abel I. Smith an Indenture of Mortgage, of such date and of such purport and effect as in the bill set forth, and that the same was duly acknowledged and recorded, and is a prior lien and incumbrance on the said mortgaged premises.

He further admits that the Complainants, as Executors of the last will and testament of Philip Earle, deceased, and as Trustees of his real estate, by a certain release executed by them, of the date, purport and effect, as set forth in the said bill, did remise, release and quit claim unto this defendant, Francis Price, for

the consideration therein expressed, a part of the said mortgaged premises, as stated in the said bill; and that the said Abel I. Smith did also remise, release and quit claim unto the defendant, Francis Price, by a certain release executed by him, of the date, purport and effect as mentioned in the said bill, and for the consideration therein set forth; and that the same have been duly acknowledged and recorded.

He further admits that the said Morris Canal and Banking Company recovered against him, in the Circuit Court of the County of Hudson, at the term, and for the sum, and in the manner as stated in the said bill; but he avers that this judgment has been paid off and satisfied, although it still remains uncanceled of record.

He denies that all the principal money contained in the said first mentioned bond or obligation, and secured by the said first mentioned indenture of mortgage, so as aforesaid given by him to the said Philip Earle, is now due and owing to the said complainants, as Executors as aforesaid; but says that a great part thereof, has been paid to the said Philip Earle during his lifetime, or to the complainants, executors as aforesaid, since his decease; and that there only remains now due on the said bond and mortgage, so as aforesaid given by him the said Francis Price to the said Philip Earle, for principal, the sum of Four Thousand Dollars, with some amount of interest.

He admits that since the execution of said indenture of mortgage by him, he hath possessed and enjoyed the said mortgaged premises, and hath received the rents, issues and profits thereof.

He says that the said Philip Earle, in his life time, and on or about the 15th of June, 1835, by a certain indenture of that date, and for the consideration of twelve thousand dollars, did convey unto him and his heirs forever, the above mentioned mortgaged premises; and to secure the payment of part of the consideration money therefor, the said indenture of mortgage was given to the said Philip Earle; and in which said conveyance to him the said Francis Price, was included all the right, title and interest of the said Philip Earle to the land on which the Bergen Turnpike Road is worked or laid out, to the centre of the said road, as far as the same bounds the above conveyed premises, if any

such right or title be had ; and which Indenture so as aforesaid given by the said Philip Earle to the said Francis Price, was duly acknowledged and recorded in the Clerk's Office of the County of Bergen, in Liber O. 3 of Deeds, pages 411, 412, 413.

He further says, that the land over which the Bergen Turnpike Road was originally surveyed or laid out, and to the centre of which road, as far as the same bounds the above mentioned premises, it was the design and intention of the said Philip Earle to convey to him the said Francis Price, is distant from the turnpike road, as it at present runs and is worked, about on an average from four to five hundred feet, and the lands embraced between the said two roads, as far as the same bounds the premises so as aforesaid conveyed by the said Philip Earle to him the said Francis Price, contains about six acres.

He further says that the said Bergen Turnpike Road, which leads from Hoboken to Hackensack, was originally laid out and surveyed by the Commissioners appointed for that purpose, in conformity with the law incorporating the said Turnpike Company, through the valley, East of the said Turnpike Road, as it now runs, and distant therefrom, on an average, about four or five hundred feet, but that subsequently the said turnpike road was worked, as it now runs, and he the said Francis Price has heard and believes it to be true, that the present location of it, as far as the same bounds the above conveyed premises to him, was never surveyed by the said Commissioners.

He further says, that at the time of the contract for the purchase of the premises conveyed by the said Philip Earle to him, the said Francis Price, he made an objection to purchasing the same, unless the said Philip Earle should convey to him all the title he had to the premises to the centre of the turnpike road, as it was originally surveyed or laid out by the said Commissioners, as far as the same bounds the above conveyed premises ; and that the said Philip Earle, at or about that time pointed out to him the said Francis Price, the survey that was made of the turnpike road through the valley as above mentioned, and agreed to convey to him all his right, title and interest to the centre of the said road, as originally surveyed, so far as the same was contiguous to, and bounded by the said conveyed premises.

He insists that at the time the said premises were conveyed by the said Philip Earle to him the said Francis Price, the said Philip Earle intended to convey, and did, by the said conveyance then made, convey to him the said Francis Price, all the right, title and interest which he the said Philip Earle, in his life time, had to the land embraced between the said two roads, as far as the same bounds the above conveyed premises, containing about six acres. And he avers, that at the time of the date of the Deed last above stated, the premises conveyed thereby were owned by the said Philip Earle.

He further says that the Complainants, as Executors of the last will and testament of Philip Earle deceased, and as Trustees of his real estate, after his death took possession of the said strip or parcel of land embraced between the two said roads so far as the same bounds the above described premises, and still hold possession of the same, (except they may have conveyed away some part thereof,) and have not given possession thereof to the said Francis Price; and he submits and insists, that as he is called upon by the said Complainants to pay to them as Executors as aforesaid, whatever may be found to be due on his said bond and mortgage, given to the said Philip Earle, or else that the said mortgaged premises should be sold to satisfy the same, that the Court of Chancery, will at the time they make a decree for that purpose, order and direct the said Complainants to deliver up possession to him the said Francis Price, of the said strip or parcel of land, so as aforesaid described and embraced between the two said roads, so far as the same bounds the above conveyed premises. And he, the said Francis Price, tenders himself ready to pay to the Complainants, as such Executors, whatever may be found to be due on his said bond and mortgage, whenever they shall deliver unto him the possession of the said strip or parcel of land, embraced between the said two roads as aforesaid.

The Appellants rely upon the following points, and insist that the said Decree is erroneous.

1. Because the said decree adjudges that the said mortgaged premises of the said Francis Price should be sold to satisfy the mortgages therein mentioned, without directing, ordering, and decreeing the above Complainants, to deliver up possession to the

said Francis Price of certain premises, now in the possession of the said Complainants, and alledged to have been included in the Deed given by the said Philip Earle to the said Francis Price, and to secure a part of the consideration money in the said Deed mentioned, the said premises were mortgaged to the said Francis Price, and for a sale of which said mortgaged premises, the Complainants Bill in the said cause was filed.

2. Because the said Chancellor did not order and direct that upon payment of the money due on the said bond and mortgage by the said Francis Price, and as tendered to be paid by him, that the said Complainants should deliver up possession of certain premises included in the said Deed, given by the said Philip Earle to the said Francis Price, and now in possession of the said Complainants.

3. Because the said decree is in other respects erroneous.

Examination of witnesses in the cause depending in the Court of Chancery, of the State of New Jersey, wherein Abraham L. Van Boskerck and Abel I. Smith, Executors of Philip Earle, deceased, complainants, and Francis Price, Abel I. Smith, and the Morris Canal and Banking Company are defendants, taken at the house of Robert Martin, innkeeper, in Jersey City, on Monday, the eighteenth day of April, in the year of our Lord, one thousand eight hundred and forty-two, before Lewis D. Hardenbergh, one of the Masters and Examiners of the said Court, in the presence of Matthias Ogden, Esquire, of Counsel for the said defendants, and of Abraham L. Van Boskerck, one of above complainants, and J. Dickerson Miller, Esq., Solicitor and of Counsel for said complainant, upon notice given by the defendants and service admitted by J. D. Miller, complainants Solicitor.

Exhibit C. and F. on the part of the complainant being two bonds, are admitted by the Counsel of the defendants.

James F. Gardner, a witness produced on the part of the complainants being duly sworn, upon his oath saith he was acquainted with Philip Earle in his life time, lived a neighbor to him, since he lived at Weehawken, he moved to Weehawken about twenty years ago.—Philip Earle built the Weehawken Mountain House, and enclosed with it about eight or nine acres,—said house was built about ten or twelve years ago—witness is acquainted with what is now called the Weehawken Mountain House lot—the inclosure to which I have referred as made by Philip Earle is the Mountain House lot—upon reflection the witness thinks the inclosure of the Mountain House lot was made more than twelve years ago—the Hackensack and Hoboken turnpike road was then used as a turnpike—the Weehawken Mountain House lot was and is South of the said turnpike road—witness don't think there was any part of said Mountain House lot on the North or East of said turnpike road—said lot was enclosed in front with a paling fence—witness knows where the old Hackensack stage road run through the hollow—this road is distant from the present turnpike road about six hundred yards—thinks there is about forty acres or more opposite the Price house and between the two roads—no part of the Weehawken Mountain house lot ever

was laid out on the North side of the turnpike road, as it now runs, to witness's knowledge—Philip Earle commenced building a house on the North side of the turnpike road shortly after he sold the Mountain House to Price—which house has been finished since Mr. Earle's death and is now occupied by the estate of said Philip Earle—witness is acquainted with what is called the Myers' lot, thinks it was something like four acres large—this lot is situated entirely on the South side of the present turnpike road—William Myers never owned any property on the North side of the turnpike road in that vicinity, as witness knows—said lot is immediately West of the Mountain House lot, and adjoining to it.

Witness being cross examined, says he has understood the Turnpike road as originally laid out, was North of the present Turnpike road—does not know the reason the location of said Turnpike was altered, unless it was to shun the Weehawken ferry—the Turnpike road was located and run where it is, at the instigation of Mr. Stevens, who owned the Hoboken ferry—witness supposes the turnpike road was run where it is, to make a road more difficult to be made, to the Weehawken ferry, and draw the passengers to Hoboken ferry.

This testimony objected to by Complainant.  
L. D. H., M. C. Philip Earle did not own any property in New Jersey at the time the Turnpike road was laid out, which was thirty odd years ago—witness cannot tell the quantity of land contained between the Turnpike road as originally laid out, and the present Turnpike road bounding on the Mountain house lot—witness understands the Commissioners appointed for the purpose, laid out a Turnpike road, but cannot tell where it was located—witness has understood that a part of the Turnpike road near the Mountain house was laid out in a different place by the Commissioners from what it was made—witness has understood the present Turnpike road is South of where it was laid out by the Commissioners—at the time the deed was given by Mr. Earle to Mr. Price, Earle owned the land on the North and South of the Turnpike road, said road running through his land—Executors of Mr. Earle are now in possession of the land on the North side of said Turnpike road.

Being again examined in chief, witness says that no road North of the present Hackensack Turnpike has been opened or worked besides the one he has already referred to as being distant about six hundred yards from the said turnpike road.

Sworn and subscribed this 18th day }  
of April, A. D. 1842, before me, } JAMES F. GARDNER.  
L. D. HARDENBERGH, M. C.

James Ludlum being duly sworn on the part of the Complainant, says, he has lived at Weehawken about thirty-four or five years—has known Philip Earle over forty years—recollects of his building the Mountain House, and helped draw some of the timber for it—the Mountain House was built from twelve to fifteen years ago—there was about nine acres of land enclosed with the house—the house is called the Mountain House, but never knew the lot to be called the Mountain House lot—the lot was enclosed separately from Mr. Earle's other property—never knew any land belonging to the Mountain House, to be North or East of the turnpike road—Philip Earle tilled and pastured his land North and East of the turnpike road after Mr. Price bought of him—turnpike road has been laid out and used between thirty-five and forty years—witness knows what is called the Myers lot, it contains about four acres—it adjoins the Mountain House lot on the West, and lays entirely South of the turnpike road. Mr. Myers never owned any land on the North of the present turnpike road—witness lived at Weehawken, before Mr. Myers came there, and still lives there—the old stage road leading to Hackensack is from five to six hundred yards distant from the turnpike road—witness thinks there is forty acres of land in front of the Mountain House between the two roads. Mr. King has bought a part of this ground since from the executors of Philip Earle—since Earl sold to Price, a house has been built on the land North of the turnpike road, and opposite to the Mountain House—the witness thinks the house and improvements on this lot cost three thousand dollars or more.

Witness being cross examined says, he has understood they viewed the ground North of the present turnpike, but never heard of their laying out a road—the house built on the North of

the turnpike above alluded is from one hundred and fifty yards to two hundred yards from the road.

Sworn and subscribed this 18th day }  
of April, A. D. 1842, before me, }

JAMES LUDLUM.

L. D. HARDENBERGH, M. C.

Adjourned to Friday the 22d April, 1842, at 10 o'clock, A. M.  
at my office.

LEWIS D. HARDENBERGH,

July 12, 1842.

Master in Chancery.

Examination of Witnesses in a cause depending in the Court of Chancery of the State of New Jersey, wherein Abraham L. Van Boskerk and Abel I. Smith, Executors of Philip Earle, deceased, are complainants, and Francis Price, Abel I. Smith, and the Morris Canal and Banking Company, are defendants, taken at the Office of L. D. Hardenbergh in Jersey City, on Saturday, the twenty-fourth day of September, in the year of our Lord, one thousand eight hundred and forty-two, before Lewis D. Hardenbergh, one of the Masters and Examiners of the said Court, in the presence of J. D. Miller, Esq., Solicitor and of Counsel for the said complainants, and of Matthias Ogden, Esq., Solicitor and of Counsel for the said defendants, upon notice given by the said defendants, the service of which is admitted by the Counsel of the complainants.

Rodman M. Price, of Brooklyn, in the State of New York, a witness produced on the part of the said defendant, being sworn, upon his oath saith, he is acquainted with the property his father Francis Price, bought of Philip Earle, and being shewn a deed marked exhibit A, on the part of the defendant Francis Price—witness was present at the time the contract was made for the property between his father and Earle—the contract was in writing, and witness drew it—the father of witness had the contract—about the time the deed was made out and delivered, for the above mentioned property, a conversation took place between the witnesses' father and Mr. Earle, respecting the Turnpike road, as was originally laid out between Hoboken and Hackensack—in this conversation, Mr. Earle pointed out where the Turnpike road was originally laid

The testimony of Rodman M. Price so far as it relates to a written contract and its contents excepted to.

out to the Northward and Eastward of the present Turnpike road in a curved line, and nearly parallel with it—Mr. Earle told witness the location of the road was altered, and the present road was worked at the instigation of Mr. Stevens who was the owner of Hoboken ferry—Mr. Earle stated he thought the Hackensack company had no right to work the road where it now is, and that the location of it could be changed to the place where it was originally surveyed and laid out, and with the view of securing to the said Francis Price, the land laying between the two roads as originally surveyed and laid out, and as it now runs, the last clause of the description of said property in the said deed, marked exhibit A, was inserted and that the words “ or laid out ” interlined in said last clause of the description, which are in his own handwriting, were made for the purpose of making said description more clear, and of securing the right to the land to the line of the road to the said Francis Price, as said to be originally laid out by the said Philip Earle—Mr. Earle stated to witness the reason why the said Turnpike road was worked off the original survey, was to take the said road further from the Weehawken ferry—from what Mr. Earle stated to witness, about the line of the two roads, witness should think there was about two or three acres of land laying between the said two roads—witness has been at the Clerk’s Office in Hackensack, to find the survey of the said Turnpike road, as originally laid out or as it now runs, but has not been able to find either. It is consented that the law incorporating the Hackensack and Hoboken Turnpike company shall be referred to on the hearing of this cause by either party—from what witness understood from Mr. Earle, the road as originally laid out would intersect the present road at a place between the barn and a bar room, built upon the said premises, about one hundred yards from the brow of the hill or the gate as it now stands.—The house commenced building by Mr. Earle, and subsequently finished would not stand on the land laying between the line of the two roads as pointed out to witness by Mr. Earle since the execution of the deed for the above mentioned property, and since Francis Price has taken possession of the property—Mr. Earle stated to Mr. Price, he might set his fence any where and pay no attention to the worked road—that the Turnpike company had no right to the road—witness was in habit of

attending to his father's business in the year 1837, and being shown a receipt marked exhibit B, on the part of the defendant, says he believes it to be the handwriting of Abraham L. Van Boskerck, who he has frequently seen write, and being shown another receipt marked exhibit C, on the part of the defendants, says he believes it to be the handwriting of Abm. L. Van Boskerck, and which said exhibits purport to be receipts given to Mr. Francis Price, for money paid on account of the estate of Philip Earle.

Being cross examined, says, he is the son of Francis Price, one of the above named defendants—there was a contract in writing between the parties Earle and Price, before the deed was given for the sale of the Mountain house lot—the agreement was made some two or three months before the deed was given—witness thinks he and Charles Earle were witnesses to the said agreement, which witness had in his possession and held for his father—the conversation above mentioned between Mr. Earle and father of witness took place at different times; cannot say whether there was any conversation before the contract was made, but recollects there was afterwards—the conversation referred to when Mr. Earle stood near the house, and pointing out the road as originally laid out, which witness supposes to be one hundred or one hundred and fifty yards to the North of the house—at the time when the interlineation was made in the deed referred to, witness understood that the premises to be conveyed would extend to the line of the road as laid out originally—if the road was changed—the Mountain house stands within sixty or seventy feet of the present worked Turnpike road—witness is certain the words “or laid out,” in the last clause of the description of the deed referred to, are in his hand writing—the defendant, Francis Price, has put a fence along the road, further out in the road than the old fence stood, where there was a fence—there was some part of the property along the road not enclosed—the reason Mr. Earle told witness he need pay no attention to the road as it then run, was because he believed the road was not laid there—witness does not recollect of any other person being present at the conversation above referred to, than his father, Mr. Earle and himself—witness thinks he made the payments, for which the receipts marked exhibits B and C, were given—the

impression of witness is that when the last payment was made, for which receipt marked exhibit C was given, a receipt was put on the bond for the amount of both receipts, being the receipt for five hundred dollars, and dated the 14th of July, A. D. 1837—witness thinks the conversations with Mr. Earle above referred, took place after the contract was made, and both before and after the deed was made.

Being again examined in chief—witness says—that it is his impression that there was a counterpart of the original contract for the sale of the Mountain House lot—one which was kept by Mr. Price, and the other by Mr. Earle.—The Southern part of the valley road, as laid out on the map marked exhibit G on the part of the Complainant is on the line of the Hackensack road as originally laid out as pointed out to witness by Mr. Earle.

Subscribed and sworn this 24th day of }  
September, A. D. 1842, before me, } RODMAN M. PRICE.

L. D. HARDENBERGH, M. C.

Adjourned till Tuesday next Sept. 27th, 1842, at 10 o'clock,  
A. M.

Tuesday, Sept. 27, 1842.—Parties met at 10 o'clock, at the Office of L. D. Hardenbergh.—J. D. Miller, Solicitor and Counsel of the Complainant, objected to any further testimony being taken in this cause, the same being noticed for trial, and the objection is noted accordingly.

Richard Outwater, Esq. a witness produced on the part of the defendant Francis Price, being sworn, upon his oath saith—he is a surveyor—John Outwater, the father of witness, was also a Surveyor—witness knows his father was applied to about forty years ago by the directors of the Hackensack and Hoboken turnpike company to survey a road about to be laid out by said company—they run the road at Weehawken in coming South, along the old stage road below the hill, and in going Northerly, along the side of the hill where the road is now worked—the said road was chained and the distances and courses taken, there was also a map of the road made out, which witness thinks may now be got, he has understood the survey has been found, but in whose pos-

session it is he cannot say—at the time the road was run out witness understood it was run as now worked, to avoid the Weehawken ferry and carry the travel to Hoboken—being shown a map marked exhibit G, says that the road marked as the valley road thereon, is nearly the course and direction in which the road as run by himself and farther South of the hill was surveyed—witness has searched for his field book and notes of the survey, among his own and his father's papers but has not been able to find them.

Witness being cross examined, says, he does not know what his father done with the map made of the survey—in making the survey referred to, in running over the hill we commenced on the West side of the Weehawken hill where the old stage road then was—witness knows where James Gardner used to live—in making the survey they run somewhere near his house—the old stage road as surveyed by us for the turnpike, is distant there nearly half a mile from the road as now worked—don't know that the road we surveyed along the old stage road was ever laid out—said road was never opened or adopted as the Hackensack and Hoboken turnpike, but the road we surveyed on our return over the side of the hill as is now worked, was worked and used as a turnpike road, but does not know if regularly laid out as such—it is about thirty-nine years since the said turnpike road was so opened and worked—no other road than the one now used has been used or opened for the Hackensack and Hoboken turnpike road.

Witness again examined in chief says, the road surveyed below the hill, was more advantageously situated for making a road than the road as it now runs—at the time the survey was made we hugged the hill pretty close along the ground opposite the Mountain House lot, and East of it.

Witness being cross-examined again, says—the house of Gardner referred to in my previous examination stands in a Northeast direction from the Mountain House; in a due East course from the Mountain House to the old stage road referred to is about one hundred and fifty yards—witness has never taken the distance, and cannot tell within fifty yards—witness has known the Mountain House lot about forty-five years—the said lot is on the West and

South side of the turnpike road—Cantello's house is almost Northerly from the Mountain House, and about a half a mile distant therefrom: the old stage road runs still to the North of the Cantello House. Gardner's house above referred to was near the present Bulls' ferry road, a little to the East of it, and North of the old Stage road, and near to it.

Sworn and subscribed this 27th } RICHARD OUTWATER.  
 Sept., A. D. 1842, before me }  
 L. D. HARDENBERGH, M. C.

Robert C. Bacot, of Jersey City, a witness produced on the part of the Complainant being sworn, on his oath saith he is a surveyor—a map being shown him, marked Exhibit G, says it was made by him from a survey made, from a certified copy of a deed marked Exhibit H on the part of the complainant—that said map contains a correct representation of the property as now enclosed—witness also run round the property of Mr. Ehler, formerly the property of Mr. Myers, said map contains the number of acres contained in the present enclosures—find the Mountain House lot enclosed with stone wall all along the road—from the centre of the Hackensack road opposite the Mountain House, due East, to the centre of the valley road as marked on the map, is about three chains.

Witness being cross examined says, the valley road on said map is the road running below the hill, and is a worked road, the valley road is taken from Douglass' topographical map and not from actual survey.

Sworn and subscribed this 24th day of } ROBERT C. BACOT,  
 Sept., A. D. 1842, before me, } Surveyor.  
 L. D. HARDENBERGH, M. C.

George Cassedy, Esq., a witness produced on the part of the Complainants, being duly sworn, upon his oath saith—being shown a paper writing, marked exhibit A, on the part of the defendant, that he filled up the description part of the deed for Mr. Earle. Witness has no recollection where he got the boundaries from—in the words “or laid out” in the descriptive part of the

deed, there is a strong resemblance to the handwriting of witness, but cannot say it is his.

Witness being cross-examined says,—the word “township” noted as having been interlined before the execution of the deed is in the handwriting of witness—the words “as laid out”—noted as interlined before the execution of the said deed, is in the handwriting of Samuel Cassedy—witness does not think he was present at the execution of the deed—witness thinks that if the words “or laid out” had been interlined by him he would probably have marked all the interlineations before the deed went out of his possession—it is the impression of witness that the said words “or laid out” are not in his writing.

Subscribed and sworn before me this }  
 27th day of Sept., A. D. 1842, }

GEO. CASSEDY.

L. D. HARDENBERGH, M. C.

Cornelius Doremus, a witness on the part of Complainants, being duly sworn, upon his oath saith that—is in his eightieth year of age—has been a director in the turnpike company leading from Hackensack to Hoboken—the present turnpike road as laid out, and worked and travelled over Weehawken hill, has been so used for about forty years—there never was any other road laid out over Weehawken hill for the Hackensack and Hoboken turnpike, than the one now travelled—the road as now worked over Weehawken hill, has always been considered a part of the Hackensack and Hoboken turnpike road—witness knows the Mountain House lot, and has known it for forty years—the Mountain House lot lays to the West and South of the present turnpike road—it was a clever little lot containing from nine to eleven acres, but don't recollect particularly—the Mountain House lot has been enclosed since Mr. Earle built there, which is about twelve years ago or more—witness knows the house where Lambert now lives—the house marked Lambert in pencil on the map, represents its relative situation—Mr. Naugle built the Lambert house for Mr. Earle or his heirs—thinks Mr. Earle was not living at the time—witness thinks Mr. Earle was living when the house was commenced—the Lambert house is situate intermediate between

the Gardner house and the Mountain house—the road now laid out and used as the Hackensack and Hoboken turnpike road is the only one ever laid out and used for such road—other routes were examined but no other one adopted.

Being cross examined witness says he is acquainted with Richard Outwater, and was acquainted with his father, they were both Surveyors—knows that old Judge Outwater surveyed the route of the turnpike between Hackensack and Hoboken—does not know whether Richard Outwater was there or not—when old Judge Outwater was surveying the road from Hoboken to Hackensack, he took by compass the courses for a road, East at the bottom of Weehawken hill, along the old stage road till it came to a stream at the mouth of a gully, then went up the gully Northerly till they came to the old stage road, West of Gardner's, crossing a point of Mr. Cantello's land—the route was not chained—witness does not know of any alteration in the route on account of Mr. Stevens—there was two routes run.

Mr. Miller refused to let the defendant, Francis Price, mark on a map marked exhibit G, in pencil mark, the road as originally surveyed by Judge Outwater, in order to show from the testimony of Cornelius Doremus, that it was the road as originally surveyed for the Hackensack and Hoboken Turnpike company, and to which he referred in his testimony, as also the cross road.

In chief—the survey made by old Judge Outwater, to which witness has referred, was a mere experimental survey.

Cross examined, says, there was a map made of the Turnpike road—does not know if it was ever filed in the Clerk's office—understood it was not—there was a cross road built after the Turnpike was made, from the Turnpike to the Weehawken ferry—this cross road was a little South of the Lambert house—this was no part of the Hackensack and Hoboken Turnpike road.

Subscribed and sworn this 27th day of }  
September, A. D. 1842, before me, } CORNELIUS DOREMUS

L. D. HARDENBERGH, M. C.

John Van Boskerk, a witness on the part of the Complainant, being sworn, upon his oath saith he has been acquainted with the

Mountain house lot as long as it has been known by that name, which has been for twenty years past—the house on the Mountain lot has been built since that time—the present Turnpike road has run as it now runs for twenty or thirty years—the Mountain house lot has always been considered as laying on the South and West of the said Turnpike road—the Mountain house lot, the witness has understood, contains eight or ten acres—no part of the Mountain house lot, as witness has ever heard or known, extends North or East of the said Turnpike road—the house now occupied by John Lambert, was built by Jacob Naugle for Philip Earle, and was commenced, he thinks, in the life time of Earle—the house and improvements and fences of the Lambert property could not be put up for less than three thousand dollars—witness does not know that any other route was ever laid out for the Hackensack and Hoboken Turnpike road than the one now travelled—has lived at Hoboken for about twenty-five years—Cornelius Doremus has lived at New Durham, three and a half miles from Hoboken and on the said Turnpike road, as long as witness can recollect.

Being cross examined, witness says, Phillip Earle owned the land in front of the Mountain house lot, South and East of the Turnpike road, down to the river, and sold a part of it bounding on the river about seventeen years ago to Stevens—witness thinks the Weehawken Mountain house lot was so called after Mr. Earle built on said lot—witness' father lived at the Weehawken ferry several years—there was a road leading from the Turnpike, at the top of the hill near the Mountain house, and South of Lambert's house, down to the Weehawken ferry—this road is not any part of the Hackensack and Hoboken Turnpike road—there may be three or four acres or more between the present Turnpike road, and the road at the foot of the hill and south of the road leading from the turnpike on top of the hill to Weehawken ferry—the old road known as the stage road lies farther East than the valley road, as designated on the map marked G—the road referred to as leading down to Weehawken ferry was not part of the valley road, but crossed the same below this road

leading to the Weehawken ferry has been shut up, witness thinks, fifteen or twenty years.

Subscribed and sworn this 27th day } JOHN VAN BOSKERK.  
of September, 1842, before me }  
L. D. HARDENBERGH, M. C.

Abel I. Smith, a witness on the part of the complainant being sworn, on his oath saith—(Mr. Abel I. Smith is excepted to by Matthias Ogden, Esq., of Counsel for the defendant, Francis Price, on the ground that he is both a party complainant and defendant in this cause)—he is one of the executors of Philip Earle deceased—all the papers belonging to him, have come into the hands of witness and his associates—witness has never discovered any agreement entered into between Philip Earle and Francis Price for the sale of the Weehawken Mountain lot, except the deed—witness was acquainted with Philip Earle in his lifetime, and long time previous to his death—he was in habit of consulting witness about his business—done so in two or three instances—about the time Mr. Price was bargaining with Mr. Earle for the Mountain house lot, Mr Earle sent for witness—upon coming to Mr. Earle, found Mr. Earle, Mr. Francis Price, and Mr. Price's son there, who had staid there all night—whether the bargain was made before witness came there he cannot tell, but the bargain was when witness was there, Mr. Price was to give Mr. Earle twelve thousand dollars for the property, five thousand dollars to pay in cash and become answerable to pay witness one thousand dollars for which he held a mortgage on the property, and give a bond and mortgage for six thousand dollars being the balance of the purchase money,—after this some conversation was had about having the property surveyed but it was thought unnecessary as the witness had a mortgage which contained a correct description of the premises—which they requested witness to bring over, and the deed was to be drawn from it—witness sent his mortgage to Mr. Earle's—the deed was drawn and the day appointed for the execution of it—witness met Mr. Price and Mr. Earle at Earle's house, and came from there to Jersey City, where the deed was acknowledged by Mr. Samuel Cassedy—at that time the yard in

front of the house, and between it and the road was unenclosed, and Mr. Price mentioned, he wished to enclose it, and put up a fine fence there, and wished some alterations in the deed, so that he might enclose it to the road wherever it might run—to the best of witness' knowledge the property conveyed by Earle to Price was the same as described in the mortgage he held against the property and no other—the Mountain House and lot lies on the South and West of the Hackensack and Hoboken turnpike road—have known the Mountain House since it has been built—the Mountain House lot so called never extended North or East of the turnpike road—Philip Earle contracted with Jacob Naugle before his (Earle's) death for the building of the house on the North side of the road—the Mountain House lot is computed to contain nine acres.

Being cross examined witness says—witness never knew of any written contract between Price and Earle for the purchase of the Mountain House lot, but there may have been several meetings before the one which witness was present—George Cassedy, Esq. was not present at the execution of the deed—Mr. Price to the knowledge of witness had never seen the mortgage from which the deed from Earle to him was to be made out, previous to the agreement above referred to—at the time of the execution of the deed before Mr. Samuel Cassedy, some little alterations were made in the deed to enable Mr. Price to fence out to the road—Mr. Earle.

Subscribed and sworn this 27th day of }  
 Sept., A. D. 1842, before me,        }  
 L. D. HARDENBERGH, M. C.

ABEL I. SMITH.

Abm. L. Van Boskerck sworn on part of Complainant—(Mr. Matthias Ogden, of Counsel on the part of the defendant, excepts to Mr. Van Boskerck's being sworn as a witness, he being a party Complainant in this suit)—says he and Mr. Abel I. Smith are the only Executors living of Philip Earle—witness has never discovered among the papers of the said Philip Earle, any contract or copy of one, for the sale of the Mountain House lot previous to the deed—witness being shewn a paper marked exhibit C, says

the indorsement made thereon, dated July 14, 1837, for five hundred dollars, the body of said receipt is in the handwriting of Rodman Price—this five hundred dollars was paid in two payments of two hundred and fifty dollars each, one payment at the time it bears date, and the other a few days previous—the two papers marked exhibits B and C, being shewn to witness, he says they are the receipts given for the five hundred dollars endorsed on the bond.

Subscribed and sworn this 27th day }  
of Sept., A. D. 1842, before me. } A. L. VAN BOSKERCK.  
L. D. HARDENBERGH, M. C.

Charles H. Earle being sworn on the part of the Complainant, is objected to by Matthias Ogden, Esq., on the part of the Defendant, Francis Price, on the ground that he is an interested witness, being an heir at law of Philip Earle, deceased:—

Says, he was present at the time the contract was signed between Philip Earle and Francis Price, for the sale of the Mountain house lot—witness was a subscribing witness to the contract—there was but one copy, to the best of witness' recollection, that was kept by Mr. Price—Philip Earle had no copy—witness only signed one as a witness—by the contract, there was no land sold laying East and North of the road—the contract mentioned nine acres, as contained in the Mountain house lot—something was said after the contract was made, about Mr. Price buying of Mr. Earle the land lying on the North side of the Turnpike, but Mr. Earle expressly reserved it, saying, he wanted it to build a house on for himself and family.

Being cross examined, witness says, he is a son of Philip Earle, *and am* interested in his estate—witness has never released any right or interest in the estate—Abel I. Smith was not by when this contract was made—the contract for the land was executed in the month of April or May.

Subscribed and sworn this 27th }  
day of Sept., 1842, before me, } CHARLES H. EARLE.  
L. D. HARDENBERGH, M. C.

Filed. Oct. 13, 1842.

LEWIS D. HARDENBERGH, Master in Chancery.

## IN CHANCERY OF NEW JERSEY.

Between

Abraham L. Van Boskerck, and Abel I. Smith, Executors etc. of Philip Earle, deceased, <i>Complainants.</i>	} On Pleadings, Proofs, etc.
And Francis Price, The Morris Canal and Banking Company, etc. <i>Defendants.</i>	

Interlocutory Decree.

This cause coming on to be heard at the special term of the Court of Chancery, held at the State House, in the City of Trenton, before the Chancellor, agreeably to the order of the Court, and the consent of the Solicitors of the Complainants and of Francis Price, at the last stated term of the Court, and it appearing that process of subpœna for the appearance of Francis Price, Abel I Smith, and the Morris Canal and Banking Company, hath been duly issued and returned, served by the Sheriff of Hudson County, to whom the same was directed and delivered, and that the said Defendants, Abel I. Smith, and the Morris Canal and Banking Company, have neglected to file any plea, answer or demurrer to the Complainants's Bill of Complaint, within the time limited by law or at any other time, and it further appearing that the said Francis Price hath filed his separate answer to the Complainants' Bill, and that testimony hath been taken and closed according to the rules of the Court; and the said defendant, Francis Price, having made default at the hearing, no counsel appearing for him, and the pleadings, depositions, exhibits and proofs being read, and the argument of the Counsel for the Complainants being heard, and no cause appearing to the contrary. It is thereupon, on motion of J. D. Miller of Counsel, with the Complainants, on this second day of November, in the year of our Lord one thousand eight hundred and forty-two, ordered, adjudged and decreed that the Complainants' Bill be taken as confessed against the said Defendants, Abel I. Smith and the Morris Canal and Banking Company. And that it be referred to Lewis D. Hardenbergh, Esq., one of the Masters of this Court, to ascertain and report the amount due to the said Complainant, for principal and interest upon the mortgage held by them, upon

the premises mentioned and described in the said Bill of Complaint; and also, the amount due, if anything, to the said Abel I. Smith in his own right, upon his mortgage and to report accordingly; and also the ascertain and report the order and priority of the said mortgages respectively, and whether they both embrace the same, or what part of the mortgaged premises, and whether the whole or a part, and what part of the said mortgaged premises should be sold for the payment and satisfaction of the said several claims, and if all the said premises should be sold, whether they should be sold together or in parcels, and if in parcels, in what order. And that the said Master do make his report thereon, with all convenient speed. And all further equity is reserved until the coming in of the Master's report.

WM. PENNINGTON, C.

A true copy.

SAMUEL R. GUMMERE, Clerk.

Filed, Nov. 2, 1842.

IN CHANCERY OF NEW JERSEY.

Between

Abraham L. Van Boskerck and  
Abel I. Smith, Executors of  
Philip Earle, deceased,  
*Complainants.*

And

Francis Price, the Morris Canal  
and Banking Company, et al.  
*Defendants.*

} January 2d, 1843.

In pursuance of an Order of this Court entered in the above cause, bearing date the second day of November, in the year of our Lord one thousand eight hundred and forty-two—I have been attended by the Solicitor of the Complainants, and also by the Solicitor of Abel I. Smith, and I have considered of the matters thereby referred to me. And the Solicitor of the Complainant produced before me the mortgage in their bill mentioned, bearing date the fifteenth day of June, A. D. eighteen hundred and thirty-five, and made and executed by

Francis Price to the said Philip Earle, and which said mortgage was duly acknowledged according to law by the said Francis Price, and recorded as in the bill mentioned, as appears, by endorsements thereon. And the said Complainants Solicitor also produced to me the Bond intended to be secured by the said mortgage, and which said Bond and Mortgage are marked exhibits A and B, on the part of the Complainants: and I find there is due to the Complainants on their said Mortgage for principal and interest on this day the sum of three thousand nine hundred and seventy-six dollars and forty-nine cents; and I do certify and report that the schedule hereunto annexed marked No. 1, and making part of this my report, contains a statement and account of the principal and interest money due to the Complainants on their said Mortgage, and to which for greater certainty I refer.

The Bond above referred to was given by Francis Price for the sum of seven thousand dollars. There is indorsed on the said bond the following agreement, signed by Philip Earle and Francis Price, in presence of Samuel Cassedy, Esq., viz: 'This bond is given for a part of the consideration money named in a certain deed of conveyance of the said Philip Earle for his present residence on Weehawken hill to the said Francis Price, and there being a prior mortgage on the said premises of one thousand dollars, to one Abel I. Smith, recorded in the Bergen County Clerk's Office, 17 April, 1834, in Book H. of Mortgages, page 103. It is agreed that this bond be credited the said sum, leaving six thousand dollars to be paid and remain a credit so long as the interest on said bond, is kept down by the said Francis Price, and when the principal is paid, the credit to become absolute.—This bond is secured by a mortgage, June 15, 1835.'—This agreement is dated same day the bond was given, and by it if Francis Price paid the interest and principal of the bond to Abel I. Smith it was to be an absolute credit. Francis Price paid the interest on said bond to June 15, 1841. The balance of interest is included in Schedule No. 2, making part of this my report. As the interest of Abel I. Smith the holder of the thousand dollar mortgage is represented in this suit, and being prior in date to the mortgage of the Complainants, must be first paid, and from the sale of the property of Francis Price, the credit given him on his bond of the

bond and mortgage of Abel I. Smith for one thousand dollars must be considered absolute and the said Francis Price the defendant, charged only with the sum of six thousand dollars and interest, with which I have charged as per schedule No. 1.

And I do further report that the Solicitor of Abel I. Smith, produced before me the mortgage in the Complainants bill referred to bearing date the seventh day of December, A. D. eighteen hundred and thirty-three, and made and executed by the said Philip Earle to the said Abel I. Smith, and which mortgage was duly acknowledged according to law by the said Philip Earle before J. D. Miller, Esq., one of the Masters of the Court of Chancery of New Jersey, and recorded in the Clerk's Office of the County of Bergen, on the 17th day of April, A. D. 1834, as appears by indorsements thereon; and the said Solicitor of Abel I. Smith, also produced to me the bond referred to in the said last mentioned mortgage, the payment of which was intended to be secured thereby, and which last mentioned mortgage and bond are marked exhibits C and D, on the part of the Defendant Abel I. Smith: and I find there is due to the said Abel I. Smith on his said mortgage for principal and interest on this day the sum of one thousand and ninety-two dollars and ninety-nine cents. And I do certify and report that the schedule hereunto annexed marked No. 2, and making part of this my report, contains a statement of the principal and interest money due to the said Abel I. Smith on his said mortgage and to which for greater certainty I refer: and I do further certify and report that the same premises comprised in the Complainants mortgage, are also comprised in the mortgage of the said Abel I. Smith, and that the mortgage to the said Abel I. Smith was made and executed and also recorded prior to the mortgage of the said Complainants, and is entitled to priority in payment, and that it is necessary and advisable that the whole of the mortgaged premises should be sold to raise and pay the money so due to the said Abel I. Smith, and the Complainants respectively, together with the costs of this suit.

All which is respectively submitted.

LEWIS D. HARDENBERGH,  
Master in Chancery.

## SCHEDULE A.

Bond bearing date the 15th day of June, 1835, in the penal sum of \$14,000 conditioned for the payment of \$7,000 on or before the 15th June, 1837, with lawful interest, secured by the Mort- gage in the complainants bill mentioned		\$7,000 00
Credit on above bond as per agreement indorsed on bond		1,000 00
Interest on \$6,000 00 from June 15, 1836, (int. endorsed paid to that time) to 14 July, 1837, 1 y. 29 d.		\$6,000 00
		389 00
Then paid		\$6,389 00
		500 00
Interest to Aug. 29, 1837, 1 1-2 mos.		\$5,889 00
		44 16
Then paid		\$5,933 16
		500 00
Int. to February 6th, 1838,—5 m. 8d.		\$5,433 16
		143 05
Then paid		\$5,576 21
		360 00
Int. to June 23d, 1838—4 m. 17 d.		\$5,216 21
		119 08
Then paid		\$5,335 29
		800 00
Int. to October 12, 1838—3 m. 19 d.		\$4,535 29
		82 39
Then paid		\$4,617 68
		100 00
Int. to December 1, 1838—1 m. 18 d.		\$4,517 68
		36 14
		\$4,553 72

Then paid . . . . .	300 00
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Int. to Dec. 15, 1838—15 days . . . . .	\$4,253 72 10 63
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Then paid . . . . .	\$4,264 35 100 00
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Int. to May 2d, 1839—4 m. 17 d. . . . .	\$4,164 35 95 07
	<hr/>
Then paid . . . . .	\$4,259 42 1,000
	<hr/>
Int. to January 2d, 1843, . . . . .	\$3,259 42 717 07
	<hr/>
Amount due Jan. 2, 1943, . . . . .	\$3,976 49

LEWIS D. HARDENBERGH,  
Master in Chancery.

#### SCHEDULE B.

Bond of Philip Earle to Abel I. Smith, bearing date the 7th December, 1833, in the penal sum of \$2,000 00 conditioned for the pay't of \$1,000 00 on the 7th December, 1834, with lawful interest secured by the mortgage in the complainant's bill mentioned . . . . .

\$1,000 00

Int. paid on said bond up to June 15, 1841, and indorsed on bond.

Int. from June 15, 1841 to Jan'y 2, 1843 . . . . . 92 99

Due Jan'y 2, 1843, . . . . . \$1,092 99

LEWIS D. HARDENBERGH,  
Master in Chancery.

Filed January 18, 1843.

## IN CHANCERY OF NEW JERSEY.

Between

Abraham L. Van Boskerck and  
 Abel I. Smith, Executors of  
 Philip Earle, deceased.

*Complainants.*

And

Francis Price, the Morris Canal  
 and Banking Company, et al.

*Defendants.*

On Bill to foreclose mort-  
 gaged premises.

Decree.

This cause coming on to be heard at the special term of the Court of Chancery, held at the State House, in the City of Trenton, before the Chancellor, agreeably to the order of the Court, and the consent of the Solicitors of the Complainants and of Francis Price, at the last stated term of the Court, and it then appearing that process of subpoena for the appearance of Francis Price, Abel I. Smith and the Morris Canal and Banking Company, hath been duly issued and returned served by the Sheriff of Hudson County, to whom the same was directed and delivered, and that the said Defendants, Abel I. Smith and the Morris Canal and Banking Company have neglected to file any plea, answer or demurrer, to the Complainants' Bill of Complaint within the time limited by law, or at any other time. And it then further appearing that the said Francis Price had filed his separate answer to the Complainants' Bill, and that testimony had been taken and closed according to the rules of the Court, and the pleadings, depositions, exhibits and proofs having been read, and the argument of the Counsel for the Complainants having been heard, and no cause appearing to the contrary, it was thereupon on motion of J. Dickinson Miller of Counsel, with the Complainants, on the second day of November, in the year of our Lord one thousand eight hundred and forty-two, ordered, adjudged and decreed that the Complainants' Bill be taken as confessed against the said Defendants, Abel I. Smith and the Morris Canal and Banking Company. And now at this day the cause being opened to the Court by J. Dickinson Miller, Solicitor for and of Counsel with the Complainants; and it appearing that Lewis D. Hardenbergh, Esq., one of the Masters of this Court, hath made

his report bearing date the second day of January instant, in pursuance of the decretal order of this Court, dated the second day of November, in the year of our Lord one thousand eight hundred and forty-two, by which report it appears that there was due on the day of the date thereof unto Abel I. Smith, upon the bond held by him, payment whereof was intended to be secured by the mortgage made to him, the sum of one thousand and ninety-two dollars and ninety-nine cents: And that there was due to the said Complainants upon the bond held by them, payment whereof was intended to be secured by the mortgage made to them, the sum of three thousand nine hundred and seventy-six dollars and forty-nine cents; and that the same premises, comprised in the Complainants' mortgage, are also comprised in the mortgage of the said Abel I. Smith—and that the mortgage to the said Abel I. Smith was made and executed and also recorded prior to the mortgage of the said Complainants and is entitled to priority in payment; and that it is necessary and advisable that the whole of the mortgaged premises should be sold to raise and pay the money so due to the said Abel I. Smith and the Complainants respectively, together with the costs of this suit; and no cause being shewn or appearing against confirming the said report. It is on this eighteenth day of January, in the year of our Lord one thousand eight hundred and forty-three, by William Pennington, Governor and Chancellor of the State of New Jersey, ordered, adjudged and decreed, that the said Master's report and all the matters and things therein contained, do stand ratified and confirmed, and that the said Complainant is entitled to relief and to a sale of the said mortgaged premises, to satisfy the said Abel I. Smith and the Complainants, the amounts so as aforesaid reported to be due to them respectively with their costs of suit. And it is accordingly further ordered, adjudged and decreed that so much of the said estate and premises in the said mortgages of the said Abel I. Smith and of the Complainants mentioned, as will be sufficient to raise and satisfy the said sums so as aforesaid reported to be due to them respectively with their costs of suit to be taxed, be sold; and that a writ of fieri facias do issue for that purpose out of this Court, directed to the Sheriff of the County of Hudson, commanding him to make sale, according to law of the said mortgaged premises, and that out of the moneys

arising from such sale, he in the first place pay to the said Abel I. Smith or his Solicitor, the sum of one thousand and ninety-two dollars and ninety-nine cents, with interest to be computed from the date of the said report until the same be paid, and that he do then pay out of the proceeds arising from the said sale, in case there be any surplus, after paying the said Abel I. Smith, the sum aforesaid, to the said Complainants or their Solicitor, the said sum of three thousand nine hundred and seventy-six dollars and forty-nine cents, with lawful interest thereon to be computed from the date of the said Master's report until the same be paid, together with their costs of suit to be taxed, with interest from the date of the said Master's report, and in case there be any surplus, that the same be brought into Court and deposited with the Clerk, to abide the further order of this Court, unless otherwise disposed of by the order of the Court; and that the said Sheriff make return to this Court of his proceedings by virtue of the said writ. And it is further ordered, adjudged and decreed, that the Defendants stand absolutely debared and foreclosed of and from all equity of redemption of, in, and to so much of the said mortgaged premises as shall be sold as aforesaid, by virtue of this decree.

WM. PENNINGTON, C.

A true copy. SAMUEL R. GUMMERE, Clerk.

Filed January 20, 1843.

COURT OF APPEALS IN THE LAST RESORT.

Between

Francis Price,	<i>Appellant,</i>	} On Bill, etc.
And		
Abraham L. Van Boskerck and	} Petition of Appeal.	
Abel I. Smith, Executors of		
Philip Earle, deceased.		
	<i>Respondents.</i>	

To the Honorable the Court of Appeals in the last resort in all causes of law.

The humble petition of Francis Price, the Appellant in the above stated cause respectfully shews, that your petitioner finds

himself aggrieved by a final decree made in the Court of Chancery by His Excellency William Pennington, Governor and Chancellor of New Jersey, bearing date, the eighteenth day of January, ie the year of our Lord, one thousand eight hundred and forty-three, wherein the said Abraham L. Van Boekerck and Abel I. Smith, Executors of Philip Earle, deceased are complainants and the said Francis Price and Abel I. Smith and the Morris Canal and Banking Company are defendants, in this respect, to wit, that the said decree adjudges that the said mortgaged premises of the said Francis Price one of the defendants in the above suit in the pleadings in the cause mentioned, should be sold to satisfy the mortgages therein stated, without directing, ordering and decreeing the above complainants to deliver up possession to the said Francis Price one of the defendants in the Bill mentioned, of certain premises now in the possession of the said complainants, and alledged to have been included in the deed given by the said Philip Earle in his lifetime to the said Francis Price, for the premises in the pleadings in the above cause set forth, and to secure a part of the consideration money in the said deed mentioned, the premises were mortgaged by the said Francis Price to the said Philip Earle, and for a sale of which said mortgaged premises, the complainants bill in the said cause was filed. And your petitioner humbly appeals from that part of the said decree of the Chancellor which decrees as aforesaid, upon the ground that the same is erroneous, for that the said defendant Francis Price is entitled to have the possession of certain premises included in the deed given by the said Philip Earle in his lifetime to him, and now in the possession of and under the control of the said complainants, delivered up to him, the said Francis Price by the said complainants, before the said mortgaged premises should be sold to satisfy the moneys due on the said mortgage, and which was given as a security for a part of the consideration money mentioned in the said deed. 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 that your petitioner may have such relief in the premises as to this Honorable Court shall seem meet.

Dated May 16, 1843.

PETER BENTLEY,  
Solicitor for and of Counsel with Appellant.

Filed May 17, 1843.

MATTHIAS OGDEN,  
Of Counsel with Appellant.



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