

Court of Errors and Appeals.

IN CHANCERY OF NEW JERSEY.

Between

JOSEPH R. TANTUM, ap-
pellant,

and

EMMA W. GREEN, respon-
dent.

} On appeal
from Court
of Chancery.

George M. Robeson, of counsel with appellant.

Frederick Kingman, of counsel with respondent.

Bill of Complaint.

[Filed February 5, 1867.]

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

Humbly complaining, showeth unto your Honor, your oratrix, Emma W. Green, of Allentown, in the county of Monmouth, in the state of New Jersey—that on or about the fourteenth day of December, in the year of our Lord one thousand eight hundred and sixty-six, your oratrix recovered a judgment against one John A. Tantum, of Allentown, in 10 the county of Monmouth aforesaid, in the Supreme Court of this state, for the sum of two thousand and eight hundred dollars damages, and sixty-six dollars and nineteen cents costs of suit, in an action of trespass on the case upon

premises for a breach of promise of marriage; and that on the same day an execution, commonly called a *feri facias de bonis et terris*, was issued out of said court on said judgment, directed to the sheriff of the said county of Monmouth, commanding him to levy and make the damages and costs aforesaid out of the goods and chattels of the said John A. Tantum, and that if sufficient goods and chattels of the said defendant could not be found in his county, then to make the said damages and costs out of the lands and tenements of
 10 the said defendant, that the said execution was afterwards, to wit, on the fifteenth day of the same month of December, delivered to the said sheriff to be by him executed according to law.

And your oratrix further shows, that the said sheriff afterwards returned the said execution with the following return endorsed thereon, viz.

“I herewith return the within execution, no goods or chattels, lands or tenements, of the within named defendant found in my county, whereon to levy to make the money, or
 20 any part thereof.

“Dated December 31st, 1866.

[Signed,]

WM. B. SUTPHIN, *Sheriff.*”

All which will more fully appear by the said judgment then remaining of record in the said Supreme Court, and by the said execution, and the return of the said sheriff thereto, now on file in the office of the clerk of said court, and to which, for greater certainty, your oratrix begs leave to refer, if it shall be necessary so to do.

And your oratrix further shows, that the said sum of
 30 twenty-eight hundred and sixty-six dollars and nineteen cents, with interest from the said fourteenth day of December, A. D. eighteen hundred and sixty-six, remains due and owing to your oratrix from the said John A. Tantum, on the said judgment; and your oratrix has not been able to discover, nor is she aware of any property of the said John A. Tantum upon which a levy could be made by virtue of any execution that could be issued out of the said Supreme Court; but your oratrix has been credibly informed, and believes and charges, that the said John A. Tantum has property or
 40 things in action due to him, or held in trust for him, where

the trust has been created by, or the fund held in trust has proceeded from himself, over and above such property as is now reserved by law; and that the said John A. Tantum has property, and things in action, bonds and mortgages, and other evidences of debt, which he conceals.

And your oratrix further shows unto your Honor, that on or about the twenty-eighth day of March, A. D. eighteen hundred and sixty-five, one Rebecca P. Quigley, the wife of Asher Quigley, executed and delivered unto the said John A. Tantum a bond and mortgage to secure the payment, to the said John A. Tantum, of the sum of three thousand dollars, and that the said mortgage is well secured on certain real estate owned by the said Rebecca P. Quigley, situate in the township of Washington, in the county of Mercer, in this state, and was duly recorded in the clerk's office of said county of Mercer. And your oratrix charges that the said sum of three thousand dollars, with interest thereon from March twenty-fifth, eighteen hundred and sixty-six, mentioned in said bond and mortgage, are still due and owing from the said Asher Quigley and Rebecca P. his wife, to the said John A. Tantum. 20

And your oratrix further shows, that on or about the first day of April, eighteen hundred and sixty-five, one Henry Eldridge executed and delivered to the said John A. Tantum a bond and mortgage to secure the payment of the sum of seven hundred dollars to the said John A. Tantum, and that the said mortgage is well secured on certain real estate of the said Henry Eldridge, situate in the township of East Windsor, in the said county of Mercer, and was duly recorded in the clerk's office of said county. And your oratrix charges that the said sum of seven hundred dollars, with interest thereon from the first of April, eighteen hundred and sixty-six, mentioned in said bond and mortgage, is still due and owing from the said Henry Eldridge to the said John A. Tantum. 30

And your oratrix further shows, that on or about the twenty-ninth day of March, eighteen hundred and sixty, one Samuel D. Vincent, executed and delivered unto James Tantum, who was the father of the said John A. Tantum, a bond and mortgage, to secure the payment of three hundred dollars, and that the said mortgage is well secured on certain 40

real estate of the said Vincent, in the township of Washington, in the said county of Mercer, and was duly recorded in the office of the clerk of said county, which said mortgage was afterwards, by the executor of the said James Tantum, deceased, duly assigned to the said John A. Tantum, which said assignment was duly recorded in the clerk's office of the said county of Mercer. And your oratrix charges that the said sum of three hundred dollars, with interest thereon from the first day of April, eighteen hundred and sixty-six, is still due and owing from the said Samuel D. Vincent to the said John A. Tantum.

And your oratrix further shows, that among the securities held by the said John A. Tantum, at the time of the rendering of the verdict before mentioned against him, was a mortgage made by Alfred Conover to Elizabeth Tantum, dated May twenty-sixth, eighteen hundred and forty-seven, duly recorded in the clerk's office of the county of Monmouth, and duly assigned to said John A. Tantum; also, a mortgage made by Abraham Burke and Sarah J. his wife, to James D. Hall, dated the eleventh of February, eighteen hundred and fifty-four, recorded in the clerk's office of said county of Monmouth, and duly assigned to said John A. Tantum; also, a mortgage made by Henry Layton and Angelina his wife, and George Layton, to James Tantum, dated the seventeenth day of June eighteen hundred and fifty-six, recorded in said clerk's office, and duly assigned to said John A. Tantum; also, a mortgage made by John Bunting, junior, to said John A. Tantum, dated the twenty-fifth day of March, eighteen hundred and sixty-four. Which said last four mortgages, and the bonds secured thereby, were in the hands of the said John A. Tantum, at the time the said verdict was rendered against, and the money due thereon, amounting in the aggregate to the sum of twelve hundred and fifty dollars, as near as your oratrix can ascertain, was then due from the said mortgagors to the said John A. Tantum.

And your oratrix further shows unto your Honor, that after the verdict was rendered against said John A. Tantum in favor of your oratrix, upon which the judgment aforesaid was entered, to wit, on the eighth day of December, A. D. eighteen hundred and sixty-six, the said John A. Tantum

made a pretended assignment of all the bonds and mortgages aforesaid, to his brother, Joseph R. Tantum, of Wilmington, in the state of Delaware, by two separate instruments of writing, executed at Camden, in this state; and your oratrix charges, that the said pretended assignments of said mortgages were made for the purpose of defeating your oratrix in the collection of her said judgment, and protecting the property of said John A. Tantum, and placing it beyond the reach of your oratrix, and more effectually concealing it. And your oratrix has reason to believe, and does believe, 10 and charge that the said pretended assignments, were made without any *bona fide* consideration paid, or intended to be paid, and upon some secret trust, for the purpose of defrauding your oratrix, and preventing her from collecting her said judgment.

And your oratrix further shows that upon the trial of the issue joined between your oratrix and the said John A. Tantum, upon which the verdict aforesaid was rendered and judgment entered, at Freehold, in the said county of Monmouth, on the fifth day of December last past, the said John 20 A. Tantum declared upon his oath that he was worth seven thousand dollars in bonds and mortgages, and notes and other securities, and your oratrix further shows, that after the rendition of the said verdict, at a late hour in the night, of the seventh day of December last, the said Tantum departed from Freehold for Allentown, the place of his residence, and on the following day at Camden, in this state, executed the said pretended assignments of the mortgages aforesaid, and then departed from this state, and has not since returned, as your oratrix is informed and believes. 30

And your oratrix charges that the said pretended assignments were made by the said John A. Tantum, to the said Joseph R. Tantum, for the avowed and openly declared purpose of preventing your oratrix from collecting the amount of the said judgment.

And your oratrix charges that the said Joseph R. Tantum had full knowledge of the aforesaid purpose of the said John A. Tantum to defraud your oratrix, and colluded with him to effect said fraudulent purpose; and that the said pretended assignments are, therefore, void as to complainant, a 40

judgment creditor; and that the said assignments were a mere sham, as between the parties thereto, and were a fraud upon the rights of your oratrix, and conveyed no title to the said Joseph R. Tantum for the bonds and mortgages above mentioned, or the moneys due thereon. And your oratrix respectfully insists, that both the said John A. Tantum and the said Joseph R. Tantum should be enjoined and restrained from collecting any of the moneys due on the said mortgages, or either of them, until they shall have answered this
10 bill, and until the further order of the court in the premises.

And your oratrix further shows, that she has reason to believe, and does believe and charges, that the said John A. Tantum has in his possession moneys, and notes, obligations, and other evidences of debt, amounting to, at the least, ten thousand dollars, or thereabouts, and that he has concealed, and still conceals, the same, so as to prevent your oratrix from reaching or levying on the same, by means of her said judgment.

And your oratrix further shows, that the said judgment of
20 your oratrix still remains wholly unsatisfied, and that she does not know of any property of the said defendant which can be reached by process thereon, issued out of a court of common law.

And your oratrix further shows, that she has frequently applied to the said John A. Tantum, and requested him to pay the said judgment of your oratrix. But now, so it is, may it please your honor, that the said defendants, combining and confederating with divers persons, unknown to your oratrix, but whose names, when discovered, your oratrix
30 prays may be inserted in this her bill of complaint, with apt and proper words to charge them as defendants, to injure and aggrieve your oratrix in the premises, not only refuse to comply with such reasonable request, but put your oratrix at defiance, and pretend that the said John A. Tantum has no property or means in this state with which to pay and satisfy the said judgment. All which actings, doings, and pretences of the said defendant and his confederates, are contrary to equity and good conscience, and tend to the manifest injury of your oratrix. In tender consideration whereof,
40 and forasmuch as your oratrix is remediless by the strict

rules of the common law, where matters of this nature are particularly cognizable and relievable, to the end, therefore, that the said John A. Tantum and Joseph R. Tantum, and each of them, may answer the premises, and that as fully as though they were herein again repeated, and they thereto particularly interrogated, paragraph by paragraph, and that the said John A. Tantum make full discovery of his property and state what is the full value thereof, of what it consists, and where situate, and that the said pretended assignments of mortgages by the said John A. Tantum to the said 10 Joseph R. Tantum may be set aside as fraudulent; and that the said mortgages may be applied, under the direction of this court, in payment of the judgment of your oratrix; and if it shall appear that your oratrix cannot obtain payment therefrom, that, in such case, the said defendants, and each of them may be held personally liable, and may be decreed to pay to your oratrix the amount due on the said judgment and costs; and that, if necessary, a receiver may be appointed to take charge of the property of the said John A. Tantum, and apply the same to the payment of the said claim and 20 judgment of your oratrix, under the direction of this court.

And that your oratrix may have such other and further relief in the premises at the nature of the case may require, and as may be agreeable to equity and good conscience.

May it please your Honor, the premises considered, to grant unto your oratrix, not only the state's writ of injunction, issuing out of and under the seal of this court, to be directed to the said John A. Tantum and Joseph R. Tantum, restraining them, and each of them, from selling, assigning, or otherwise disposing of said mortgages or either 30 of them, and from taking any proceedings either at law or in equity, for the collection of the same; also, another writ of injunction to be directed to the said Asher Quigley and Rebecca P. Quigley, Henry Eldridge, and Samuel D. Vincent, of the county of Mercer, and Alfred Conover, Abraham Burke, Henry Layton, and George Layton, and John Bunting, junior, restraining them, and each of them, from paying off, or otherwise satisfying the bonds and mortgages herein before mentioned, or either of them, to the said John A. Tantum, or the said Joseph R. Tantum, or any 40 other person whatever; but also the state's writ of subpoena,

issuing out of and under the seal of this court, to be directed to the said John A. Tantum, Joseph R. Tantum, Asher Quigley, Rebecca P. Quigley, Henry Eldridge, Samuel D. Vincent, Alfred Conover, Abraham Burke, Henry Layton, George Layton, and John Bunting, junior, therein and thereby commanding them, on a certain day, and under a certain penalty therein to be specified, to be and appear before your Honor, in this honorable court, then and there to answer the premises, and to stand to, abide, perform such decree as to your
 10 Honor shall seem meet.

F. KINGMAN,

Solicitor and of counsel with complainant.

New Jersey, ss.—Emma W. Green, the complainant in the foregoing bill of complaint, being duly sworn, on her oath saith—that the matters and things set forth in the said bill are true, and that the said John A. Tantum made the assignment of the mortgages mentioned therein, on the day following the rendering of the said verdict against him, and immediately thereafter left this state; that the said Tantum
 20 made oath on the said trial that he was worth six thousand dollars in bonds and mortgages, and notes, and one thousand in government securities, and from his own statement made to deponent, before said trial, she believes he is now worth, and has at his command, ten thousand dollars, at the least, over and above all liabilities; that the said Tantum boasted before the said trial, that he would put his property out of his hands if the verdict was against him, and that deponent should never have a cent of his money, and that the said assignments were made in fulfillment of said purpose, and
 30 with the intention of preventing deponent from collecting said judgment, and in pursuance of his openly declared purpose to do so.

And deponent further says, that the said Joseph R. Tantum, to whom the said assignments were made, is a brother of said John A. Tantum, residing in Wilmington, Delaware, and from statements made by the said John A. Tantum, she verily believes that the said Joseph R. Tantum colluded with said John A. Tantum, to defraud deponent, and the said assignments were a mere sham, and that the moneys due on

the said mortgages are still due and owing to the said John A. Tantum; and that the said John A. Tantum fraudulently conceals his property for the purpose of preventing this deponent from collecting her said judgment against him.

EMMA W. GREEN.

Sworn and subscribed, this twenty-fourth day of January, A. D. eighteen hundred and sixty-seven, before me.

JAMES S. AITKIN, *M. C.*

New Jersey, ss.—Elias B. Rogers being duly sworn, on his oath saith—that he is well acquainted with the facts, mat- 10
ters, and things set forth in the foregoing bill of complaint,
and that the same are true, and that the said John A. Tan-
tum was worth, at the time of the rendering of said verdict
against him, about ten thousand dollars, and that he openly
declared that he would put his property out of his hands in
case the verdict was against him, so that complainant could
get nothing, and deponent verily believes that the said as-
signments of mortgages were made without any considera-
tion, and for the purpose of defrauding the complainant, and
preventing the collection of her said judgment, and that the 20
said Joseph R. Tantum was well aware of such purpose, and
took the said assignments with the intent and purpose of
aiding and assisting his brother in his designs for defeating
and defrauding the complainant; and deponent further
saith, that from the statements made by the said John A.
Tantum, both before and since the said trial and verdict, he
verily believes that it is still the purpose and intention of
said John A. Tantum to conceal his property, and to keep
it beyond the reach of said judgment, and thus to defraud
the complainant; and that the said Joseph R. Tantum is 30
harboring the said John A. Tantum, at Wilmington, Dela-
ware, as deponent is informed, and is still aiding and assist-
ing the said John A. Tantum, to defraud the complainant,
by attempting to collect the moneys due on the said mort-
gages.

ELIAS B. ROGERS.

Sworn and subscribed, this twenty-fourth day of January,
A. D. eighteen hundred and sixty-seven, before me.

JAMES S. AITKIN, *M. C.*

Answer.

[Filed April 11, 1867.]

*Answer of Joseph R. Tantum, one of the defendants to the bill of
complaint of Emma W. Green, complainant.*

This defendant, saving and reserving to himself all and all
manner of benefit of exception to the manifold errors and
10 imperfections of the said complainant's said bill of complaint
contained, for answer thereto, or to so much and such parts
thereof as he is advised that it is necessary or proper that he
should make answer unto, answering, says—that in regard
to the statements of the said bill of complaint as to the re-
covery of the judgment therein mentioned against John A.
Tantum, co-defendant and brother of this defendant, the
amount thereof, and the issuing of the execution thereon,
and the return of the sheriff thereto, this defendant has no
accurate and particular information, but he admits that he
20 has heard of the general facts therein set forth, in reference
to the same, from his said brother and other persons, and
while he cannot specifically admit or deny the strict accuracy
of all the particulars so set forth, he admits that the said
statements of the said bill are in accordance with his general
knowledge and information on the subject; and he admits,
also, that the dates of the entry of said judgment, and the
issuing of the execution thereon, are correctly set forth in
said bill, leaving the said complainant to make such proof of
other particulars of these matters as she may be advised and
30 may be able to do.

And this defendant further answering says, that he is not
informed as to the statements of the said bill in regard to the
amount due said complainant on said judgment, or whether
she has been able to find sufficient property subject to the
same to suffice for the payment and discharge thereof, nor

as to the statements or declarations of the said John A. Tantum in regard to the amount or situation or investment of his property in the said bill set forth, nor is he informed, nor does he know of any trust or fund held for said John A. Tantum, nor any concealment of property of his by the said John A. Tantum, nor does he know how much money or means the said John A. Tantum has in his possession, or under his control, nor that he has any, except from the circumstances hereinafter set forth.

And this defendant further answering says, that he believes 10 the statements of the said bill in relation to the execution and assignments of the bonds and mortgages therein mentioned to the said John A. Tantum, are substantially correct, and therefore he admits the same, but he denies that the moneys secured by the same, or any of them, or the interest thereon, accrued or due from the mortgagors, or any part thereof, now is or was, at the time of the filing of said bill of complaint, or of the entry of the judgment, or the issuing of the execution therein mentioned, due or owing to the said John A. Tantum; and he denies that he has, or had at any 20 of said times, any estate or interest of any kind in said bonds and mortgages, or any or either of them, or the moneys or interest due or to grow due thereon, or the estates thereby conveyed, directly or indirectly, in his own name or in the name of any other person, or as beneficiary under any trust or otherwise. And this defendant denies all knowledge of any pretended assignment or assignments of said bonds and mortgages by the said John A. Tantum to this defendant, or any other person.

And this defendant further answering says, that on or 30 about Saturday, the eighth day of December last, defendant's brother, the said John A. Tantum, came to the residence of the defendant, in the city of Wilmington, in the state of Delaware, where this defendant is a practising physician, and after the usual and natural conversation on general and family subjects, natural between brothers, produced the bonds and mortgages in said bill mentioned, and two regular and formal assignments thereof, to this defendant, dated the said eighth day of December, duly executed, acknowledged, and stamped by him, the said John A. Tantum, and he then and 40

there informed the defendant that the action against him at the suit of the said complainant, of which this defendant had been previously informed, had terminated in favor of the said complainant, who had recovered against him a verdict of nearly three thousand dollars, which, with the other large expenses of the said John, incident to the trial of the said case, he would not be able to pay and discharge without the assistance of this defendant in raising the money by converting these securities into cash, and the said John ap-
10 pealed to this defendant as a brother whom he knew could command means, to raise the money and buy the said bonds and mortgages and securities from him, declaring specifically and repeatedly at the time, that he wished to leave the state of New Jersey and embark in business elsewhere, and that he desired to realize this money on these securities for the purpose of paying off and discharging the claim of the said complainant, and all his other obligations of every kind in the state of New Jersey, previous to estab-
20 lishing himself elsewhere; and the said John, as a further inducement to this defendant to raise the money required, and to purchase the said bonds and mortgages, offered to include in the sale other property of the estimated value of about three hundred and fifty dollars.

And this defendant further answering says, that on the following Monday, the tenth day of December, this defendant crediting the said statements of the said John, and desiring to assist him as far as he reasonably could afford to do, this defendant agreed to purchase and did purchase said bonds and mortgages of the said John, and took the assignments
30 of the same, executed as aforesaid, and then and there delivered to this defendant, and that defendant actually paid to the said John, on the tenth day of December last, for the said bonds and mortgages and a horse and wagon belonging to the said John, and by him sold at the same time to this defendant, the just and full sum of five thousand five hundred and three dollars and sixteen cents, being the full amount of principal and interest of the said bonds and mortgages, (the said horse and wagon being valued at three hundred and fifty dollars, and being conveyed to this defendant as part in-
40 ducement in addition to his desire to oblige his brother as aforesaid. for raising the money and purchasing said pro-

perty;) and defendant says that he paid to the said John the sum of two hundred and fifty-three dollars and sixteen cents in money, and gave him a check on the "Farmers Bank of Wilmington" for the balance, being five thousand and two hundred and fifty dollars, which check defendant met and paid by borrowing the sum of four thousand dollars, and adding it to about thirteen hundred dollars which he had then in bank, which said borrowed sum defendant has since, also on the first day of April, paid out of his own funds which then came in.

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And this defendant further answering, denies all and all kinds of fraudulent intent, purpose, or agreement, with his said brother in respect to said purchase, and he denies that the said purchase of the said bonds and mortgages, and the assignments thereof, were pretended or fraudulent, or made or taken with any intent on his part of defrauding the said complainant or any other person, or to prevent the collection of said judgment, or any claim of said complainant or any other person, but simply as a fair *bona fide* purchase and payment and assignment for the accommodation of his brother, 20 as aforesaid.

And this defendant explicitly denies the statement and charge of the said bill that he had "full knowledge," or any knowledge of any "purpose of the said John A. Tantum to defraud the complainant," and that he "colluded with him to effect any fraudulent purpose," and he denies that the said assignments were "pretended," or "a mere sham as between the parties, or were a fraud," by the said defendant on the rights of said complainants; and he denies that the said bonds and mortgages were ever liable or subject to the 30 said judgment of the said complainant, but he says that the same, with all the moneys due and to grow due thereon and all the estate and interest thereby conveyed, were legally and actually sold, assigned, transferred, and delivered over to him on the tenth day of December last, for full, fair, and valuable consideration, actually paid by him without any fraudulent act or intent, and the said assignments thereof were deposited for record in the proper offices on the said tenth day of the same month, all of which actually took place before the entry of said judgment of the said complainant, on the issuing of the execu- 40

tion thereon as set forth in the said bill of complainant, and all and every interest and estate therein, became and was and remains the property of this defendant, without any interest of any kind being or remaining in his said brother, the said John A. Tantum, on any liability to the judgment of the said complainant, or for any of the debts of the said John.

And this defendant insists, that the said purchase and assignments for good and valuable consideration as aforesaid, conveyed and vested in him good, clear, and perfect title to the said bonds and the said mortgages, and the estates thereby conveyed, and the money thereby secured; and that he is entitled to sue for, collect, and receive the same, and every part thereof, without the hinderance or interference of the said complainant or any other person whatever.

And this defendant denies all and all manner of unlawful combination and confederacy in said bill charged, without that, that any other matter or thing material for this defendant to make answer unto, and not herein or hereby well and sufficiently answered, confessed or avoided, traversed or denied, is true, to the knowledge or belief of this defendant.

All which matters and things this defendant is ready to aver, maintain, and prove, as this honorable court may direct, and humbly prays that a decree may be made by this honorable court dissolving the injunction granted against him in this case, and that he be hence dismissed with his reasonable costs and charges in this behalf most wrongfully sustained; and this defendant will ever pray, &c.

ROBESON & SCOVEL,

30 *Solicitors for and of counsel with defendant, Joseph R. Tantum.*

New Jersey, Mercer county, ss.—Joseph R. Tantum, the above mentioned defendant, alleging himself conscientiously scrupulous of taking an oath, and being first solemnly affirmed, affirms and says—that the facts, matters, and things, in the above answer set forth, so far as they refer to the acts and deeds of this defendant, or are stated on his own knowledge, are true, and so far as they relate to the acts and deeds of any other person, or are stated upon information and belief, this defendant believes them to be true.

Affirmed and subscribed at Trenton, N. J., this 8th day of April, A. D. 1867, before the subscriber.

P. S. SCOVEL, M. C.

Replication.

[Filed May 3, 1867.]

This repliant, saving and reserving to herself all and all manner of advantage of exception to the manifold insufficiencies of the answer of the defendant, Joseph R. Tantum, for replication thereunto saith—that she will aver and prove her 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, that any other matter or thing whatsoever in the said answer contained, material in the law to be replied unto, confessed and 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 her said bill she has already prayed.

F. KINGMAN, 20

Solicitor for and of counsel with complainant.

Depositions for Complainants.

[Filed August 17, 1867.]

Examination of witnesses taken in the above stated cause, before the subscriber, a master and examiner of the state of New Jersey, at his office, in the city of Trenton, on Thursday, the thirteenth day of June, A. D. 1867, in the presence of Frederick Kingman, esquire, solicitor of the complainant, and George B. Robeson, esquire, and Phillip S. Scovel, esquire, solicitors and counsel of the defend- 30

ant, Joseph R. Tantum, pursuant to notice given by the solicitor of the complainant to the solicitors of the defendant, service of which was duly acknowledged before me, by the said solicitor of said defendant; and said defendant's solicitor also waived all objection to the taking of testimony.

JAMES S. AITKIN, *M. C.*

Asher Quigley, a witness produced on the part of the complainant, being duly sworn, on his oath says—I live in
10 Washington township, Mercer county, New Jersey; I purchased a farm of John A. Tantum; it was two years ago—April 1st, 1865; I gave him a mortgage on that farm for a part of the purchase money; the mortgage was for three thousand dollars; there was one year's interest due on it on April 1st, last, at six per cent.; there has been no interest paid since April 1st, 1866; the whole amount of the principal money of that mortgage is still due.

ASHER QUIGLEY.

Sworn and subscribed, this 13th day of June, A. D. 1867,
20 before me.

JAMES S. AITKIN, *M. C.*

Adjourned, by consent, to Friday next, June 21st, at 10 o'clock A. M.

Friday, June 21st, 10 o'clock A. M. Examination resumed, pursuant to adjournment, in the presence of the counsel of the respective parties.

George Middleton, a witness produced on the part of the complainant, being duly affirmed according to law, on his affirmation says—I reside in the village of Allentown, Monmouth county, New Jersey; I am not personally acquainted
30 with Emma W. Green, but have known her for several years; I have seen her very frequently.

I know John A. Tantum and Joseph R. Tantum; they were sons of James Tantum, deceased; he died prior to the 1st of July, 1862; he left a will; his executors were Joseph

R. Tantum and myself; the will was admitted to probate the twelfth day of July, 1862.

I think his estate, at the settlement, was about seventy-two thousand dollars; I paid to John A. Tantum his portion of the estate, in part; he receipted to me November 13th, 1862, as one of the executors of his father's estate, for four hundred and fifty-three dollars in cash, and he acknowledged to having had advanced from his father three thousand and forty-seven dollars, making, altogether, three thousand five hundred dollars, at that date; the next payment was May 6th, 1863; I have his receipt of that date, amounting to two thousand seven hundred dollars, on account of legacy due him from his father's estate; there was no specific legacy left him by the will; the payment was, in fact, on account of his portion of his father's estate; the next payment was September 9th, 1863, of one thousand nine hundred and fifty dollars; I have a receipt for that amount; these receipts were all given by him to me as one of the executors of his father's estate; it was money paid to him by me; I have a receipt from John A. Tantum to his father, which I found among his papers, for the advance spoken of in the first receipt I have mentioned; it is dated January 7th, 1862; the receipt is in my handwriting, and signed by John A. Tantum, and is for money advanced by his father to him, in the father's lifetime; the amount is two thousand nine hundred dollars; the interest on the sum, up to the time of distribution, I suppose, makes the sum mentioned in my first receipt of three thousand and forty-seven dollars; the advance of two thousand nine hundred dollars was a farm—the receipt so states; and that his father deeded to him a farm; I understood that he conveyed the farm to Asher Quigley; Quigley now occupies it; I do not know for what amount the farm was sold to Quigley; the aggregate amount that John A. Tantum receipted to me for, on account of his father's estate, was eight thousand one hundred and fifty dollars; that includes the advance I have spoken of.

At December Term, 1863, of the Orphans Court of Mounmouth county, the letters were revoked, as far as I was concerned, as executor of the estate; I was discharged from all further obligation and duties connected with the estate; I

joined in the application for the discharge; my account was settled by the court, leaving a balance in my hands of four thousand four hundred and eighteen dollars and sixty-seven cents, which I paid over to Joseph R. Tantom, my co-executor; I have his receipt for that amount; it is dated December 26th, 1863; I don't think John A. Tantom has been engaged in any business since the decease of his father; he has not to my knowledge; he has lived at his mother's a part of the time since then, about a mile out of the village
10 of Allentown; he afterwards married Sarah Hartman, a widow, and lived in her house in the village; he was very close and economical in his habits; he lived with his wife at her house up to the time of the trial of the suit between Emma Green and himself; that house is only a few hundred yards from my house; I have not seen him since that trial; I saw him very frequently before that, when he was at home in the village; he has not been home since that time to my knowledge; I understood he went to Wilmington, Delaware; that was what was said; James Tantom left eight
20 legatees by his will, that is, he had nine children, one of whom had been advanced in the lifetime of the father, and the bulk of the estate was left to be divided among his eight children; by the will the sons received three shares and the girls two shares, that is, in that proportion; there were four sons and four daughters, constituting the eight children, who were entitled to the estate under the will; each of the sons had three twentieths of the estate, and each daughter two twentieths; they all receipted to me in that proportion; John A. Tantom's portion of the balance paid over to Joseph
30 R. Tantom by me, would be six hundred and sixty-two dollars and eighty cents; I do not know whether or no he has settled that estate; Joseph R. Tantom had full knowledge of the amount paid by me to John R. Tantom, on account of his share; he was present at each distribution; we had the children all together.

And being cross-examined by Mr. Scovel, the witness says—James Tantom left no real estate that came into the hands of his executors; his house and lot was devised to his widow, and I think he had no other real estate; I mean that

seventy-two thousand dollars above spoken of, was the entire value of the estate; there were some specific legacies in the will, and there were also some debts against the estate, which were paid.

And being again examined in chief, the witness says—

Quest. After the marriage of John A. Tantum, and shortly before he left Allentown, what was he generally reputed to be worth?

Ans. I should think twelve thousand dollars.

Quest. From your knowledge of his property and his circumstances, what do you estimate that his property amounted to at that time?

Ans. I would take it at twelve thousand dollars, myself; judging from his habits, he was very saving and close; he spent but little; his wife had a very nice property of her own; she owned the house and lot where they lived, and had some personal property besides; she had one child by her former husband; she bought the property herself.

And being again cross-examined, the witness says—

Quest. Do you know whether Mrs. John A. Tantum, formerly Mrs. Hartman, owns this house and lot of land you have spoken of, in her own name or not?

Ans. I can't say positive; we all call it her property, and believe it to be so; I don't know whether her child has any interest in the house; I cannot say as to that; I think not.

GEORGE MIDDLETON.

Affirmed and subscribed, this twenty-first day of June, A. D. eighteen hundred and sixty-seven, before me.

JAMES S. AITKIN, M. C.

Elias B. Rogers, a witness produced on the part of the complainant, being duly sworn, on his oath, says—I live in Allentown, New Jersey; Emma W. Green is my niece; she is the complainant; she has lived in my family for six or seven years last past; she brought a suit against John A. Tantum for breach of promise of marriage; Tantum lived in Allentown at the time of the suit; that suit was tried at the

December Term, 1866, of the Monmouth Circuit Court, at Freehold; the verdict was rendered for the plaintiff for twenty-eight hundred dollars; I acted as her friend, and assisted her on that trial; I was present all the time during the trial; it was tried the first week of court; the verdict was rendered on Friday evening, at ten o'clock; it was the seventh day of December; I know John A. Tantum was in the village of Freehold at the time the verdict was rendered; I didn't see him in the court-house at that time; I returned to
10 Allentown the next morning; I have not seen John A. Tantum in Allentown since that time; his wife was with him attending the trial every day; she returned home in the same train of cars that we did, the next day; her husband was not with her; he lived with her in Allentown from the time he was married until the day of the trial; they lived in her house; he lived with her about nine months in her house; they were married about the first of March, 1866; John A. Tantum was a domestic man; he was home every day, and home every night; he was not in the habit of being absent—very seldom
20 away from town, anyhow; never away more than a day at a time to my knowledge; he has not been in Allentown since that trial, to my knowledge; before that I saw him frequently in the streets, he was in the habit of being about the streets of Allentown, more or less, every day; if he had been there since that trial I think I would have heard of it; he would have had to come and to go in the night, or else I would have heard tell of it; his flight, and continued absence from the village, has been the subject of much talk in the village; it has been frequently talked over among the people; I have
30 not been able to hear of any person who has seen him in the village since that trial; it is understood that he is now at Wilmington, Delaware, and has been since that trial, at his brother's; I mean at Joseph R. Tantum's, the defendant in this case; I am a carpenter by trade; I knew Mrs. Hartman before her marriage to John A. Tantum; I have worked for her both before and since her marriage with him; I have repaired her house since her marriage to Tantum; she paid me for that work, and took a receipt in her own book, and in her own name; she was reputed to be worth, before her
40 marriage to him, between four and five thousand dollars;

she owns a house and lot in Allentown; he married her, and went directly there to live; John A. Tantum was reputed to be worth from ten to twelve thousand dollars; some would estimate him at ten thousand, and some at twelve thousand dollars; that was up to the time of this trial; nothing has been received on the judgment rendered on the verdict in this case; I understood John A. Tantum sold the farm for four thousand dollars; I heard Quigley say that was what he gave Tantum for it; I think he told me so; that was what Tantum asked for it before he sold it, and the property did 10 not go down any in value while he was in possession of it.

5 Quest. Did or did not Mr. John A. Tantum, before the trial, threaten publicly that if the verdict was against him in that suit, he would put his property out of his hands, so that the plaintiff should never get a cent of his money?

Ans. Yes, sir, he did—so I was told; I did not hear him myself; I heard it from a number who did hear him. [Question and answer objected to; the question as leading, and the answer as founded on hearsay.]

This matter of putting his property out of his hands was 20 a subject of public conversation in Allentown both before and after the trial; he has not made any offer to pay anything since the verdict was rendered; he has not been in any business since, as far as I can learn; he is merely staying at his brother's; he had a horse and carriage at Allentown which he kept for his own use; that was taken away the next Monday after he left.

And being cross-examined by Mr. Scovel, the witness 30 says—

Quest. You have stated that the property of John A. Tantum, up to the time of this suit at Freehold, was generally reputed to be worth from ten to twelve thousand dollars; please state, as near as you can, of what that property consisted?

Ans. Bonds and mortgages, notes of hand, and government securities.

Quest. How do you know this?

Ans. I heard him say so—I heard him say it in court; he stated the amount in court; it was six thousand dollars in 40 personal property; one thousand dollars in government secu-

rities, making seven thousand dollars that he said he was worth.

Quest. Then you don't know as to his worth, except from the above statement made by him—is that so?

Ans. Only by general reputation.

Quest. Do you know, at the time his farm was sold, whether there was any encumbrance upon the same or not?

Ans. No; I don't know whether there was or was not.

Quest. After this farm was sold, did he own, to your know-
10 ledge, any other real estate?

Ans. No, sir.

Quest. Did he own any other personal property, except the bonds and mortgages, notes, and horse and carriage you have spoken of, to your knowledge?

Ans. No, sir.

Quest. Do you know, of your own knowledge, where John A. Tantum has been staying or residing since he left Allentown, at the time you have spoken of—at the termination of the suit?

20 *Ans.* No, sir, only by general reputation; I have not seen him since that time.

ELIAS B. ROGERS.

Sworn and subscribed, this 21st day of June, A. D. 1867, before me.

JAMES S. AITKIN, *M. C.*

Adjourned to Friday, June 28th, at 10 o'clock A. M., by consent.

June 28th, 1867. The respective parties appeared before me and resumed the examination, pursuant to adjournment.

30 *Albert K. Nutt*, a witness produced on the part of the complainant, being duly sworn, on his oath says—I live at Allentown, New Jersey; I am acquainted with Emma W. Green, the complainant, and have been for several years; I am acquainted with John A. Tantum; I have known him for five or six years; I have been intimately acquainted with him; we were often together; he talked confidentially to me

of his private matters; after the suit was brought against him by Emma W. Green, he several times spoke to me of this matter; we were talking one day about the trial—about three weeks before the trial—and he was talking about attending the trial, at Freehold, and then if it should go against him, he said he would take it to the Supreme Court, and then he would have a chance to put his money out of his hands, and go west; but if he went away before, he said, he would not have the honor of attending the trial there, and if it should go against him, he would have a chance to 10 escape; he spoke of this matter to me more than once; can't say whether more than twice; I do not know of what his property consisted; when he spoke to me of this matter the second time, his plan was the same as before; he said to me several times that Emma W. Green should never have a cent of his money; and before she should have a cent of it, he would throw it in the fire; I was at the trial at Freehold; I saw John there every day until the verdict; the verdict was rendered, I think, about eleven o'clock on Friday night; I returned in the cars the next morning; 20 John and his wife went down to attend the trial in the cars with me; he did not return with her in the cars; she returned in the same train I did; he left Freehold on Friday night after the verdict; I have not seen him in Allentown since; he has not been there, to my knowledge, since; he went to Wilmington, Delaware—I learned that from his wife; I do not know whether or not he has been staying there ever since; I know nothing more about it, any more than what his wife has said—that he was there, and stopping at his brother Rusling's. 30

Quest. When John A. Tantum spoke to you about putting his property out of his hands to avoid payment of this claim, did he or not mention his brother, Joseph R. Tantum, in connection with that—and if so, what was said?

Ans. He did mention him, and said that he offered to take his property off of his hands, and settle it for six hundred dollars; I understood him to mean that he would take his, John's, money, and he would pay him, Joseph, six hundred dollars; that is, it should not cost him, John, over that for settling this affair of Emma W. Green's; this conversation 40 was at Allentown; it was about two or three weeks before

the trial, as near as I can come at it; I do not know of my own knowledge that John took his horse and wagon to Wilmington with him; I know he had a horse and wagon, and I offered him five hundred dollars for it; it left Allentown on Saturday evening, after the verdict; it has not been returned since, to my knowledge; his wife has visited him once, at Wilmington; she told me she saw the horse there; I knew of no other personal property that John had, except a sulkey, other than his bonds and mortgages; William Beatty 10 came and got the sulkey; it was in my possession when he left; I understood that the other property that John's brother was to take off his hands consisted of bonds and mortgages; I knew, from conversation with John, that he had bonds and mortgages, but he told me, that the most of his money was in government bonds; and I understood him to refer to these bonds and mortgages and government securities, when he spoke of his brother's offer.

And being cross-examined by Mr. Scovel, the witness says—

20 *Quest.* When was this declaration of Mrs. John A. Tantum made to you, in reference to her husband being at Wilmington, Delaware?

Ans. I can't give the date exactly; it has been, I suppose, about six weeks ago.

Quest. Have you had any conversation with her, before or since that period, about him?

Ans. Yes, I think I have; I spoke to her several times—two or three times—I always asked how her husband was when I saw her.

30 *Quest.* Have you been in the habit of visiting his wife since her husband left?

Ans. Yes, sir; two or three times on business.

And being again examined in chief, the witness says—

John A. Tantum's wife is now living at Allentown, in her own house, the same as before her marriage.

ALBERT K. NUTT.

Sworn and subscribed, this 28th day of June, A. D. 1867, before me.

JAMES S. AITKIN, *M. C.*

William H. Barton, a witness produced on the part of the complainant, being duly sworn, on his oath says—I am an attorney at law, residing at Trenton, New Jersey; I was introduced to John A. Tantum on last Monday, at Wilmington, Delaware; it was at the house of his brother, Doctor Joseph R. Tantum; I inquired at the house first if John A. Tantum was living there; I inquired of a little girl, who came to the door; she told me that he was living there; I saw the doctor first; he was up stairs, and when I inquired of the little girl if John A. Tantum was living there, the doctor looked out 10 from a room just at the head of the stairs, and asked me who I wanted to see; I asked him if John A. Tantum was here; he told me that he was; he said, he is here; I then told him I wished to see him; John A. Tantum came down into the parlor and introduced himself as John A. Tantum; I first inquired at the Farmers Bank, of Wilmington, for both of them; I learned there where the doctor lived, and also from the cashier of the Farmers Bank, that he had seen John A. Tantum at the doctor's very frequently, having had occasion to go there quite frequently of late for medicine, his wife being quite delicate; I made inquiry at the shoe store of Mr. Howell, for them; I inquired of the gentleman at the desk of that store, if he knew where Doctor Tantum resided; he told me he did; I asked him if he was acquainted with the family; he answered that he was well acquainted with the family; I then asked him, whether he knew if the doctor had a brother living with him.

[Counsel for defendants here object to anything that may have been said by any of these third parties and the witness, as hearsay.] 30

He said there was a brother of the doctor's living with him; I asked him if his name was John A. Tantum, he said it was, and he had been there for a few months back; he said that he came from Jersey; he also said that the doctor had been living in Wilmington about two years; he did not say that he knew them in New Jersey; there was nothing said on that subject; he said he had known them since they had been in Wilmington; this conversation at Howell's, took place before I went up to the doctor's; Joseph R. Tantum's residence in Wilmington, is on Market street, a few doors 40

above Ninth; he has his office in his dwelling; it is a brick house; it is on the west side of Market street as I went up; there was nothing said at Howell's about John being at their store, but that the doctor has come there frequently; the man at Howell's said, he saw doctor and his brother walking frequently in the streets.

And being cross-examined, the witness says—

My office in Trenton is at No. 59, East State street; I have an office with Mr. Kingman; I am practising law; my business in visiting Wilmington on that day was to ascertain if John A. Tantum was living there.

Quest. Did you ascertain from either John A. Tantum or Joseph R. Tantum, where John A. Tantum was boarding at that time, or previous thereto—and if so, state from what part of the conversation you gathered this knowledge?

Ans. From the reply that Dr. Tantum made to me when I inquired of him whether John A. Tantum lived there, I was led to the conclusion that he was boarding with Dr. Joseph R. Tantum, and also from the reply that John A. Tantum made to me when I asked him a question in reference to the city of Wilmington.

Quest. Did you not, while there, on that day represent yourself to Mr. Howell as a dealer in shoes?

Ans. I did not.

Quest. Did you represent yourself to any one else of whom you have spoken, as seen there that day, as a dealer in shoes?

Ans. Not directly.

Quest. Did you indirectly in any way, and if so, to whom?

Ans. I told both the Tantums, John A. and Joseph R., that sometimes I came into possession of shoes in the ordinary course of my business, and sometimes found it necessary to dispose of them, that was all.

Quest. Do you mean from this statement, which you made to them, that you are or have been at any time a dealer or trader in shoes?

Ans. No, sir.

And being again examined in chief, the witness says—

Quest. Did you state to Mr. John A. Tantum that there was to be an examination in a suit in chancery, in which he

was interested, on Friday, then next, and that Mr. Kingman desired his attendance there?

Ans. I did.

Quest. Did he inform you whether or not he would be there?

Ans. He said he would not.

Quest. Are you intimately acquainted with Mr. Coffin, one of the contractors at the state prison of New Jersey, for the labor for the manufacture of shoes?

Ans. I am, he is frequently at our office.

10

Quest. What was said at Wilmington by you, with reference to shoes—had it or not, reference to business of Mr. Coffin and your previous intimacy with him?

Ans. I asked John A. Tantum and the doctor, how the shoe trade was in Wilmington.; this was asked with relation to the business of Mr. Coffin.

WILLIAM H. BARTON.

Sworn and subscribed, this twenty-eighth day of June, A. D. eighteen hundred and sixty-seven, before me.

JAMES S. AITKIN, *M. C.* 20

Adjourned by consent, to Saturday, July sixth, at ten o'clock A. M.

And further adjourned, by consent of parties, to Friday, August 16th, 1867, at ten o'clock A. M.

At which time Mr. Kingman appeared before me, and offered in evidence a transcript of judgment in case of Emma W. Green against John A. Tantum, in the New Jersey Supreme Court, and which transcript is marked *Exhibit A*, *ex parte* complainant.

Said solicitor of the complainant also offered in evidence 30 a statement of certain bonds and mortgages, made by the defendant's counsel, at the request of the complainant's counsel, and which is marked *Exhibit B*, *ex parte* complainant.

The solicitor of the complainant stated that he had no further evidence to offer at this time.

August 16, 1867.

JAMES S. AITKIN, *M. C.*

Opinion.

The complainant, on the seventh day of December, 1866, obtained a verdict for twenty-eight hundred dollars damages at the Monmouth Circuit, in a suit pending in the Supreme Court, against the defendant, John A. Tantum. The suit
10 was for a breach of promise of marriage. John A. Tantum had married Mrs. Hartman, a widow, and was living with her at her own house, at Allentown. The verdict was delivered at ten in the evening; the same night Tantum left Freehold, and on Saturday, the eighth, assignments of seven mortgages, held by him on lands in this state, to his brother, the defendant, Joseph R. Tantum, were drawn, executed, and acknowledged, at Camden, in this state; on these mort-
20 gages there was due five thousand two hundred and fifty dollars, principal and some interest; and on the same day he proceeded to the residence of his brother, the defendant, Joseph R. Tantum, at Wilmington, in the state of Delaware. His brother was a practising physician at Wilmington. He applied to his brother to purchase these mortgages, and a horse and buggy which he owned; his brother, Dr. Tantum, agreed to purchase, and did purchase, the seven mortgages for the amount due on them, and the horse and buggy for three hundred and fifty dollars in addition, and paid John
30 A. Tantum the money on Monday, the tenth of December. No other property of the defendant, John A. Tantum, is known within this state. Since his going to Wilmington, on the day after the verdict, he has not been back to this state openly; his wife has continued to reside at her residence at Allentown, and he has continued to reside with his brother, Dr. Tantum, at Wilmington, where the mortgages and horse and buggy were taken just after the verdict.

Judgment was entered on the verdict on the fourteenth

day of December, 1866. On the same day an execution against goods and lands was issued to the sheriff of the county of Monmouth, who, on the thirty-first day of the same month, returned that no goods or lands of the defendant could be found in his county. On the fifth of February, 1867, the complainant filed her bill against John A. Tantum and Joseph R. Tantum, and the mortgagors in these seven mortgages, to have the transfers declared void as against her, to have a receiver appointed and the money due on them applied to the payment of her judgment, and to prevent the payment of the money due on these mortgages to the defendants, John A. Tantum, or Joseph R. Tantum. 10

Joseph R. Tantum is the only defendant who has answered the bill. He admits the verdict and judgment, and the assignment of the mortgages and other property to him. He admits that his brother came to him with the assignments executed on the eighth of December, 1866, at Wilmington, and that he told him that the complainant had recovered a verdict for near three thousand dollars against him before the assignments were delivered. But he denies that he had any knowledge that the object of the transfer was to delay or defraud the complainant in the recovery of her debt, and states, that John told him that his object was to raise money to pay the complainant and his other creditors, after which he intended to leave New Jersey, and enter into business elsewhere; and that he requested him, as a brother, to aid him by cashing these mortgages, and offered as an inducement to sell him some other property, being a horse and wagon, valued at three hundred and fifty dollars. That for these mortgages, and horse and wagon, which was also sold to him, he paid John five thousand five hundred and three dollars and sixteen cents in cash, on Monday, the tenth day of December, and that on the same day the assignments were sent to and received at the office of the clerk of the county of Camden, for recording. 30

There is no direct proof that Dr. Tantum knew of any intention on part of his brother by this assignment to defraud the complainant; there is abundant proof that such was the object of his brother, and that he had openly avowed it before

the verdict; but no part of this proof, directly or by implication, connects Dr. Tantum with this design.

On part of Dr. Tantum, both by the allegations in his answer, and by the argument of counsel, it is objected that the complainant can have no relief, because she had not, at the transfer, and has not now, any lien or claim upon these mortgages, which will give her the right to question this transfer.

The position is, without doubt, correct, that a complainant
10 cannot question in this court a transfer as fraudulent, unless he has some lien or claim upon the matter transferred, or is in such position that he would have such lien or claim if it had not been transferred. This is held by Chancellor Williamson, in *Swayze v. Swayze et al.*, 1 *Stockt.* 280, cited in the argument; and also in *Young v. Frier*, *Ibid.* 465, in which case the Chancellor reviews, with great learning and research, the authorities on this subject. Of the correctness of the position there can be no doubt; the only question is, whether this case is within it.

20 At common law, and in New Jersey, until the supplement to the chancery act, approved March 20th, 1845, and the act to prevent fraudulent trusts and assignments, approved March 7th, 1850, a creditor, even after judgment, could obtain no lien upon the choses in action of his debtor; a judgment gave him a lien on lands, and an execution on chattels. And in order to entitle a creditor to question the fraudulent sale of lands or chattels, he was required to have a judgment or an execution that would have been a lien on property fraudulently transferred before they were obtained,
30 if it had not been transferred.

In the present case, such lien might have been obtained by the complainant by an attachment against John A. Tantum, as an absconding debtor. This was not done. But she could likewise proceed to reach these mortgage debts by proceedings under the act of March 7th, 1850, or under the chancery act above referred to, and the supplement to it, approved April 12th, 1864. The bill in this case is filed for relief under the act of 1845, which gives a judgment creditor the right, upon the return of an execution unsatisfied, to file
40 a bill in this court for a discovery of property or money due

to the debtor, or held in trust for him, and to prevent the transfer of such property, or the payment of said money, and to have the same appropriated to the payment of the judgment. Upon the filing of this bill the complainant acquired a lien upon all debts due to John A. Tantum, and all property held in trust for him, and but for this transfer these mortgages on property in this state, and the moneys due on them from residents of this state, would have been subjects of that lien, and could have been collected by a receiver and appropriated to the payment of that judgment. And in such 10 case the judgment creditor who first files such bill is held to have the first lien on such choses in action, in preference to a creditor by a prior judgment, who files a bill for discovery under this act afterwards. The complainant then has, as against these mortgages and mortgage debts, by the filing of her bill in this court, the same lien that she would have had by the entry of her judgment against lands of the defendant alienated sixty days before the entry, for the purpose of defrauding her out of her debt. The complainant has a standing in court to entitle her to question the *bona fides* of this 20 transfer, and whether it was not done to delay or defeat her in the recovery of this debt.

It is not necessary to discuss here whether this transfer, not being of lands or chattles, comes within the provisions of the statute of frauds, at law that might be an important question, but courts of equity have jurisdiction in all cases of fraud, and have power to annul all fraudulent contracts and dealings. The removing property out of the jurisdiction of the court in which a suit is pending, or about to be commenced, or assigning property with intent to defraud 30 creditors, is by the statute declared to be a fraud such as will take away the protection given in the constitution from imprisonment for debts arising out of contracts. If these mortgages were transferred by one of these defendants to the other, with the intent of defrauding the complainant, this court has jurisdiction to set aside the fraudulent transfer.

The question then to be decided, is whether this transfer to Dr. Tantum was fraudulent in such manner as to affect him.

If his brother intended fraud, and he was innocent of it, 40

and paid the consideration for the transfers in good faith, without knowledge of such intent, his title cannot be injured by his brother's fraudulent intent. Joseph R. Tantum in his answer, swears that he paid the full amount due on these mortgages, with about three hundred and fifty dollars allowed for the horse and wagon, amounting to the sum of five thousand five hundred and three dollars and sixteen cents. His answer in this is directly responsive to the bill, is uncontradicted, and there are no circumstances in the case
10 sufficient to overcome it; it must be taken as true.

The answer denies "the statement and charge of said bill, that he had full knowledge or any knowledge, of the purpose of the said John A. Tantum to defraud the complainant, and that he colluded with him to effect any fraudulent purpose." It also denies that the assignments were taken with any intent on his part of defrauding the complainant, or to prevent the collection of said judgment. This is a direct denial of the fraud on his part, or any
20 knowledge of the fraudulent intent of his brother in making the transfer.

But his answer admits knowledge of the pendency of the suit, and that he was informed by his brother of the verdict given on the seventh of December, that his brother came to his house on the eight of December, with assignments executed and acknowledged, and these assignments were accepted and paid for, and sent to and received at the clerk's office at Camden, on the tenth.

The answer states that his brother applied to him for money for the purpose of paying off this verdict, and his
30 other debts. In this it is not responsive, and is not supported by proof; but it pleads and suggests a fact, that if believed would be an excuse for his disregarding circumstances in the case, which are insisted to be sufficient to give him warning of the fraud without actual notice in words.

The real question is whether the facts and circumstances in the case admitted by his answer, and proved by other evidence, do not overcome the force of his answer, denying any fraudulent intent on his part, or the knowledge of such intent on part of his brother.

40 It is easy to believe that the answer of Dr. Tantum is lit-

erally true, that he had no knowledge of any intent of his brother to defraud the complainant by that transfer. It is very probable that John did not go to a respectable wealthy brother, saying I want you to aid me in cheating Emma Green out of her verdict, now she has got it. He may have gone with the formal pretence set up in the answer, that he wanted to raise money to pay her, and yet if the circumstances are such as must, and ought to have aroused in Dr. Tantum's mind, in spite of the fact that the fraudulent intent was not announced, and an honest purpose pretended, 10 a conviction that the object was to delay the complainant, this answer should not protect him.

John was his brother, both men of property and standing, and on kindly terms. John had recently married Mrs. Hartman, and had been sued for breach of a prior promise of marriage. The suit was stoutly contested, and its existence was known to Dr. Tantum; it must have attracted the attention of his family and brother, who could hardly avoid an interest in it. John, who had contested this to the utmost, when defeated, leaves Freehold after ten o'clock at 20 night, passes through Allentown, is at Camden, and has the assignments prepared and executed there, and reaches the house of his brother, in Wilmington, the same day, and proposes the transfer. These facts must have been known to Joseph, and the knowledge of them is not denied. The negotiation is not for three thousand dollars, the amount of one of the mortgages sufficient to discharge that verdict, but for six other small mortgages, not needed for the purpose. It is for all the property of John A. Tantum, so far as appears, that could have been reached by proceedings in New 30 Jersey. It included his horse and wagon, added for a small addition, if any addition at all, to the consideration; these were necessary to his personal comfort while at Allentown, but were carried immediately to Wilmington. It is scarcely credible that Dr. Tantum could have witnessed such hot haste on part of his brother; this desire and effort so instantly to get money to pay in full a claim of this nature, that, until within a few hours, he had fiercely contested, without suspecting, or without believing, that something else was intended than that which was avowed. Dr. Tan- 40

tum had not the money; he had to borrow four thousand dollars, which he has since repaid from his earnings. Being compelled to borrow this at a few hours' notice, he would naturally be led to inquire and reflect upon what was the urgency of having all these mortgages cashed without delay, and without an opportunity for him to inquire into their validity and priority. The haste, too, in recording the assignments, which were in the clerk's office in Camden, on the same day that they were delivered at Wilmington, to
10 which haste he must have been privy, is a suspicious circumstance.

The facts before Dr. Tantum at the time of this transaction were such, that they must have suggested to him that the object of his brother was to do just what he has since done—to transfer all his property in New Jersey to some person, for value actually paid over, before they were attached or seized in any way, so as to be beyond the reach of the complainant. This, although not knowledge in its strict or literal sense, so as to make his denial of knowledge of
20 that intent perjury, yet is such notice of circumstances of suspicion that should have put him upon inquiry as will deprive him, in a court of equity, of the character of a *bona fide* purchaser, without notice. A person is to be charged with notice when he is acquainted with circumstances sufficient to convince a court or jury of the truth of the fact.

I cannot help believing that Dr. Tantum was convinced, in spite of any representations by his brother to the contrary, that his brother's object was to part with his securities and have his property in cash, so that he might avoid being com-
30 pelled to pay the judgment of the complainant. This makes the transfer to him void, as against the complainant, and there must be a decree in accordance with this view.

Final Decree.

[Filed March 3, 1868.]

This cause coming on to be heard at the last regular term of the Court of Chancery of New Jersey, held at Trenton, by his Honor the Chancellor, in the presence of Frederick Kingman, of counsel with the complainant, and the Attorney General, of counsel with the defendant, Joseph R. Tantum, the complainant's bill having been heretofore ordered to be taken as confessed against the other defendants in the cause, and the bill, the answer of said Joseph R. Tantum, the replica- 10
tion and proofs being read, and the arguments of the respective counsel having been heard, the Chancellor took time until the present term to consider the same; and it now appearing to the court that the said bonds and mortgages mentioned and set forth in the complainant's bill of complaint, were assigned by the said John A. Tantum to the said Joseph R. Tantum for the purpose of converting them into cash, so that he might avoid being compelled to pay the judgment of the complainant, set forth in said bill; and that the assignments of the same, mentioned and set forth in said 20
bill of complaint, and in the answer of the said Joseph R. Tantum, are therefore void and of no effect as against the said complainant. It is therefore, on this third day of March, in the year of our Lord one thousand eight hundred and sixty-eight, by Abraham O. Zabriskie, esquire, Chancellor of the state of New Jersey, ordered, adjudged, and decreed, and the said Chancellor doth, by virtue of the power and authority of this court, hereby order, adjudge, and decree, that the said assignments of the said bonds and mortgages so as aforesaid made by the said John A. Tantum to the said Jo- 30
seph R. Tantum, mentioned and set forth in the bill of the complainant, are and were, from the time of the execution and delivery of the same, null and void, and of no force or effect whatsoever, in law or equity, as against the said complainant.

And it is hereby further ordered, adjudged, and decreed, that unless the defendants, John A. Tantum and Joseph R.

Tantum, or one of them, shall, within twenty days from the service of a copy of this decree upon their solicitors, pay or cause to be paid to the solicitor of the complainant, the sum of twenty-eight hundred and sixty-six dollars and nineteen cents, with lawful interest thereon from the fourteenth day of December, eighteen hundred and sixty-six, being the amount of the said judgment recovered by the complainant against the said John A. Tantum, as set forth in said bill of complaint, with interest from the date thereof, together with
10 the costs of this suit to be taxed; that James S. Aitkin, esq., of the city of Trenton, in this state, be appointed a receiver in this cause, of the said bonds and mortgages, mentioned and set forth in said bill of complaint, and that he be authorised to collect the amount due thereon in his own name, as such receiver, and out of the proceeds thereof, pay to the complainant or her solicitor, the amount due on said judgment as aforesaid, with the costs of this suit. And it is further ordered, that the complainant may be at liberty to apply to this court for further directions as she may be advised,
20 and may be necessary.

A. O. ZABRISKIE, C.

Appeal.

[Filed April 3, 1868.]

The defendant, Joseph R. Tantum, hereby appeals from so much of the final decree made in this court in the above stated cause, as declares that the bonds and mortgages mentioned and set forth in the complainant's bill of complaint were assigned to the defendant, Joseph R. Tantum, for the purpose of converting them into cash, so that the said defendant,
30 John A. Tantum, might not be compelled to pay the judgment of the complainant set forth in said bill, and that the assignments of the same to the said defendant, Joseph R. Tantum, mentioned and set forth in said bill of complaint, are void and of no effect against the said complainant, and orders, adjudges, and decrees, that the said assignments are,

and were from the time of the execution and delivery of the same, null and void, and of no force and effect whatsoever in law or equity as against the said complainant; and that the amount of the judgment of the said complainant in the said bill mentioned and set forth, be paid by the said Joseph R. Tantum, (if not by the said John A. Tantum,) and in default of such payment that the same be paid out of the proceeds of said bonds and mortgages, to be collected by a receiver appointed in this cause, to the Court of Appeals in the last resort in all causes.

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Dated at Trenton, April 2d, A. D. 1868.

GEORGE M. ROBESON,

Solicitor for and of counsel with defendant, Joseph R. Tantum.

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

GEORGE M. ROBESON,

Of counsel with said defendants.

Petition of Appeal.

[Filed June 16, 1868.]

Between

20

Joseph R. Tantum,
appellant,
and
 Emma W. Green,
appellee.

} *On bill, &c.*

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

The humble petition of Joseph R. Tantum, the appellant in the above stated cause, respectfully showeth—that your petitioner find himself aggrieved by a final decree made in the Court of Chancery, by his Honor, Abraham O. Zabriskie, 30 Chancellor of New Jersey, bearing date the third day of March, in the year one thousand eight hundred and sixty-

eight, in a cause therein pending, wherein the said Emma W. Green was complainant, and the said Joseph R. Tantum was a defendant, in this respect, to wit, that the said decree adjudges that the bonds and mortgages mentioned and set forth in the complainant's bill of complaint in said cause, were assigned to the said Joseph R. Tantum for the purpose of converting them into cash, so that John A. Tantum (one of the defendants in the said cause) might not be compelled to pay the judgment of the said complainant, Emma W. Green, against him set forth in the said bill of complaint, by her filed in said cause, and that the assignment of the said bonds and mortgages, to the said Joseph R. Tantum, in the said bill of complaint mentioned and set forth, are void and of no effect against the said Emma W. Green, the complainant in said cause; and in this respect, that the said decree orders, adjudges, and decrees, that the said assignments are, and were from the time of the execution and delivery of the same, null and void, and of no force and effect whatsoever, in law or equity, as against said complainant; and in this respect, that it is by said decree, ordered, adjudged, and decreed, that unless the sum of twenty-eight hundred and sixty-six dollars and nineteen cents, the amount of a judgment recovered by the said complainant, Emma W. Green, against the said John A. Tantum, together with the costs of suit to be taxed, should (if not paid by the said John A. Tantum) be paid by the said Joseph R. Tantum, to the solicitor of the said complainant, within twenty days after the service of a copy of said decree upon the solicitor of the said Joseph R. Tantum, then a receiver be appointed in the cause of the said bonds and mortgages, and that he be authorized to collect the amount due thereon in his own name, as such receiver, and out of the proceeds thereof pay to the complainant or her solicitor, the amount due on said judgment, with costs of suit. And your petitioner humbly appeals from the said decree of the said Chancellor, which decrees as aforesaid, upon the ground that the same is erroneous, for that the said assignments of the said bonds and mortgages, were not received by the said Joseph R. Tantum, for the purpose of converting them into cash, so that the said John A. Tantum ought not be compelled to pay the

said judgment of the said complainant, and the said assignments are not therefore void and of no effect, as against the said complainant, and for that, the said assignments are not, and were not from the time of their execution and delivery, null and void, and of no force or effect whatsoever in law or equity, as against said complainant, but the same were *bona fide* assignments for good and valuable consideration, and passed and conveyed the said bonds and mortgages and the money due and to grow due thereon, and the estates thereby conveyed to the said Joseph R. Tantum, free from 10 and without any lien or liability of any kind thereon, for the payment of the said judgment of said complainant against the said John A. Tantum, or any part thereof, and neither the said bonds and mortgages, nor any of them, nor the money thereby secured, nor the estates thereby conveyed, nor the said Joseph R. Tantum, are liable for or subject to, or should be made or decreed to be liable for, or to pay the said assignment or any part thereof. And your petitioner prays that the said decree of the Chancellor may be wholly reversed, set aside, and for nothing holden. And that your 20 petitioner may have such relief in the premises as to this honorable court may seem meet.

Dated April 2d, A. D. 1868.

GEORGE M. ROBESON,
Solicitor for and of counsel with appellant.

Answer.

[Filed July 31, 1868.]

This respondent, not confessing or acknowledging all or any of the matters or things in the said petition of appeal contained and set forth to be true, for answer thereunto says—that he believes it to be true, that such decree as is complained of by the appellant, 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
10 ent humbly craves leave to refer thereto, when the same shall be produced.

And this respondent is advised and believes, that the said decree is agreeable to equity and justice, and he 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.

Dated July 31st, 1868.

F. KINGMAN,
Solicitor and of counsel with respondent.