

New Jersey Court of Errors and Appeals.

Between

RESCARRICK M. SMITH, Treasurer of the
State of New Jersey, complainant,

and

SAMUEL P. TOWNSEND and wife and
others, defendants,

} On bill, &c.

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BILL OF COMPLAINT.

IN CHANCERY OF NEW JERSEY.

*To His Excellency Benjamin Williamson, esquire, Chan-  
cellor of the State of New Jersey.*

Humbly complaining, showeth unto your Excellency your orator, Rescarrick M. Smith, treasurer of the state of New Jersey, of the city of Trenton, in the county of Mercer, that Samuel P. Townsend, for the purpose of entering into the business of banking, pursuant to an act of the Senate and General Assembly of the state of New Jersey, entitled, "An act to authorize the business of banking," and the several supplements passed thereto, became indebted to the Merchants Bank at Bridgeton, an association organized under the above statutes, and located in this state, at the town 10 of Bridgeton, in the county of Cumberland; and thereupon the said Samuel P. Townsend did execute and deliver unto the said Merchants Bank at Bridgeton a certain bond, or writing obligatory, bearing date on the first day of January, in the year of our Lord one thousand eight hundred and fifty-two, in the penal sum of ten thousand dollars, conditioned for the payment of five thousand dollars, lawful money of the United States, on the first day of January, in the year of our Lord one thousand eight hundred and fifty-three, 20 unto the said the Merchants Bank at Bridgeton, their certain attorney, successors, or assigns, with lawful interest thereon from the date thereof, at and after the rate of six

per centum per annum, payable semi-annually without any fraud or further delay, as in and by the said bond, or writing obligatory, now in the possession of your orator, and ready to be produced as this honorable court may direct, will fully and at large appear, and to which, for greater certainty, your orator begs leave to refer.

And your orator further showeth, that the said Samuel P. Townsend, being or pretending to be seized in fee, or of some other good estate of inheritance, of, in, and to the lots  
 10 or parcels of land herein after particularly set forth and described, in order to secure the payment of the said sum of money, to wit, the said sum of five thousand dollars, mentioned in the condition of the said writing obligatory, and the interest that might accrue thereon, unto the said the Merchants Bank at Bridgeton aforesaid, their certain attorney, successors, or assigns, did, together with his wife, Nancy Townsend, by a certain deed or indenture of mortgage under their hands and seals duly executed, and bearing date on the said first day of January, in the year of our Lord  
 20 one thousand eight hundred and fifty-two, for consideration of the said debt or sum of five thousand dollars, money of the United States of America, to them well and truly paid by the said party of the second part, at and before the sealing and delivery thereof, and the receipt whereof was acknowledged, did give, grant, bargain, sell, alien, enfeoff, convey, and confirm unto the said party of the second part, the Merchants Bank, an association organized under and in pursuance of an act of the legislature of the state of New Jersey, entitled, "An act to authorize the business of bank-  
 30 ing," approved February 27th, 1850, and the supplement thereto, approved March 14th, 1851, and to their successors and assigns for ever, "all those tracts or parcels of land and premises herein after particularly described, situate, lying, and being in the third and fourth wards of Jersey City, in the county of Hudson, and state of New Jersey, and which, on a map of property belonging to Selah Hill, Samuel P. Townsend, and others, made by A. Clerk and R. C. Bacot, city surveyors, dated June 14th, 1849, and filed in the office of the clerk of the said county of Hudson, are known  
 40 as those certain thirty-four (34) lots, pieces, or parcels of

land and premises numbered from two hundred and twenty-nine (229) to two hundred and sixty-two (262), both inclusive, known as block number ten (10). Also all those thirty-four (34) lots, pieces, or parcels of land and premises numbered from four hundred and twenty-five (425) to four hundred and fifty-eight (458), both inclusive, known as block number sixteen (16); and, also, all those thirty-four lots, pieces, or parcels of land and premises, as numbered from five hundred and eighty-seven (587) to six hundred and and twenty (620), both inclusive, known as block number 10 twenty-one (21), being a part of the tract of land and premises conveyed by Selah Hill and wife to the said Samuel P. Townsend, by deeds dated, respectively, April eighteenth, eighteen hundred and forty-nine, and recorded in Liber thirteen of Deeds, and July eighteenth, eighteen hundred and forty-nine, and recorded in Liber fourteen of Deeds for said county; also all that other certain lot, piece, or parcel of land and premises, with the two-story basement and attic brick house thereon, situate, lying, and being in Jersey City (late Harsimus) in the county of Hudson, and state of New Jer- 20 sey aforesaid, containing and described as follows: commencing at a point in the southerly line or side of Brooks street (late South Fourth street), distant seventy-three (73) feet eight inches easterly from the southeasterly corner of Grove and Brooks street, and running thence southerly, parallel with Grove street, fifty feet; thence, exactly parallel with Brooks street, eighteen feet five inches; thence northerly, and again parallel with Grove street, fifty feet, to the southerly line of Brooks street; thence westerly, along the southerly line of Brooks street, eighteen feet five inches, to 30 the place or point of commencing, said lot being part of the property conveyed to the party of the first part (Samuel P. Townsend) by Lorin Brooks and wife, by deed dated the 21st of July, 1848, and recorded in the clerk's office of the county of Hudson aforesaid, in Liber 21 of Deeds, together with all and singular the profits, privileges, and advantages, with the appurtenances, to the same belonging or in any-wise appertaining; also all the estate, right, title, interest, property, claim, and demand whatsoever of the said Samuel P. Townsend and Nancy his wife, the said party of the first 40

part, of, in, and to the same, and of every part and parcel thereof: to have and to hold all and singular the above described tracts or parcels of land and premises, with the appurtenances, unto the said Merchants Bank aforesaid, party of the second part, their successors and assigns, to the only proper use, benefit, and behoof of the said parties of the second part, their heirs and assigns, for ever; provided always, nevertheless, that the said indenture of mortgage was therein declared to be made and given upon this express  
 10 condition, therein inserted, that if the said Samuel P. Townsend and Nancy his wife, the parties therein of the first part, their heirs, executors, or administrators, do and shall well and truly pay, or cause to be paid, to the said Merchants Bank, party of the second part, their certain attorney or attorneys, successors or assigns, the sum of five thousand dollars, lawful money of the United States of America, on the first day of January, which will be in the year of our Lord one thousand eight hundred and fifty-three, with the interest thereon from the date of this mortgage, at and after the rate  
 20 of six per centum per annum, payable semi-annually, according to the condition of a bond of the said Samuel P. Townsend, bearing even date with the said mortgage, in the penal sum of ten thousand dollars," without any deduction or defalcation for taxes, assessments, or any impositions whatever, that then and from thenceforth these presents and the said obligation were to be void: and the said indenture of mortgage was also made and given upon the further condition, that the said parties thereto of the second part should and might, at any time after default should be made in the  
 30 performance or condition therein contained, peaceably and quietly enter into, have, hold, use, occupy, possess, and enjoy all and singular the above granted and bargained premises, with the appurtenances, without the let, suit, hinderance, or demise of the said Samuel P. Townsend, party of the first part, his heirs or assigns, or any other person or persons whatsoever.

And your orator further showeth unto your Excellency, that after the execution of the said indenture of mortgage, the same that was in due form of law acknowledged by  
 40 the said Samuel P. Townsend and Nancy his wife, on the

fifteenth day of January, eighteen hundred and fifty-two, before Ashbel Green, esquire, commissioner for taking the acknowledgments of deeds for the said state of New Jersey, and the said indenture of mortgage, or an abstract thereof, was duly recorded in the clerk's office of the county of Hudson, on the seventeenth day of January, of the year last aforesaid, in Liber 8 of Mortgages, folios 232, 233, as by the certificate of the clerk of the said county of Hudson, endorsed on the said mortgage, more fully appears, and to which registry and the certificate of said commissioner, also 10 written on the said indenture of mortgage, your orator asks leave, for greater certainty, to refer, if it shall become necessary so to do.

And your orator further showeth unto your Excellency, that on the twenty-second day of January, in the year of our Lord one thousand eight hundred and fifty-two, the said the Merchants Bank at Bridgeton, to whom the said bond and indenture of mortgage had been so made and executed as aforesaid, did, by a certain indenture of writing under the seal of the said association, and by the signature of the 20 president thereof, assign, transfer, and set over unto the said Rescarrick M. Smith, treasurer of the state of New Jersey, your orator, the aforesaid bond and indenture of mortgage, and all their right and interest therein, which indenture of assignment is in the words and figures following, to wit: " Know all men by these presents, that the Merchants Bank, an association organized under the general banking laws of the state of New Jersey, whose place of business is Bridgeton, in the county of Cumberland, in said state, of the first part, in consideration of the sum of five thousand dollars, 30 lawful money of the United States, to them in hand paid by Rescarrick M. Smith, treasurer of the state of New Jersey, of the second part, at or before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, have granted, bargained, sold, assigned, transferred, and set over, and by these presents do grant, bargain, sell, assign, transfer, and set over, unto the said party of the second part, a certain indenture of mortgage, bearing date on the first day of January, in the year one thousand eight hundred and fifty-two, made by Samuel P. Townsend and Nancy his wife, 40

of the city, county, and state of New York, to the said parties of the first part, to secure the payment of the sum of five thousand dollars, and interest thereon, and recorded in the office of the clerk of the county of Hudson, in the state of New Jersey, in Liber 8 of Mortgages, pages 236, 237, and 238, the seventeenth day of January, A. D. 1852, together with the bond or obligation therein described, and the money due and to grow due thereon, with the interest: to have and to hold the same unto the said party of the second part, 10 his successors in office and assigns for ever, subject only to the proviso of redemption in the said indenture of mortgage mentioned: and the said parties of the first part do hereby make, constitute, and appoint the said party of the second part their true and lawful attorney irrevocable, in their name or otherwise, but at their proper costs and charges, to have, use, and take all lawful ways and means for the recovery of the said money and interest, and, in case of payment, to discharge the same as fully as they might or could do if these presents were not made.—In witness whereof, the said parties 20 of the first part have caused their corporate seal to be hereunto affixed, and these presents to be signed by their president, the twenty-second day of January, in the year one thousand eight hundred and fifty-three.

FRANCIS BRADT, Presd't. [Seal.]

Sealed and delivered in presence of

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And your orator further showeth unto your Excellency, that after the execution of the said indenture of assignment, in manner and form aforesaid, by the president of the said corporation, the said indenture of assignment was, on the 30 day of its date, duly acknowledged by the said Francis Bradt, president of the Merchants Bank, before Henry M. Alexander, a commissioner of New Jersey, and residing in the city of New York, and a certificate thereof was endorsed by the said commissioner on the back of said assignment, as by the said indenture and certificate, now in the hands of your orator, and ready to be produced, will fully appear.

And your orator further showeth unto your Excellency,

that afterwards, to wit, on the thirty-first day of January, of the year last aforesaid, the said indenture of assignment was handed to the clerk of the county of Hudson, and by him received and recorded in Liber 8 of Mortgages, pages 290 and 291, as appears by the memorandum of R. Gilchrist, esq., clerk of the said county of Hudson, endorsed upon the said indenture of assignment, fully will appear, when produced by your orator, as this honorable court may direct, and to which registry and certificate your orator prays leave to refer, if necessary so to do. 10

And your orator further showeth unto the court that, in further execution of the object herein before stated, the said Samuel P. Townsend, on the first day of January, in the year of our Lord one thousand eight hundred and fifty-two, made and executed his certain other bond, or obligation, under his hand and seal, and therein became bound unto the Merchants Bank aforesaid in the penal sum of ten thousand dollars, conditioned to pay to the said Merchants Bank, their certain attorney, successors, or assigns, the just and full sum of five thousand dollars, lawful money of the 20 United States, on the first day of January, in the year of our Lord one thousand eight hundred and fifty-three, with the interest thereon from the date thereof at and after the rate of six per centum per annum, payable semi-annually, and then and there delivered the said bond, or obligation, to the said the Merchants Bank.

And your orator further showeth that, in order to secure unto the said the Merchants Bank the full payment of the said last mentioned bond of five thousand dollars, the said Samuel P. Townsend and Nancy his wife did, on the same 30 day and year last aforesaid, make and execute their certain other indenture of mortgage to the Merchants Bank upon the same premises, situate in the said county of Hudson, in this state, that are set forth herein before and contained in the first mortgage of the said Samuel P. Townsend and wife to the said Merchants Bank; and that after the said last mentioned indenture of mortgage had been duly executed, the same was, on the fifteenth day of January, eighteen hundred and fifty-two, duly acknowledged by the said Samuel P. Townsend and wife before Ashbel Green, esquire, 40

a commissioner of New Jersey residing in New York, and a certificate thereof endorsed upon said mortgage, as will upon reference thereto fully appear.

And your orator further showeth that, on the seventeenth day of January, in the year of our Lord one thousand eight hundred and fifty-two, the said indenture of mortgage was handed to the clerk of the county of Hudson, and was by him recorded, on that day, in Liber 8 of Mortgages, pages 234 and 235, as by the memorandum of R. Gilchrist, esq.,  
 10 endorsed on said mortgage, will fully appear, and to which, for greater certainty, your orator asks leave to refer, if necessary so to do.

And your orator further showeth, that afterwards, to wit, on the twenty-second day of January, in the year of our Lord one thousand eight hundred and fifty-two, the said Merchants Bank, by a certain indenture in writing under the hand of the president of said association, Francis Bradt, and under the corporate seal of said association, did grant, assign, sell, and transfer to the said Rescarrick M. Smith,  
 20 treasurer of the state of New Jersey, your orator, his successors and assigns, the said indenture of mortgage of the said Samuel P. Townsend and Nancy his wife, last above mentioned, and the bond, or obligation, of the said Samuel P. Townsend, last above mentioned, and all the right and interest of the said Merchants Bank therein and thereto, and then and there delivered unto your orator the said bond and indenture of mortgage and assignment.

And your orator further showeth, that the said assignment was on the day of the date thereof, to wit, on the twenty-  
 30 second day of January, eighteen hundred and fifty-two, duly acknowledged by the said Francis Bradt, president of the said Merchants Bank, before Henry M. Alexander, commissioner of New Jersey residing in New York, and afterwards, to wit, on the thirty-first day of January, eighteen hundred and fifty-two, the said indenture of assignment was duly recorded in the clerk's office of the county of Hudson, in Liber 8 of Mortgages, folio 288, as by the endorsement of R. Gilchrist, esq., clerk of said county, made upon said assignment, will fully appear.

40 And your orator further showeth unto your Excellency,

that in further execution of the said object, the said Samuel P. Townsend, on the first day of January, in the year of our Lord one thousand eight hundred and fifty-two, made his certain other bond, or obligation in writing, in the penal sum of ten thousand dollars, and with condition to pay unto the Merchants Bank aforesaid, their certain attorney, successors, or assigns, the just and full sum of five thousand dollars, on the first day of January, eighteen hundred and fifty-three, with interest from the date at six per centum per annum, payable semi-annually, and delivered the said bond, 10 or obligation, to the said Merchants Bank.

And your orator further showeth to your Excellency that, in order to secure unto the said Merchants Bank the payment of the full amount of the said last mentioned third bond, he, the said Samuel P. Townsend and Nancy his wife, on the said first day of January, in the year of our Lord one thousand eight hundred and fifty-two, made and executed their certain other indenture of mortgage upon the same premises set forth in the said first mentioned mortgage herein before particularly set forth, which said last mentioned 20 mortgage was subject to the same conditions and proviso that your orator hath set forth and alleged to have been contained in the said above mentioned first mortgage of the said Samuel P. Townsend and Nancy his wife.

And your orator further showeth, that the said last mentioned mortgage was also duly acknowledged after its execution, by the said Samuel P. Townsend and Nancy his wife, before Ashbel Green, esq., a commissioner of New Jersey residing in New York, and that said acknowledgment was taken on the fifteenth day of January, in the year eight- 30 teen hundred and fifty-two, and that, on the seventeenth day of the same month and year, the said indenture of mortgage was duly recorded by R. Gilchrist, esq., clerk of the county of Hudson, in Liber 8 of Mortgages, page 236, as fully appears by the certificate of said commissioner and the memorandum of said clerk, endorsed upon the said mortgage, and which fully appears thereon, and to which your orator begs leave to refer, if it be necessary so to do.

And your orator further shows unto the court that, on the twenty-second day of January, of the year last aforesaid, 40

the said Merchants Bank, by a certain other indenture in writing under the hand of the president of said association, Francis Bradt, and under the corporate seal thereof, did thereby assign, sell, transfer, and set over unto Rescarrick M. Smith, treasurer of the state of New Jersey, your orator, his successors in office, and assigns, the said indenture of mortgage of the said Samuel P. Townsend and Nancy his wife (thirdly) above mentioned, and the said third bond, or obligation, of the said Samuel P. Townsend, last above  
 0 mentioned, and all the right and interest of the said Merchants Bank therein and thereto, and then and there delivered the said bond and mortgage and the said indenture of assignment to your orator, who is ready to produce the same as this honorable court may require, and to which, for greater certainty, your orator prays leave to refer.

And your orator further showeth unto your Excellency, that the said assignment was duly acknowledged by the said Francis Bradt, president of the said Merchants Bank, on the twenty-second day of January, eighteen hundred and fifty-  
 20 two, before Henry M. Alexander, a commissioner of New Jersey residing in New York, as appears by the certificate of said commissioner endorsed on said mortgage, and that the said assignment was duly recorded, on the thirty-first day of January, of the year last aforesaid, in the clerk's office of the county of Hudson, in Liber 8 of Mortgages, folio 286, as duly appears by the memorandum of R. Gilchrist, esq., clerk of said county, endorsed upon the said mortgage, and to which certificate and memorandum your orator, for greater certainty, asks leave to refer, if necessary  
 30 so to do.

And your orator further showeth to your Excellency that, in further execution of the objects herein before particularly stated and set forth, the said Samuel P. Townsend, on the first day of January in the year of our Lord one thousand eight hundred and fifty-two, made and executed his certain other bond, or writing obligatory, in the penal sum of ten thousand dollars, lawful money of the United States, conditioned for the payment of the just and full sum of five thousand dollars to the Merchants Bank, their certain attorney,  
 40 successors, or assigns, on the first day of January, in the

year of our Lord one thousand and eight hundred and fifty-three, with interest thereon from the date at the rate of six per centum per annum, payable semi-annually, which said last mentioned bond, or obligation in writing, sealed with the seal of the said Samuel P. Townsend, is now in the possession of your orator, and ready to be produced as this honorable court may direct, and to which, for greater certainty, your orator prays leave to refer, if necessary so to do.

And your orator further showeth to your Excellency that, in order to secure the full payment of the said last mentioned 10 fourth bond, or writing obligatory, the said Samuel P. Townsend and Nancy his wife, on the day and year last aforesaid, made, executed, and delivered unto the said Merchants Bank their certain other (fourth) indenture of mortgage upon and for the same identical lands, tenements, hereditaments, and premises in the said county of Bergen, and state of New Jersey, that were contained in the first mortgage of the said Samuel P. Townsend and Nancy his wife to the said Merchants Bank, and which is herein before fully and particularly set forth and described, and that the said mortgage last 20 mentioned as fourth in order was made and given by the said Samuel P. Townsend and Nancy his wife for the same amount, upon the same premises, and with the same covenants, limitations, provisos, and conditions as the said mortgage of the said Samuel P. Townsend and Nancy his wife first given to the said Merchants Bank, and herein before fully set forth, and the said fourth indenture of mortgage is now also in the possession of your orator, and ready to be produced whenever this honorable court shall direct, and to which, for greater certainty, your orator prays leave to refer, 30 if necessary so to do.

And your orator further shows unto the court, that after the said fourth indenture of mortgage last above mentioned had been executed by the said Samuel P. Townsend and Nancy his wife, the same was duly acknowledged by the said grantors, and each of them, as the statute directs, before Ashbel Green, esq., a commissioner of New Jersey resident in New York, and duly authorized by law to take such acknowledgment, and which said acknowledgment was taken on the fifteenth day of January of the year last afore- 40

said, and a certificate thereof is entered upon said mortgage by the said commissioner, and thereupon the said fourth indenture of mortgage, so executed and acknowledged as aforesaid, was handed to the clerk of the county of Hudson, in this state, who received the same on the thirty-first day of January of the year last above mentioned; and the said clerk did, on the day and year aforesaid, duly record the said fourth indenture of mortgage in Liber 8 of Mortgages in the clerk's office of the county of Hudson, as fully appears by the written memorandum of the said clerk, R. Gilchrist, endorsed upon the back of said indenture of mortgage, and to which registry and certificates, now in your orator's possession, your orator prays leave to refer, if necessary.

And your orator further showeth unto your Excellency that, on the twenty-second day of January, in the year of our Lord one thousand eight hundred and fifty-two, the said the Merchants Bank, by virtue of a power granted by the act of the legislature of the state of New Jersey, herein before referred to, by a certain indenture in writing under the hand of Francis Bradt, the president of the said association, and under its corporate seal and by its authority, did grant, sell, assign, transfer, and make over to the said Rescarrick M. Smith, treasurer of the state of New Jersey (your orator herein) his successors and assigns, the said fourth indenture of mortgage last above mentioned, together with the bond or obligation therein described, and the money due and to grow due thereon, with the interest, and all the right, interest, property, claim, and demand of the said the Merchants Bank of, in, and to the said fourth indenture of mortgage and bond, or writing obligatory, for ever, and then and there delivered the said assignment and the said indenture of mortgage and bond to your orator, who now hath the custody thereof, and to which assignment your orator prays leave to refer, if necessary so to do, and which your orator is ready to produce in this honorable court, when required so to do.

And your orator further showeth unto your Excellency that the said last mentioned indenture of assignment was on the day of the date thereof, to wit, on the twenty-second

day of January, in the year of our Lord one thousand eight hundred and fifty-two, duly acknowledged by the said Francis Bradt, president of the said Merchants Bank, before Henry M. Alexander, esq., a commissioner of New Jersey residing in New York, and duly authorized by the laws of this state to take such acknowledgment, a certificate of which said acknowledgment is made in writing under the hand of the said commissioner upon the back of the said instrument; and thereupon the said assignment was handed to the clerk of the county of Hudson, in this state, who received and recorded the same on the thirty-first day of January, eighteen hundred and fifty-two, in Liber 8 of Mortgages in the clerk's office of the said county of Hudson, pages 292, 293, as will fully appear by reference to the record and registry thereof, and also by the memorandum of the said clerk, R. Gilchrist, endorsed upon the said assignment, and to which said registry your orator prays leave to refer, if it shall become necessary so to do.

And your orator further showeth unto your Excellency that, in further execution of the object herein before set forth, the said Samuel P. Townsend, on the *fifth* day of January, in the year of our Lord one thousand eight hundred and fifty-two, made and executed his certain other (fifth) bond, or writing obligatory, under his hand and seal, in the penal sum of ten thousand dollars, conditioned that he would pay, or cause to be paid, in lawful money of the United States of America, to the Merchants Bank (an association organized under the laws of the state of New Jersey, and located at Bridgeton, in the county of Cumberland) their certain attorney, successors, or assigns, the just and full sum of five thousand dollars, lawful money as aforesaid, on the first day of January, in the year of our Lord one thousand eight hundred and fifty-three, with interest therefor from the date of the said bond, at the rate of six per centum per annum, to be paid semi-annually without any fraud or further delay, and then and there delivered the said bond, or writing obligatory, to the said Merchants Bank aforesaid.

And your orator further showeth to your Excellency that, in order fully to secure unto the Merchants Bank aforesaid 40

the payment of the said debt or sum of five thousand dollars, with the interest that would grow due thereon by the condition thereof, the said Samuel P. Townsend with Nancy his wife, by their certain other (fifth) indenture of mortgage, did, on the same day and year last herein above mentioned, to wit, on the fifth day of January, in the year of our Lord one thousand eight hundred and fifty-two, make, execute, and deliver unto the said Merchants Bank their certain other indenture of mortgage upon it, the same identical land, pre-  
 10 mises, tenements, and appurtenances that are contained and set forth in the said first indenture of mortgage herein before particularly set forth, copied, and recited, and that the said fifth indenture of mortgage of the said Samuel P. Townsend and Nancy his wife was made and given by the said parties thereto, of the first part, upon the same premises, and with the same covenants, liabilities, provisos, and conditions as the said mortgage of the said Samuel P. Townsend and Nancy his wife first given to the said Merchants Bank, and herein before in this, your orator's bill of complaint, fully  
 20 and particularly set forth and described, which said fifth indenture of mortgage of the said Samuel P. Townsend and Nancy his wife is now also in the custody of your orator, and ready to be produced, as this honorable court may order and direct.

And your orator further showeth unto your Excellency, that the said indenture of mortgage, after its execution by the said parties as aforesaid, was, on the fifteenth day of January, of the year last herein above mentioned, duly acknowledged by the said Samuel P. Townsend and Nancy  
 30 his wife before Ashbel Green, esq., a commissioner of the state of New Jersey residing in New York, and duly authorized by the laws of the state of New Jersey to take such acknowledgments, a certificate whereof is made by the said commissioner under his hand upon the said indenture of mortgage, to which your orator prays leave to refer, if necessary, and thereupon the said fifth indenture of mortgage was handed to the clerk of the county of Hudson, who received the same on the thirty-first day of January, in the year last aforesaid, and on the same day and year recorded the same  
 40 in Liber 8 of Mortgages, folio 240, 241, in the clerk's office

of the said county of Hudson, as by a memorandum thereof, endorsed on the said indenture of mortgage, now in the custody of your orator, will fully appear, and to which certificate, registry, and memoranda your orator asks leave to refer, if necessary so to do.

And your orator further showeth unto your Excellency that, on the twenty-second day of January, in the year of our Lord one thousand eight hundred and fifty-two, the said the Merchants Bank, by virtue of a power granted by the act of the legislature of the state of New Jersey, herein before referred to, by a certain indenture, or instrument in writing, under the hand of Francis Bradt, the president of the said association, and under its corporate seal and by its authority, did grant, sell, assign, transfer, and make over to the said Rescarrick M. Smith, treasurer of the state of New Jersey, your orator herein, his successors and assigns, the said fifth indenture of mortgage last above mentioned, together with the bond or obligation therein described, and the money due and to grow due thereon, with the interest, and all the right, interest, property, claim, and demand of the said Merchants Bank of, in, and to the said fifth indenture of mortgage and bond, or writing obligatory, for ever, and then and there delivered the said assignment and the said indenture of mortgage and bond to your orator, who now hath the custody and control thereof, ready to be produced in this honorable court, when directed so to do.

And your orator further showeth unto your Excellency, that the said assignment, or instrument aforesaid, was, on the day of its date, to wit, on the twenty-second day of January, in the year of our Lord one thousand eight hundred and fifty-two, duly acknowledged by the said Francis Bradt, president of the said the Merchants Bank, before Henry M. Alexander, esq., president of the said association, as fully appears by the written certificate of the said commissioner under his signature, written out upon the back of said indenture of assignment, and to which your orator asks leave to refer, if necessary so to do.

And your orator further showeth to the court, that after the due execution of the said indenture of assignment, and the acknowledgment thereof, as above set forth, the said as-

signment was handed to the clerk of the county of Hudson, in this state, who received the same, and, on the thirty-first day of January, in the year of our Lord one thousand eight hundred and fifty-two, recorded the said assignment in Liber 8 of Mortgages, pages 284, 285, 286, in the clerk's office of the county of Hudson, as appears by the memorandum of R. Gilchrist, clerk of said county of Hudson, by him made on the said mortgage assignment, which said assignment is now in the custody of your orator, and ready to be produced  
 10 as this honorable court may and shall direct.

And your orator further showeth unto your Excellency, that the whole of the said bonds and writings obligatory of the said Samuel P. Townsend, amounting to the sum of twenty-five thousand dollars, are now due and owing to your orator, as treasurer of the state of New Jersey, with a large arrear of interest, since the first day of January, in the year eighteen hundred and fifty-four, and that the whole of the said indentures of mortgage, being five in number, and so made and given to the said Merchants Bank to secure  
 20 and make good the payment of the said sums of money, amounting to twenty-five thousand dollars, are over due and now in the custody of your orator as treasurer as aforesaid, as your orator is ready to maintain and prove.

And your orator further showeth unto your Excellency, that no part of the principal sum of the said bonds, or writings obligatory, has been paid on any or either of them, nor have any or either of the said indentures of mortgage been satisfied or cancelled, but now remain and are in full force against the said mortgage premises set forth in this, your  
 30 orator's bill, and particularly recited in the first mortgage of the said Samuel P. Townsend and Nancy his wife, so made and given to the said Merchants Bank, and so assigned to your orator, as herein before is particularly set forth.

And your orator further showeth unto your Excellency, that he has been informed, and believes it to be true, that after the above five mortgages had been made, executed, and delivered by the said Samuel P. Townsend and wife to the said the Merchants Bank, as herein before is particularly set forth, and on or about the second day of May, in the  
 40 year of our Lord one thousand eight hundred and fifty-three,

the said Samuel P. Townsend and Nancy his wife, by their certain deed of bargain and sale, bearing date on the day and year last aforesaid, did grant, bargain, sell, alien, convey, and confirm unto one John McGuigan, his heirs and assigns, "all those two certain lots of land and premises, situate in the city of Jersey City, in the county of Hudson, and state of New Jersey, which, on a map of property belonging to Selah Hill, Samuel P. Townsend, and others, situate in Van Vorst township, Hudson county, N. J., made by A. Clerk and R. C. Bacot, June 14th, 1849, and filed in the clerk's office of the county of Hudson, are known and distinguished on said map as lots numbered one hundred and twenty-seven (127) and one hundred and twenty-eight (128) on Grand street, said lot one hundred and twenty-seven being twenty-two feet front and rear, and fifty-five feet six inches deep, and said lot numbered one hundred and twenty-eight, being thirty-four feet front, and fourteen feet rear, and fifty-four feet eight inches deep on the side adjoining lot one hundred and twenty-seven," and which said lots above described the said John McGuigan alleges to have been conveyed to him for a valuable consideration, and thereby he insists that he has some lien upon the said mortgaged premises so as aforesaid set forth in the said indentures of mortgage so made and executed to the said Merchants Bank, and assigned to your orator as aforesaid; but your orator insists before this honorable court that the said deed of conveyance made to the said John McGuigan, if any lien at all upon the said mortgaged premises, was made and given long subsequent to the said mortgages of your orator thereon, and with full notice thereof, as well by the said Samuel P. Townsend as by the said John McGuigan, and that your orator's just rights and claims thereon ought not to be prejudiced or in any wise impaired by the conveyance so made by the said Samuel P. Townsend and wife to the said John McGuigan for that portion of the said mortgaged premises set forth in the above deed of bargain and sale.

And your orator further showeth unto your Excellency, that the said Samuel P. Townsend and Nancy his wife and the said John McGuigan, or some of them, have at all times since the execution of the said mortgages held by your ora-

tor possessed and enjoyed the said premises, and every part thereof, and have at all times received, and do still receive, the rents, issues, and profits thereof, and that the said premises are a slender security for the payment of the principal sum and interest growing due to your orator upon the aforesaid five bonds and mortgages herein before set forth.

And your orator further showeth, that he hath frequently and in a friendly manner applied to the said Samuel P. Townsend and John McGuigan, and requested them to pay to  
 10 your orator the amount of principal and interest moneys so remaining due to your orator on the said five bonds, or writings obligatory, and indentures of mortgage, so as aforesaid made and given by the said Samuel P. Townsend and wife to the said Merchants Bank, and so assigned to your orator as aforesaid, or that they would, according to the express condition of the said indentures of mortgage, permit your orator to enter upon and possess the said mortgaged premises, and receive and take the rents, issues, and profits thereof, and that they would release to your orator all their  
 20 right, title, and equity of redemption of, in, and to the said mortgaged premises, and deliver unto your orator all deeds, evidences, and muniments of title relating to and concerning the same.

And your orator well hoped that the said Samuel P. Townsend and Nancy his wife and John McGuigan would have complied with such reasonable requests, as in justice and equity they ought to have done, but now so it is, may it please your Excellency, that the said Samuel P. Townsend and Nancy his wife and John McGuigan, the said de-  
 30 fendants, combining and confederating with divers other persons at present unknown to your orator, but whose names, when discovered, your orator prays may be inserted in this his bill of complaint, with apt and proper words to charge them, as defendants hereto, to injure and aggrieve your orator in the premises, not only refuse to pay to your orator the amount of principal and interest money so as aforesaid due to your orator on the said several bonds, or writings obligatory, and deeds or indentures of mortgage as aforesaid, or in any other manner, to comply with such rea-  
 40 sonable requests of your orator before mentioned, but they,

the said defendants, sometimes pretend and give out in speeches that the said Samuel P. Townsend never was indebted to the said Merchants Bank in the aforesaid sum of twenty-five thousand dollars, or any other sum of money, and that the said Samuel P. Townsend did not execute and deliver unto the said Merchants Bank the bonds or writings obligatory before mentioned, or any bonds or writings obligatory, and that the said Samuel P. Townsend and Nancy his wife did not make, execute, and deliver unto the Merchants Bank the said several deeds or indentures of mortgage before mentioned or any other deeds or indentures of mortgage, and that the said Merchants Bank did not assign and transfer the said several bonds, or writings obligatory, and indentures of mortgage to your orator, whereas your orator expressly charges the contrary thereof to be true; and at other times the said defendants give out and pretend that the whole principal and interest due upon the said five bonds or obligations and five indentures of mortgage aforesaid, given by the said Samuel P. Townsend and wife to the Merchants Bank at Bridgeton, and assigned to your orator, has been paid to your orator, whereas your orator expressly charges, that neither the whole or any part of the principal part has been paid by the said Samuel P. Townsend, or by any other person for him, and that a large arrear of interest is now due thereon; and at other times they give out and pretend, that although the estate of the said Samuel P. Townsend and Nancy his wife in the said premises may have expired, and the estate of your orator become absolute, yet that your orator cannot enter into possession thereof, or dispose of the same to any purchaser, and that the said premises will be subject to an equity of redemption, all which actings, doings, and pretences of the said defendants are contrary to equity and good conscience, and tend to the manifest injury of your orator in the premises: in tender consideration whereof, and forasmuch as your orator is without adequate remedy in the premises by the strict rules of the common law and without the assistance of this honorable court, where matters of this nature are particularly cognizable and relievable.

To the end, therefore, that the said defendants and their confederates, when discovered, may, upon their several and

respective oaths or affirmations, full, true, and perfect answer make to all and every the matters aforesaid, and that as fully and particularly as if the same were herein again repeated, and that they may be decreed to pay unto your orator by a short day, to be appointed by this honorable court, the amount found due to your orator upon the said several bonds as aforesaid, together with the costs and charges of your orator in this behalf expended, and that, on failure thereof, they and all persons claiming or to claim by, 10 from, through, or under them, or any of them, may be barred and foreclosed for ever of and from all right, title, and equity of redemption of, in, and to the said mortgaged premises, and every part thereof, and may deliver the possession of the same, and all papers, deeds, maps, evidences, and muniments of title relating to and concerning the same unto your orator; or, if your Excellency shall deem it more equitable and just, that the mortgaged premises, with the appurtenances, may be sold, to pay unto your orator the money due and owing upon the said several bonds and the costs and 20 charges, and that your orator may have such other relief as the nature of the case may require and as may be agreeable to equity and good conscience—

May it please your Excellency, the premises considered, to grant unto your orator a writ or writs of subpœna of the state of New Jersey, to be directed to the said Samuel P. Townsend and Nancy his wife and John McGuigan, therein and thereby commanding them and each of them, at a certain day and under a certain penalty, personally to be and appear before this honorable court, then and there to answer 30 the premises, and to stand to, abide, and perform such decree as to your Excellency shall seem meet, &c.; and your orator, as in duty bound, will ever pray, &c.

R. P. THOMPSON,  
*Solicitor of complainant.*

Subpœna returnable January 27th, 1855; filed January 11th, 1855.

Order of publication; filed February 8th, 1855.

Answer of John McGuigan; filed March 24th, 1855.

## DEMURRER.

*The several demurrer of Samuel P. Townsend, one of the defendants to the above bill of complaint of Rescarrick M. Smith, treasurer of the state of New Jersey, complainant.*

This defendant, by protestation, not confessing or acknowledging all or any of the matters or things in and by the said bill set forth and complained of to be true, in manner and form as the same are therein and thereby set forth and alleged, saith, that he is advised by his counsel that the complainant's said bill is insufficient, and to which, by the rules of this honorable court, this defendant ought not to be compelled to make or give any answer, and for causes of demurrer thereunto this defendant showeth the following:

*First.* Because it does not appear by the said bill that 10 that the said Merchants Bank at Bridgeton was ever duly and lawfully incorporated, nor how nor when incorporated, nor that the necessary steps were taken to incorporate the same under the same acts referred to in the said bill of complaint.

*Second.* Because there was no authority given by any law of the state of New Jersey to the said Samuel P. Townsend to make, execute, and deliver any bonds and mortgages to the Merchants Bank at Bridgeton.

*Third.* Because the said the Merchants Bank at Bridge- 20 ton had no authority by law to receive from Samuel P. Townsend the said bonds and mortgages, or either of them, the said Samuel P. Townsend not being in any way indebted to the said bank for any loan or discount made by the said bank to said Townsend, or on any contract which said bank had authority to enter into with said Townsend, no such state of facts having been averred by said bill.

*Fourth.* Because it does not appear that the said supposed assignment of the said bonds and mortgages were authorized by any resolution of any board of directors of the 30 said Merchants Bank at Bridgeton.

*Fifth.* Because it does not appear that there ever was in existence any board of directors of the said the Merchants Bank at Bridgeton.

*Sixth.* Because it does not appear, by the said supposed assignments, for what purpose the same were made to the said Rescarrick M. Smith, or upon what trusts, terms, or conditions.

*Seventh.* Because the treasurer of the state of New Jersey has no power to receive an assignment, in his name of treasurer, of bonds and mortgages, unless upon certain trusts, terms, and conditions.

*Eighth.* Because there was no authority given by the 10 said act of the legislature, referred to in the said bill, to make more than one mortgage covering the same tract of land, and that four of the said mortgages are void.

*Ninth.* Because it does not appear, by the said bill, how, or for what reason or cause, the said bonds and mortgages mentioned in the complainant's bill are due to the said complainant.

*Tenth.* Because it does not appear, by the said bill, for what cause the said mortgages became due, and the title to the mortgaged premises became absolute in the said 20 complainant.

*Eleventh.* Because it does not appear, by any averments or otherwise, that the said lands conveyed by said Samuel P. Townsend and wife to John McGuigan were any part of the said mortgaged premises mentioned in the said several mortgages set forth and referred to in the complainant's bill.

*Twelfth.* Because it does not appear, by the said bill of complaint, that the said the Merchants Bank at Bridgeton ever became insolvent or unable to pay its debts, or ever failed or refused to redeem their circulating notes in lawful 30 money of the United States.

*Thirteenth.* Because allusion is made in the said bill of complaint to certain acts of the legislature, to wit, "An act entitled an act to authorize the business of banking," approved February 27th, 1850, and the supplements thereto, approved March 14th, 1851; and yet there are no averments in the said bill of complaint to connect the said several bonds and mortgages with the said acts, or to show that they were originally given under the power and authority contained in said acts, or that they ever became forfeited in consequence 40 of any failure on the part of the Merchants Bank at Bridge-

ton, or Samuel P. Townsend, or any other person or party, to comply with the terms of the said acts; that assuming that the said bonds and mortgages were given under the authority, express or implied, contained in the said acts, there should be sufficient averments in the said bill to show that the mortgagor, the mortgagee, or some other party, had failed to comply with the terms of the said acts, how and in what manner such failure took place, and by what power and authority the complainant can invoke the aid of this honorable court in the premises. 10

*Fourteenth.* Because, by the said act referred to, the treasurer of the state of New Jersey, before he could enter upon the discharge of the trusts and duties imposed upon him by the said acts, should enter into bond to the state of New Jersey with sufficient sureties, to be approved of by the governor and chief justice of the said state, in such sum as they shall direct, with condition for the faithful performance of the trusts and duties imposed upon him by said act, and that it does not appear by the said bill that the said treasurer has in that particular complied with the require- 20  
ments of the said acts.

*Fifteenth.* Because it does not appear that the said bonds and mortgages were given for the purpose of securing any bills, or assigned for that purpose, as in the sixth section of said act referred to in the said bill.

*Sixteenth.* Because it does not appear that the said mortgages were and became a lien upon improved productive unencumbered lands within this state, worth, independent of any buildings thereon, at least triple the amount for which they were mortgaged. 30

*Seventeenth.* Because, by the said act, no mortgage shall be for a greater amount than five thousand dollars, while in point of fact the five mortgages in said bill referred to, making twenty-five thousand dollars, were all on the same property, and in truth and in fact constitute but one mortgage, and were not authorized by the said act in the said bill referred to.

*Eighteenth.* Because, by the very terms of the act referred to, such association assigning bonds and mortgages to the treasurer may receive the interest to accrue thereon, un- 40

less default shall be made in paying the bills or notes, to be countersigned as in said act set forth, and there is no averment of such default contained in the said bill.

*Nineteenth.* Because it does not appear, by the said bill, that the treasurer has complied with the requirements of the said act.

*Twentieth.* Because it does not appear that any notes of the said the Merchants Bank at Bridgeton were ever protested, or that the treasurer ever gave notice that the notes of the  
10 said bank would be redeemed, by publishing such notice in three or more newspapers published in this state, as in the said act referred to and set forth.

*Twenty-first.* Because the remedy pointed out by the said act is a sale of the bonds and mortgages, and not a foreclosure of the same by the treasurer.

*Twenty-second.* Because it does not appear, by the said bill, that the said foreclosure is for the purpose of redeeming bills and notes, as set forth in the tenth section of the said act.

*Twenty-third.* That by the twenty-eighth section of the said act it is declared, that it shall be lawful for such association to purchase, hold, and convey such real estate as shall be necessary for its immediate accommodation in the convenient transaction of its business, or as shall be mortgaged to it in good faith, by way of security for loans made by or moneys due to such association, or shall be conveyed to it in satisfaction of debts previously contracted in the course of its dealings, or such as it shall purchase at sales under judgments, decrees, or mortgages held by such asso-  
30 ciation; and that the said association shall not purchase, hold, or convey real estate in any other case or for any other purpose.

And it does not appear that the said bonds and mortgages were given to the said Merchants Bank at Bridgeton in good faith by way of security for loans made by or moneys due to said bank, or for and in satisfaction of debts previously contracted in the course of its dealings.

*Twenty-fourth.* Because it does not appear that the Chancellor of the state of New Jersey, as in the 29th sec-  
40 tion of the act required, has ordered an investigation of the

affairs of the said bank, or made any rule or order touching or concerning the same.

*Twenty-fifth.* Because such association, as referred to in the said bill, is unlawful, unconstitutional, null, and void. The legislative power of the state of New Jersey is, by the constitution of the state of New Jersey, vested in the Senate and General Assembly, and the legislature cannot delegate its sovereign power to create a corporation to the mere determination of a commissioner of deeds, who may certify that seven persons or more in number, approved before him, 10 and acknowledging that they executed a paper containing a few clauses, and which was dignified by the name of a bank, be consummated by filing such certificate in the office of the secretary of state, after the same has been recorded in the office of a county clerk; that any such proceedings is in derogation of the constitution of the state of New Jersey and absolutely void.

*Twenty-sixth.* That by the constitution of the state of New Jersey, the assent of three-fifths of the members elected to each house shall be requisite to the passage of every law 20 for granting, continuing, altering, amending, or renewing charters for banks or money corporations; and it does not appear, by the said bill, that three-fifths of the members elected to each house of the legislature assented to the incorporation of the said Merchants Bank at Bridgeton.

*Twenty-seventh.* Because the said bill of the complainant alleges that Samuel P. Townsend, for the purpose of entering into the business of banking, &c., &c., became indebted to the Merchants Bank at Bridgeton; that such allegation is unauthorized and unfounded; that Samuel P. Townsend, as 30 an individual, could not, by the said act, enter into the business of banking; that by the act referred to, in the fifteenth section thereof, it is declared that not less than seven persons can enter into the business of banking; that if said Samuel P. Townsend, as in said bill mentioned, solely entered into the business of banking, then that the whole proceedings referred to, in vague and general terms in the said bill, are and were void.

*Twenty-eighth.* Because the said bill is unskillfully and



one thousand eight hundred and fifty-five, on motion on behalf of Richard P. Thompson, solicitor and of counsel with the complainant, that the said demurrer be overruled with costs, to be paid by said defendant, Samuel P. Townsend, and that he file his answer to the complainant's bill in forty days, and if he fail so to do, that the said bill be taken as confessed.

B. WILLIAMSON, C.

Costs on demurrer; filed May 21st, 1855.

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*The answer of Samuel P. Townsend, one of the defendants, 10  
to the above bill of complaint.*

This defendant, now and at all times hereafter saving and reserving unto himself all benefit and advantage of exception which can or may be had or taken to the many errors, uncertainties, and other imperfections in said complainant's said bill of complaint contained, for answer thereunto, or unto so much and such parts thereof as this defendant is advised is or are material or necessary for answer thereunto, this defendant, answering, saith—

That this defendant admits that he, for the purpose of entering into the business of banking, pursuant to an act of the Senate and General Assembly of the state of New Jersey, entitled, "An act to authorize the business of banking," and the supplement passed thereto, did execute and deliver unto the said Merchants Bank of Bridgeton a certain bond, dated the first day of January, eighteen hundred and fifty-two, in the penal sum of ten thousand dollars, conditioned as in said bill alleged; but this defendant denies that at the time of the giving of said bond he was indebted to the said Merchants Bank, but that the said bond was given in pursuance of the act aforesaid, solely and only for the purpose of organizing and carrying on the business of said bank, and of such indebtedness this defendant insists that the said complainant be put to due proof.

And further answering saith, that he admits that he, the said defendant, did, together with his wife Nancy, execute, under their hands and seals, the first certain indenture of mortgage in said bill mentioned, bearing date the 1st day of January, 1852, for the consideration of five thousand dollars, and that they did thereby give, grant, bargain, sell, alien, enfeoff, convey, and confirm unto the said the Merchants Bank, an association organized under and in pursuance of an act of the legislature of the state of New Jersey, entitled

10 "An act to authorize the business of banking," approved February twenty-seventh, eighteen hundred and fifty, and a supplement thereto, approved March fourteenth, eighteen hundred and fifty-one, and to their successors and assigns for ever, all those tracts or parcels of land and premises, herein after particularly described, situate, lying, and being in the third and fourth wards of Jersey City, in the county of Hudson, and state of New Jersey, and which, on a map of property belonging to Selah Hill, Samuel P. Townsend, and others, made by A. Clerk and R. C. Bacot, city survey-

20 ors, dated June fourteenth, eighteen hundred and forty-nine, and filed in the office of the clerk of the said county of Hudson, are known as those certain thirty-four (34) lots, pieces, or parcels of land and premises, numbered from two hundred and twenty-nine (229) to two hundred and sixty-two (262), both inclusive, known as block number ten (10). Also all those thirty-four (34) lots, pieces, or parcels of land and premises, numbered from four hundred and twenty-five (425) to four hundred and fifty-eight (458), both inclusive, known as block number sixteen (16); and also all those

30 thirty-four lots, pieces, or parcels of land and premises, as numbered from five hundred and eighty-seven (587) to six hundred and twenty (620), both inclusive, known as block number twenty-one (21), being a part of the tract of land and premises conveyed by Selah Hill and wife to the said Samuel P. Townsend, by deeds dated, respectively, April, eighteen hundred and forty-nine, and recorded in Liber thirteen of Deeds, and July, eighteen hundred and forty-nine, and recorded in Liber fourteen of Deeds for said county; also all that other certain lot, piece, or parcel of land and

40 premises, with the two-story basement and attic brick house

thereon, situate, lying, and being in Jersey City (late Har-  
simus), in the county of Hudson, and state of New Jersey  
aforesaid, containing and described as follows: commencing  
at a point on the southerly line of Brooks street (late South  
Fourth street), distant seventy-three feet eight inches, east-  
erly, from the southeasterly corner of Grove and Brooks  
street, and running thence southerly, parallel with Grove  
street, fifty feet; thence, exactly parallel with Brooks street,  
eighteen feet five inches; thence northerly, and again paral-  
lel with Grove street, fifty feet, to the southerly line of 10  
Brooks street; thence westerly, along the southerly line of  
Brooks street, eighteen feet five inches, to the place or point  
of commencing, said lot being part of the property conveyed  
to the party of the first part (Samuel P. Townsend) by  
Louis Brooks and wife, &c., &c.

And this defendant further admits, that the said mortgage  
was in due form of law acknowledged on the fifteenth day  
of January, eighteen hundred and fifty-two, as in said bill  
stated, and was duly recorded in the clerk's office of Hud-  
son county, on the twenty-ninth day of January, eighteen 20  
hundred and fifty-two, and that a certificate to that effect is  
endorsed thereon.

And this defendant further answering insists, that the Mer-  
chants Bank had no power or authority to assign the said  
bond and mortgage to the said Rescarrick M. Smith, trea-  
surer of the state of New Jersey, as mentioned in complain-  
ants's bill; that there was not in existence any board of di-  
rectors of the said the Merchants Bank of Bridgeton; and  
that the said pretended assignment, so made by the said the  
Merchants Bank of Bridgeton to the said Rescarrick M. 30  
Smith, treasurer of the state of New Jersey, was not au-  
thorized by any resolution of any board of directors of the  
said the Merchants Bank of Bridgeton; and that the said  
pretended assignment, executed, delivered, and acknow-  
ledged as set forth in the said bill of complaint, was illegal,  
insufficient, irregular, and contrary to the laws of the state  
of New Jersey.

And this defendant further answering charges and insists,  
that if the said bond and mortgage was legally and properly  
assigned by the said Merchants Bank, as set forth in said 40

complainant's bill, to the said Rescarrick M. Smith, treasurer of the state of New Jersey, it was assigned to him in pursuance of the sixth section of the act to authorize the business of banking, passed by the Senate and General Assembly of the state of New Jersey, on the twenty-seventh of February, eighteen hundred and fifty, to secure the bills or notes of the Merchants Bank, and for no other or different purpose; that the said Rescarrick M. Smith, treasurer as aforesaid, has no right, title, or interest in said bond and  
 10 mortgage, either in law or equity, except the right to hold the same as a pledge to secure the bills or notes issued by the said Merchants Bank, when "secured by pledge of securities in the state treasury shall be stamped on their face," and has only the power and authority over said bond and mortgage so pledged with him, as is specially and particularly conferred upon him by said act of February twenty-seventh, eighteen hundred and fifty; and this defendant expressly insists that the said complainant, holding this bond and mortgage in accordance with the provisions of the act  
 20 of February twenty-seventh, eighteen hundred and fifty, has no legal right, title, or authority to file his bill of complaint for the foreclosure of the said mortgage.

And this defendant expressly denies that the whole of the said bond and writing obligatory of the said Samuel P. Townsend are now due and owing to the said complainant, as treasurer of the state of New Jersey, with a large arrear of interest, since the first day of January, in the year eighteen hundred and fifty four; and this defendant insists that the said bond and writing obligatory are only in the  
 30 custody of the said treasurer as a pledge to secure the bills or notes of the Merchants Bank, stamped, as herein before mentioned, in accordance with the provisions of the act of February twenty-seventh, eighteen hundred and fifty, and for no other or different purpose.

And this defendant further answering says, that by the provisions of the ninth section of said act, the association assigning bonds and mortgages to the treasurer may receive the interest thereon, unless default shall be made in paying the bills or notes to be countersigned as aforesaid, or unless  
 40 the bond and mortgage so pledged shall become an insuffi-

cient security for the payment of such bills or notes; that the said complainant has not alleged in his bill of complaint that the said Merchants Bank has made any default in paying the bills or notes countersigned by the treasurer, as mentioned in said act of February twenty-seventh, eighteen hundred and fifty, nor has he alleged in his bill of complaint that the said bonds and mortgages have become an insufficient security for the payment of such bills or notes.

And this defendant denies, upon information and belief, that the said Merchants Bank have at any time, on lawful demand between the hours of ten and three o'clock, at the place where the bills or notes of said bank, stamped on their face "*Secured by pledge of securities in the State Treasury,*" are made payable, has failed or refused to redeem such note or notes in the lawful money of the United States. 10

And this defendant further answering charges and insists, that if the said Merchants Bank had failed or refused to redeem such note or notes in the lawful money of the United States, the treasurer of the state of New Jersey would only have the power and authority to sell the defendant's bond and mortgage, according to the mode or manner prescribed in the tenth section of the act of February twenty-seventh, eighteen hundred and fifty, and would have no power or authority to foreclose the same. 20

And this defendant further answering saith, that this defendant admits that, for the same object and purpose herein before stated, to wit, for the purpose of entering into the business of banking under the said act of the legislature of the state of New Jersey, this defendant did make and execute four other certain bonds under his hand and seal, and therein became bound unto the Merchants Bank aforesaid in the penal sum of ten thousand dollars in each of said bonds, conditioned as in said bill of complaint set forth and described; but this defendant denies that at the time of the giving of the four bonds last above named he was indebted to the Merchants Bank, but that the said bond was given, in pursuance of the act aforesaid, solely and only for the purpose of organizing and carrying on the business of said bank, and of such indebtedness this defendant insists that the said complainant be put to due proof. 30 40

And this defendant further denies that he, together with his wife Nancy, ever made, executed, delivered, or acknowledged the four other several mortgages in said bill mentioned, or any or either of them, upon the same premises, situate in the said county of Hudson, in this state, that are set forth in the said bill of complaint, and contained in the first mortgage of the said Samuel P. Townsend and wife to the said the Merchants Bank at Bridgeton, and a description of which premises is herein before recited.

- 10 And this defendant further answering insists, that the Merchants Bank had no power or authority to assign the four said bonds to the said Rescarrick M. Smith, treasurer of the state of New Jersey, as mentioned in complainant's bill; that there was not in existence any board of directors of the said the Merchants Bank at Bridgeton; and that the said pretended assignment, so made by the said the Merchants Bank at Bridgeton to the said Rescarrick M. Smith, treasurer of the state of New Jersey, was not authorized by any resolution of any board of directors of the said the
- 20 Merchants Bank at Bridgeton; and that the said pretended assignment, executed, delivered, and acknowledged, as set forth in the said bill of complaint, was illegal, insufficient, irregular, and contrary to the laws of the state of New Jersey.

- And this defendant further answering charges and insists, that if the four said bonds were legally and properly assigned by the said Merchants Bank, as set forth in said complainant's bill, to the said Rescarrick M. Smith, treasurer of the state of New Jersey, they were assigned to him in pur-
- 30 suance of the sixth section of the act to authorize the business of banking, passed by the Senate and General Assembly of the state of New Jersey, on the twenty-seventh day of February, eighteen hundred and fifty, to secure the bills or notes of the Merchants Bank, and for no other or different purpose; that the said Rescarrick M. Smith, treasurer as aforesaid, has no right, title, or interest in the four said bonds, either in law or equity, except the right to hold the same as a pledge to secure the bills or notes issued by the said Merchants Bank, when "secured by pledge of securi-
- 40 ties in the state treasury," shall be stamped on their face;

that the said treasurer has only the power and authority over the four said bonds so pledged with him, as is specially and particularly conferred upon him by said act of February twenty-seventh, eighteen hundred and fifty; and this defendant expressly insists that the said complainant, holding these four said bonds according to the provisions of the act of February twenty-seventh, eighteen hundred and fifty, has no legal right, title, interest, or authority to file his bill of complaint.

And this defendant expressly denies that the whole of the 10 said four bonds and writings obligatory of the said Samuel P. Townsend are now due and owing to the said complainant, as treasurer of the state of New Jersey, with a large arrears of interest since the first day of January, eighteen hundred and fifty-four, or in the custody of the said complainant, treasurer as aforesaid, otherwise than as a pledge to secure the bills or notes, as herein before mentioned.

And this defendant further answering admits, that he did grant, bargain, sell, alien, convey, and confirm unto one John McGuigan all those two certain lots of land and pre- 20 mises, as described in the said complainant's bill.

And this defendant denies all and all manner of unlawful combination and confederacy wherewith he is by the said bill charged, without this, that there is any other matter, cause, or thing in the said complainant's said bill of complaint contained material or necessary for this defendant to make answer unto, and not herein and hereby well and sufficiently answered, confessed, traversed, and avoided or denied, is true, to the knowledge or belief of this defendant; all of which matters and things this defendant is ready and 30 willing to aver, maintain, and prove, as this honorable court shall direct, and humbly prays to be hence dismissed with his reasonable costs and charges in this behalf most wrongfully sustained.

RICH'D McCLELLAND,  
*Solicitor and of counsel with defendant.*

State of New Jersey, Hudson county, ss.—Samuel P. Townsend, of the city, county, and state of New York, being duly sworn upon his oath according to law, deposeth

and saith, that the matters and things set forth in the above answer, so far as they relate to his own acts, are true, and so far as relates to the acts of others, he believes them to be true.

SAMUEL P. TOWNSEND.

Sworn and subscribed before me, this sixteenth day of June, A. D. 1855, at Jersey City.

JACOB WEART, *M. C.*

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ORDER TO AMEND BILL.

10 It appearing to the court that the complainant hath, by mistake alleged in his bill filed in this cause, that the several indentures of mortgage, therein alleged to have been made and executed by the said Samuel P. Townsend and Nancy his wife, were all upon the same land and premises, whereas, in truth and in fact, each of the five mortgages so made and given as aforesaid is upon different lands and premises, and upon distinct and separate properties—it is, on this twenty-eighth day of July, in the year of our Lord one thousand eight hundred and fifty-five, on motion of R. P. Thompson,  
 20 solicitor of the complainant, ordered that the said complainant have leave to amend his bill, by setting out each of the said other four mortgages of the said Samuel P. Townsend and wife to the Merchants Bank at Bridgeton, with the metes and bounds and general descriptions therein contained, and the several assignments thereof made to the complainant, together with prayer for sale thereof for the payment of the amount due thereon, and that the said Samuel P. Townsend and Nancy his wife answer the said complainant's bill, as amended, at or before the first day of the next term of this  
 30 court.

B. WILLIAMSON, *C.*

## AMENDED BILL.

The complainant further showeth unto your Excellency, that the bond of the said Samuel P. Townsend to the said the Merchants Bank at Bridgeton, which is secondly stated and referred to in the original bill of complaint, was made and executed by the said Samuel P. Townsend and wife, as therein set forth; and in order to secure the payment thereof, the said Samuel P. Townsend made, executed, and delivered to the said Merchants Bank at Bridgeton a certain indenture of mortgage, bearing date on the first day of January, eighteen hundred and fifty-two, and made by and between the 10 said Samuel P. Townsend and Nancy his wife, of the first part, and the Merchants Bank, an association organized under and in pursuance of an act of the legislature of the state of New Jersey, entitled, "An act to authorize the business of banking," approved February 27th, 1850, and the supplement thereto, approved March 14th, 1851, the place of business of which association is Bridgeton, in the county of Cumberland, and state of New Jersey, of the second part, and therein and thereby the said Samuel P. Townsend and Nancy his wife did grant, sell, and convey unto the said 20 party of the second part, and to their successors and assigns, all those tracts or parcels of land and premises situate, lying, and being in the third and fourth wards of Jersey City, in the county of Hudson, and state of New Jersey, and which, on a map of property belonging to Selah Hill, Samuel P. Townsend, and others, made by A. Clerk and R. C. Bacot, city surveyors, dated June 14th, 1849, and filed in the office of the clerk of the said county of Hudson, are known and distinguished as those certain twenty-seven (27) lots, pieces, or parcels of land and premises numbered from one hundred 30 and thirty-one (131) to one hundred and fifty-seven (157), both inclusive, known as block number seven (7); also all those thirty (30) lots, pieces, or parcels of land and premises numbered from three hundred and twenty-seven (327) to three hundred and fifty-six (356), both inclusive, known as block number thirteen (13); and also all those thirty (30) lots, pieces, or parcels of land and premises numbered from five

hundred and twenty-three (523) to five hundred fifty-two (552), both inclusive, known as block number nineteen (19); also all those thirty (30) lots, pieces, or parcels of land and premises numbered from seven hundred and three (703) to seven hundred and thirty-two (732), both inclusive, known as block number twenty-five (25), being a part of the tracts of land and premises conveyed by Selah Hill and wife to said Samuel P. Townsend, by deeds dated, respectively, April fourteenth, eighteen hundred and forty-nine, and re-  
 10 corded in Liber thirteen of Deeds, and July eighteenth, eighteen hundred and forty-nine, and recorded in Liber 14 of Deeds for said county; also all that certain lot, piece, or parcel of land and premises, with the two-story attic and basement brick house thereon, situate, lying, and being in Jersey City, late Harsimus, state of New Jersey aforesaid, containing and described as follows: commencing at a point in the southerly line of Brooks street, late South Fourth street, distant easterly thirty-six (36) feet two inches from the southeasterly corner of Grove and Brooks street, and  
 20 running thence southerly, parallel with Grove street, fifty (50) feet; thence easterly, parallel with Brooks street, eighteen feet five inches; thence northerly, parallel again with Grove street, fifty feet, to the southerly line of Brooks street; and thence westerly, along the southerly line of Brooks street, eighteen (18) feet five inches, to the place of beginning, said lot being part of the property conveyed to the said party of the first part by Lorin Brooks and wife, by deed dated the 31st day of July, A. D. 1848, and recorded in the clerk's office of the county of Hudson, in Liber 21 of  
 30 Deeds for said county, together with all and singular the profits, privileges, and advantages, with the appurtenances thereto belonging; which said indenture of mortgage was and is subject to the express condition, that if the said party of the first part, their heirs, executors, or administrators, do and shall well and truly pay, or cause to be paid, to the said party of the second part, their certain attorney or attorneys, successors or assigns, the sum of five thousand dollars, lawful money of the United States of America, on the first day of January, which will be in the year of our Lord one thou-  
 40 sand eight hundred and fifty, with the interest thereon from

the date of this mortgage at and after the rate of six per centum per annum, payable semi-annually according to the condition of a certain bond or obligation of the said Samuel P. Townsend, bearing even date with these presents, in the penal sum of ten thousand dollars, accompanying this mortgage, as by reference thereto (marked B) will appear, that then the said mortgage, as well as the said obligation, should cease and be void.

And your orator further showeth unto your Excellency, that the said Merchants Bank at Bridgeton, the association 10 aforesaid, for a valuable consideration to them paid, and for divers good causes, did, by an instrument in writing, duly executed in behalf of the said association by Francis Bradt, president thereof, under the corporate seal of the said association thereto affixed, on the twenty-second day of January, eighteen hundred and fifty-two, grant, bargain, assign, transfer, and set over unto the said complainant the said indenture of mortgage above set forth, together with the bond or obligation therein, and herein before described, and did deliver the said mortgage and bond to your orator with the 20 said deed of assignment, and your orator now holds the same, ready to be produced as this honorable court may direct.

And your orator further showeth to the court, that in order to secure the bond or obligation thirdly set forth in the said original bill, the said Samuel P. Townsend and Nancy his wife, on the first day of January, in the year of our Lord one thousand eight hundred and fifty-two, did make, execute, and deliver unto the said the Merchants Bank at Bridgeton, an association organized as is herein before set 30 forth, a certain other indenture of mortgage, and therein did grant, bargain, sell, and convey unto the said the Merchants Bank at Bridgeton, their successors and assigns, all those tracts or parcels of land and premises situate, lying, and being in the third and fourth wards of Jersey City, in the county of Hudson, and state of New Jersey, and which, on a map of property belonging to Selah Hill, Samuel P. Townsend, and others, made by A. Clerk and R. C. Bacot, city surveyors, dated June 14th, 1849, and filed in the office of the clerk of the said county of Hudson, and known and 40

- distinguished as those four (4) certain lots, pieces, or parcels of land and premises numbered as lots from one (1) to four (4), both inclusive, known as block number one (1); also all those certain twenty-two (22) lots, pieces, or parcels of land and premises numbered as lots from five (5) to twenty-six (26), both inclusive, known as block number two (2); also all those ten (10) lots, pieces, or parcels of land and premises numbered from twenty-seven (27) to thirty-six (36), both inclusive, known as block number three (3); also all those
- 10 sixteen (16) lots, pieces, or parcels of land and premises numbered one hundred and five (105), one hundred and six (106), one hundred and eight (108), one hundred and ten (110), one hundred and twelve (112), one hundred and fourteen (114), one hundred and sixteen (116), one hundred and eighteen (118), one hundred and twenty (120), one hundred and twenty-two (122), one hundred and twenty-four (124), one hundred and twenty-five (125), one hundred and twenty-six (126), one hundred and twenty-seven (127), one hundred and twenty-eight (128), being the north half of the
- 20 block known as number six (6), being a part of the tracts of land and premises conveyed by Selah Hill and wife to said Samuel P. Townsend, by deeds dated, respectively, April 14th, 1849, and recorded in Liber 13 of Deeds, and July 18th, 1849, and recorded in Liber 14 of Deeds for said county; also all that other certain lot, piece, or parcel of land and premises situate, lying, and being in Jersey City (late Harsimus) state of New Jersey aforesaid, with the two-story attic and basement brick house thereon, containing and described as follows: commencing at the southeasterly corner of Grove
- 30 and Brooks street (late South Fourth street), and running thence southerly, along the easterly side of Grove street, fifty feet; thence easterly, parallel with Brooks street aforesaid, eighteen (18) feet five inches; thence northerly, parallel with Grove street aforesaid, fifty feet, to the southerly line of Brooks street; thence westerly, along the southerly line of Brooks street, eighteen (18) feet five inches, to the place of commencing, said lot being part of the property conveyed to the party of the first part by Lorin Brooks and wife," together with all the profits, privileges, and advantages,
- 40 tages, with the appurtenances, and all the estate, right, title,

interest, property, claim, and demand whatsoever of the said Samuel P. Townsend and Nancy his wife in and to the said land and premises for ever.

And your orator showeth further unto the court, that the said last mentioned indenture of mortgage was and is subject to the express condition, therein expressed, "that if the said party of the first part, their heirs, executors, or administrators, do and shall well and truly pay, or cause to be paid, to the said party of the second part, their certain attorney, successors in office, or assigns, the sum of five thousand 10 dollars, lawful money of the United States of America, on the first day of January, which will be in the year of our Lord one thousand eight hundred and fifty-three, with the interest thereon from the date hereof at and after the rate of six per centum per annum, payable semi-annually, according to the condition of a certain bond or obligation of the said Samuel P. Townsend, bearing even date with the said mortgage, in the penal sum of ten thousand dollars, as by the said bond or obligation accompanying this mortgage, and which is set out in the said original bill of complaint, 20 third in order of said bond, and which by reference to said bond, now in your orator's possession, (marked C) will fully appear, then the said indenture of mortgage and the said bond or obligation should cease and become void.

And your orator further showeth, that the said the Merchants Bank at Bridgeton, the association aforesaid, for a good and valuable consideration, and for divers sufficient causes therefor, did, by an instrument in writing, duly made and executed in behalf of the said association by Francis Bradt, president thereof, under the corporate seal of the said 30 association, thereto affixed on the twenty-second day of January, eighteen hundred and fifty-two, grant, bargain, sell, assign, transfer, and set over unto the said complainant the said indenture of mortgage above last mentioned, together with the bond, or obligation, therein and herein before described, and did then and there deliver the said mortgage and bond to your orator, with the said deed of assignment, and your orator now holds the same ready to be produced, as this honorable court may direct.

And your orator further showeth unto your Excellency 40

that, in order to secure the payment of the said bond, or obligation, fourthly set forth in the said original bill of complaint, the said Samuel P. Townsend and Nancy his wife, on the first day of January, in the year of our Lord one thousand eight hundred and fifty-two, made and executed and delivered unto the said the Merchants Bank at Bridgeton, an association organized as aforesaid, their certain other indenture of mortgage, and therein and thereby they did grant, bargain, sell, convey, and confirm unto the said the

10 Merchants Bank at Bridgeton, their successors in office and assigns, "all those tracts or parcels of land and premises situate, lying, and being in the third and fourth wards of Jersey City, in the county of Hudson, and state of New Jersey, and which, on a map of property belonging to Selah Hill, Samuel P. Townsend, and others, made by A. Clerk and R. C. Bacot, city surveyors, dated June 14th, 1849, and filed in the office of the clerk of the county of Hudson, are known and distinguished as lots numbered from one hundred and ninety-three (193) to two hundred and twenty-eight

20 (228), both inclusive, being block numbered nine (9) on said map; also lots numbered from three hundred and ninety-one (391) to four hundred and twenty-four (424), both inclusive, being block numbered fifteen (15) on said map; also lots numbered from six hundred and twenty-one (621) to six hundred and thirty-eight (638), both inclusive, being block numbered twenty-two (22) on said map, being part of the tract of land and premises conveyed by Selah Hill and wife, by two several deeds, to the said Samuel P. Townsend; also

30 all that other certain lot, piece, or parcel of land and premises, with the two-story basement and attic brick house thereon, commencing at a point on the southerly side of Brooks street, distant, easterly, fifty-five (55) feet four inches from the southeasterly corner of Brooks and Grove streets, and running thence southerly, parallel with Grove street, fifty feet; thence easterly, parallel with Brooks street, eighteen (18) feet five inches; thence northerly, parallel again with Grove street, fifty (50) feet, to the southerly line of Brooks street; and thence westerly, along the southerly line of Brooks street, eighteen (18) feet five inches, to the place

40 of beginning, said lot being part of the property conveyed

to the said Samuel P. Townsend by Green Brooks and wife, by deed dated July 31st, 1848, and recorded in the clerk's office of Hudson county, in Liber twenty-one of Deeds," together with all the appurtenances to the same belonging, and all the estate, right, title, claim, and interest of the said Samuel P. Townsend and Nancy his wife of, in, and to the same for ever.

And your orator further showeth unto your Excellency, that the said indenture of mortgage last above set forth was and is subject to this express condition, "that if the said 10 party of the first part, their certain attorney, executors, or administrators, do and shall well and truly pay, or cause to be paid, to the said party of the second part, their certain attorney, successors, or assigns, the sum of five thousand dollars, lawful money of the United States of America, on the first day of January, which will be in the year of our Lord one thousand eight hundred and fifty-three, with the interest thereon from the date of this mortgage at and after the rate of six per centum per annum, payable semi-annually, according to the condition of a certain bond or obliga- 20 tion of the said Samuel P. Townsend, bearing even date with said mortgage, in the penal sum of ten thousand dollars, as by the said bond or obligation, accompanying this mortgage, and which by reference thereto in your orator's possession, marked D, will fully appear, then the said indenture of mortgage and the said bond or obligation should cease and be void."

And your orator further showeth to the court, that the said the Merchants Bank at Bridgeton, the association aforesaid, for a valuable consideration and for divers good causes, 30 did, on the twenty-second day of January, in the year of our Lord one thousand eight hundred and fifty-two, by an instrument in writing, duly made and executed in behalf of the said association by Francis Bradt, president thereof, under the corporate seal of the said association, thereto affixed, grant, bargain, sell, assign, transfer, and set over unto the said complainant the said indenture of mortgage last above mentioned and the said bond therein described, and did then and there deliver the said bond and mortgage and deed of assignment to your orator, who now holds the same, ready to 40

be produced in this honorable court, if the same shall become necessary.

And your orator further showeth unto the court that, in order to secure the payment of the bond, or obligation, fifthly set forth in the said original bill of complaint, the said Samuel P. Townsend and Nancy his wife, on the first day of January, in the year of our Lord one thousand eight hundred and fifty-two, made, executed, and delivered unto the said the Merchants Bank at Bridgeton, an association organized  
 10 as aforesaid, their certain other indenture of mortgage of that date, and therein they did grant, bargain, sell, convey, and confirm unto the said the Merchants Bank at Bridgeton, their successors in office and assigns, "all those tracts or parcels of land and premises situate, lying, and being in the third and fourth wards of Jersey City, in the county of Hudson, and state of New Jersey, and which, on a map of property belonging to Selah Hill, Samuel P. Townsend, and others, made by A. Clerk and R. C. Bacot, city surveyors,  
 20 dated June 14th, 1849, and filed in the office of the clerk of the said county of Hudson, and known and distinguished as lots numbered one hundred and one (101), one hundred and two (102), one hundred and three (103), one hundred and seven (107), one hundred and nine (109), one hundred and eleven (111), one hundred and thirteen (113), one hundred and fifteen (115), one hundred and seventeen (117), one hundred and nineteen (119), one hundred and twenty-one (121), one hundred and twenty-three (123), one hundred and twenty-nine (129), one hundred and thirty (130), being the south half of block known as number six (6); also all those  
 30 thirty (30) lots, numbered on the said map from two hundred and ninety-seven (297) to three hundred and twenty-six (326), both inclusive, known as block number twelve (12); also all those thirty (30) lots, numbered on said map from number four hundred and ninety-three (493) to five hundred and twenty-two, both inclusive, being block number eighteen (18) on said map; also all those thirty (30) lots, numbered on said map from six hundred and seventy-three (673) to seven hundred and two, both inclusive, being block number  
 40 veyed by Selah Hill and wife to the said Samuel P. Town-

send ; also all that other certain lot, piece, or parcel of land and premises, with the two-story basement and attic brick house thereon, commencing at a point on the southerly line of Brooks street, eighteen feet five inches distant, easterly, from the southeasterly corner of Grove and Brooks streets, and running thence southerly, parallel with Grove street, fifty feet ; thence easterly, parallel with Brooks street, eighteen feet five inches ; thence northerly, and again parallel with Grove street, fifty feet, to the southerly line of Brooks street ; thence westerly, along the southerly line of Brooks street, 10 eighteen feet five inches, to the place of beginning, said lot being part of the property conveyed to the said Samuel P. Townsend by Green Brooks and wife, by deed dated July 31st, 1848, and recorded in Hudson county clerk's office, in Liber 21 of Deeds, on the 19th of August, 1851," together with all and singular the appurtenances and all the estate, title, interest, and property of the said Samuel P. Townsend and Nancy his wife of, in, and to the said land and premises, and every part and parcel thereof.

And your orator further showeth unto your Excellency, 20 that the said last mentioned indenture of mortgage was and is made and given and subject to the express condition therein expressed, "that if the said party of the first part, their heirs, executors, or administrators, do and shall well and truly pay, or cause to be paid, to the said party of the second part, their certain attorney, successors, or assigns, the sum of five thousand dollars, lawful money of the United States of America, on the first day of January, which will be in the year of our Lord one thousand eight hundred and fifty-three, with the interest thereon from the date of this mort- 30 gage at and after the rate of six per centum per annum, payable semi-annually, according to the conditions of a bond bearing even date herewith in the penal sum of ten thousand dollars, as by the said bond, accompanying the mortgage, and now in the custody of your orator, marked E, will fully appear on reference thereto.

And your orator further showeth unto your Excellency, that the said the Merchants Bank at Bridgeton, the association aforesaid, for good and valuable consideration and for divers good causes, did, by an instrument in writing, duly made 40

and executed in behalf of the said association by Francis Bradt, president thereof, under the corporate seal of the said association, thereto affixed on the twenty-second day of January, in the year of our Lord one thousand eight hundred and fifty-two, grant, bargain, sell, assign, transfer, and set over unto the said complainant the said last mentioned indenture of mortgage, together with the bond or obligation therein and herein before described, and did then and there deliver the said mortgage and bond, with the said deed of  
 10 assignment, to your orator, who now holds the same, ready to be produced as this honorable court may direct and require.

And your orator further showeth to the court, that each of the said several indentures of mortgage were duly acknowledged by the said Samuel P. Townsend and by Nancy his wife, on the fifteenth day of January, in the year of our Lord one thousand eight hundred and fifty-two, before Ashbel C. Green, esq., a commissioner of New Jersey residing in the state of New York, and that the said several inden-  
 20 tures of mortgage herein before set forth were duly recorded as the statute directs, and are now of record in the clerk's office of the county of Hudson, and that the said several sums of money therein and thereby secured, amounting in the whole to twenty thousand dollars, has not, nor hath any part thereof, been paid according to the condition of the said several bonds and to the proviso in the said mortgages, but that the principal sum of each of the said bonds and mortgages, with a large arrear of interest thereon, is now over due and owing upon the said several bonds and mortgages  
 30 to the said complainant, as the said complainant is able to maintain and prove to this honorable court, if necessary so to do.

And this complainant respectfully prays of this honorable court, that the said defendants, Samuel P. Townsend and Nancy his wife, may be compelled, by a short day, to be appointed by this court, to pay unto your orator the whole of the principal sums contained in the said several four indentures of mortgage in this his amended bill set forth, with the interest that shall have accrued thereon and the costs of  
 40 the complainant, or that, if your Excellency shall deem it

more agreeable to equity, the whole of the mortgaged premises, above herein in this amended bill set forth, may be sold by decree of this honorable court, and out of the money thence arising your orator may be paid the full amount of the principal sums due on the said four bonds or obligations and indentures of mortgage herein before specified, together with the interest thereon and his costs, and that your orator may have such other and further relief in the premises as may seem proper and shall be agreeable to equity and good conscience.

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R. P. THOMPSON,  
*Solicitor of complainant.*

Notice with acknowledgment of service endorsed; filed August 1st, 1855.

Costs on amended bill; filed September 17th, 1855.

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*The answer of Samuel P. Townsend, one of the above defendants, to the bill of the complainant, as amended.*

This complainant, now and at all times hereafter saving and reserving unto himself all benefit and advantage of exception which can or may be had or taken to the many errors, uncertainties, and other imperfections in the said complainant's bill, for answer thereunto, or unto so much and such parts thereof as this defendant is advised is or are material or necessary, for answer thereunto this defendant says—

That this defendant admits, that the four several bonds and mortgages mentioned and described in the bill, as amended, of the said complainant, and referred to in the complainant's original bill of complaint, were made, executed, and delivered to the said Merchants Bank at Bridge-  
ton, as in said amended bill set forth, and that the said mortgages named therein were given upon the lands and premises therein described to secure the payments of the sums of money in said bonds named, and that said mortgages were

acknowledged and registered as in said original bill mentioned.

And this defendant further answering says, that Francis Bradt, named in the complainant's bills of complaint as the president of the Merchants Bank at Bridgeton, had no authority to affix the corporate seal of the said Merchants Bank to the said assignment mentioned in said bills of complaint; these were not done and made within the scope of his authority as president of said bank. The transfer of  
 10 bonds and mortgages by a bank is of rare occurrence it is not within the range of banking operations; it is not a part or portion of legitimate banking business; and that the said Francis Bradt, president as aforesaid, was not authorized or empowered to execute the said assignment by the board of directors, or by any act of the state of New Jersey, or in any other manner; but this defendant charges and insists, that there was not in existence any board of directors of the said the Merchants Bank at Bridgeton at the time that the said assignments are alleged to have been made; and further  
 20 says, that the said pretended assignment so alleged to have been made by the said the Merchants Bank at Bridgeton to the said Rescarrick M. Smith, treasurer of the state of New Jersey, was not authorized by any resolution of any board of directors of the said the Merchants Bank at Bridgeton, and that the said pretended assignments of the four said  
 30 bonds and mortgages, as set forth in the said bill of complaint, were illegal, insufficient, irregular, and contrary to the laws of the state of New Jersey.

And this defendant further answering charges and insists,  
 30 that if the four said bonds and mortgages, mentioned in the original bill of complaint and the bill as amended of the said complainant, were legally and properly assigned by the said Merchants Bank to the said Rescarrick M. Smith, treasurer of the state of New Jersey, they were assigned to him in pursuance of the sixth section of the act to authorize the  
 40 business of banking, passed by the Senate and General Assembly of the state of New Jersey, on the 27th of February, eighteen hundred and fifty, to secure the bills or notes of the Merchants Bank, and for no other or different purpose; that the said Rescarrick M. Smith, treasurer as aforesaid, has no

right, title, or interest in the said four bonds and mortgages, except the right to hold the same as a pledge to secure the bills or notes issued by the said Merchants Bank, when "secured by pledge of securities in the state treasury" shall be stamped on their face, and has only the power and authority over said bonds and mortgages so pledged with him as is specially and particularly conferred upon him by said act of February 27th, eighteen hundred and fifty; and this defendant expressly insists, that the said complainant, holding the four said bonds and mortgages in accordance with 10 the provisions of the act of February 27th, eighteen hundred and fifty, had no legal right, title, or authority to file his bill of complaint for the foreclosure of the said mortgages.

And this defendant expressly denies that the whole of the said four bonds and writings obligatory of the said Samuel P. Townsend are now due and owing to the said complainant, as treasurer of the state of New Jersey, with a large arrear of interest since the first day of January, eighteen hundred and fifty-four; and this defendant insists that the 20 said four bonds and writings obligatory are only in the custody of the said treasurer as a pledge to secure the bills or notes of the Merchants Bank, stamped, as herein after mentioned, in accordance to the provisions of the act of February twenty-seventh, eighteen hundred and fifty, and for no other or different purpose.

And this defendant further answering saith, that by the provisions of the ninth section of the said act, the association assigning bonds and mortgages to the treasurer may receive the interest thereon, unless default shall be made in 30 paying the bills or notes to be countersigned as aforesaid, or unless the bonds and mortgages so pledged shall become an insufficient security for the payment of such bills or notes; that the said complainant has not alleged in his bill of complaint that the said Merchants Bank has made any default in paying the bills or notes to be countersigned as aforesaid, or unless the bonds or mortgages so pledged shall become an insufficient security for the payment of such bills or notes; that the said complainant has not alleged in his bill of complaint that the said Merchants Bank has made any default 40

in paying the bills or notes countersigned by the treasurer, as mentioned in said act of February twenty-seventh, eighteen hundred and fifty, nor has he alleged in his bill of complaint that the said bonds and mortgages have become an insufficient security for the payment of such bills or notes.

And this defendant further shows unto your Honor that he has been informed, and verily believes, that the said Merchants Bank never failed or refused to redeem such note or notes in the lawful money of the United States at any time, 10 on lawful demand, between the hours of ten and three o'clock, at the place where the bills or notes of said bank, stamped on their faces "secured by pledge of securities in the state treasury," are made payable.

And this defendant further answering charges and insists, that if the said Merchants Bank had failed or refused to redeem such note or notes in the lawful money of the United States, the treasurer of the state of New Jersey would only have the power and authority to sell the said four bonds and mortgages according to the mode and manner prescribed in 20 the tenth section of the act of February twenty-seventh, eighteen hundred and fifty, and would have no power or authority to foreclose the same.

Wherefore this defendant prays to be hence dismissed with his reasonable costs and charges in this behalf most wrongfully sustained.

RIC'D D. McCLELLAND,  
*Solicitor and of counsel with above defendant.*

State of New Jersey, Hudson county, ss.—Samuel P. Townsend of the city, county, and state of New York, be- 30 ing duly sworn upon his oath according to law, deposeseth and saith, that the matters and things set forth in the above answer to the bill of complaint, as amended, so far as relate to his own acts are true, and so far as relates to the acts of others, he believes them to be true.

SAMUEL P. TOWNSEND.

Sworn and subscribed before me, this tenth day of October, A. D. 1855, at Jersey City.

JACOB WEART, *M. C.*

To this a replication was filed, in the usual form, November 8th, 1855.

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TESTIMONY.

*Examination of witnesses in a cause depending in the Court of Chancery of the state of New Jersey between the above named parties, taken at the state house, in the city of Trenton, on Wednesday, the eighteenth day of June, in the year eighteen hundred and fifty-six, before Samuel A. Allen, esq., one of the masters and examiners of the said court, in the presence of R. P. Thompson, solicitor and of counsel for the said complainants, and 10 of Richard D. McClelland, solicitor and of counsel for the defendants, upon due and legal notice to R. D. McClelland, esq., of the taking of such examination; served upon him on the sixth day of June, A. D. 1856, as appears by the written admission of the said R. D. McClelland, present, annexed.*

*Henry M. Alexander*, of the city of New York, a witness produced on the part of said complainant, being duly sworn, deposeth and saith—I reside in the state of New York; I hold a commission from New Jersey as commissioner of 20 deeds; I received my first commission from Governor Stratton; I am not certain that I am acquainted with Francis Bradt.

Witness being shown a paper, marked by me *Exhibit 1*, says, that is my signature as commissioner. On a person's coming to take an acknowledgment, I require an introduction from some person known to me; I am satisfied that Francis Bradt did appear before me, and take his acknowledgment; I suppose the paper was brought to me signed by Bradt before he came, from the fact that I have not signed 30 it as witness; acknowledgment was taken 22d of January, 1852; I administered an oath to Bradt; contents of that oath is set forth in the acknowledgment; he swore to the fact stated in my certificate of acknowledgment.

[Counsel for defence objects to the sufficiency of proof to the above paper.]

Being shown four other papers, marked *Exhibits 2, 3, 4, 5*, says, these papers were acknowledged on the same day by the same person, and my certificate is on each of the papers as commissioner, and the facts stated therein are true, as they occurred at the time; I say that the knowledge of identity was acquired at the time, but from my usual course of business, I am sure it was full and certain as to the per-

10 son who signed the papers.

*Question.* Who came to the office with Francis Bradt at the time the papers were acknowledged?

*Answer.* I don't recollect certainly, but have an impression—my impression is it was Dr. Samuel P. Townsend, or a tall man who originally came with him or for him; my impression is the man's name was Allen.

*Quest.* Did the person whom you supposed to be Mr. Allen come at other times on business of Mr. Townsend?

*Ans.* My impression is that he was there several times.

20 Witness being shown another paper, marked *Exhibit —*, says, that is my certificate of acknowledgment, subject to the qualifications above stated; paper dated 22d of January, 1852; the paper was executed the same day. Upon seeing this last paper, my impression is still stronger that Francis Bradt was identified with S. P. Townsend, but I cannot say for certain.

[Defendants' counsel objects to the sufficiency of the proof on acknowledgment of the above paper.]

On being cross-examined by defence—

30 *Quest.* Do you know where Francis Bradt resided on the 22d of January, 1852?

*Ans.* I do not know.

*Quest.* Had you known Francis Bradt otherwise than by the introduction to you on that day, or the means of information on that day had, as by you stated in your deposition?

*Ans.* Not unless he had been before me in my capacity as commissioner of deeds previous to that time.

40 *Quest.* Have you any distinct recollection that Francis Bradt ever appeared before you, as such commissioner, on any other day than the said 22d of January?

*Ans.* I have no distinct recollection.

*Quest.* Will you state which one of these papers was first proved or acknowledged?

*Ans.* I cannot.

*Quest.* Can you state what length of time, on the said 22d of January, elapsed between taking the above proofs or acknowledgments?

*Ans.* From the fact, that part of the acknowledgments are in the handwriting of my partner, Mr. Green, I believe that they must have been simultaneous, and that I handed 10 over a part of them to him to save the time of those who came to acknowledge.

H. M. ALEXANDER.

Taken, sworn, and subscribed before me, the day and year above written.

S. A. ALLEN, *M. C.*

*R. M. Smith*, of the county of Mercer, a witness produced on the part of the above complainant, being duly sworn, deposeseth and saith—[Counsel of defendants excepts to the testimony of the witness, because he is complainant in the 20 cause.]

Witness being shown papers marked *Exhibits 7*, says, that those papers were handed to me by Dr. John Allen; Allen represented the Merchants Bank at Bridgeton; he resided in the city of New York; he represented himself to me as the agent of Dr. Samuel P. Townsend; I knew him to be the agent of Dr. Townsend, from various circumstances. From the certificate sent me, enclosed in a letter to me from Dr. Townsend, I ascertained that Francis Bradt was the president of the Merchants Bank at Bridgeton; Francis Bradt 30 has never been here; I have had numerous conversations with Dr. Townsend about these mortgages since they were deposited here; he has spoken to me of paying them; he has always expressed a willingness to pay them eventually; he never did, on any occasion, say to me that they had not been properly assigned.

*Quest.* Has he not said to you that they were all right and properly assigned?

[Objected to, inasmuch as the assignments speak for themselves.]

*Ans.* He has said so, and that they were given in good faith, and he had value for them, and meant to pay them; the only question was, that he wanted time.

Witness being shown a paper marked *Exhibit No. 6*, says, my impression is that this paper was brought when the first bond and mortgage was brought.

Being shown a paper marked *Exhibit No. 7*, says, that is a  
10 letter from Dr. Townsend to me, dated January 13th, 1854.

Being shown a paper marked *Exhibit No. 8*, says, that is a letter from Dr. Townsend, dated December 11th, 1854; I am satisfied they are letters from him, and written by him.

*Quest.* What amount will be required to pay the liabilities of the Merchants Bank?

*Ans.* About twenty-five thousand dollars—about the amount of the mortgage.

*Quest.* Has there been an injunction granted by the Chancellor against the Merchants Bank at Bridgeton? and when?

20 *Ans.* There was an injunction granted on the 10th of February, 1854; received it on the 11th of February, the day following.

[The above question objected to by defendants' counsel.]

*Quest.* Did you give the notice required by the statute immediately after receiving the injunction?

[Objected to, as the notice will speak for itself.]

*Ans.* I did give the notice.

Being cross-examined—

30 *Quest.* What was the notice you referred to in your last answer?

*Ans.* A notice saying to the public that an injunction had been issued against the Merchants Bank at Bridgeton, and on and after such a time such a dividend would be paid on the bills.

I am the treasurer of the state of New Jersey, and complainant in this suit.

Letters produced by witness are excepted to, there being no post-mark on them.

40 *Quest.* Were you ever present when Samuel P. Townsend wrote?

*Ans.* I have been present in his office, and have seen him write there several times.

R. M. SMITH.

Taken, sworn, and subscribed before me, the day and year above written.

S. A. ALLEN, M. C.

Rule to set down cause ; filed August 6th, 1856.

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*Depositions of witness, taken before Vancleve Dalrimple, a master and examiner in chancery of New Jersey, at the city of Trenton, on the fifth day of November, A. D. 10 1856, in a certain cause depending in the Court of Chancery of said state between the treasurer of the state of New Jersey, complainant, and Samuel P. Townsend, defendant, in the presence of Richard P. Thompson, esq., attorney general and solicitor of complainant, and R. McClelland, esq., solicitor of defendant.*

*Artis E. Hughes, of the township of Bridgeton, in the county of Cumberland, a witness produced and sworn on the part of said defendant, deposeseth and saith—I reside in Bridgeton, in the county of Cumberland ; I was the principal 20 actor there in the Merchants Bank at Bridgeton, that is, the clerk or agent, or cashier, in handling the funds ; I was elected one of the directors. I was acting as an officer of the bank during its organization as disbursing agent ; I was there in the bank to redeem the bills of the bank ; there were notes presented there, from time to time, to be redeemed, and were redeemed, sometimes in specie and sometimes in bank notes, if they chose to take them ; there were never any notes presented for redemption which were not redeemed, and I had charge of the bank from its com- 30 mencement till its close ; there was money in the bank to redeem notes, when presented there for payment, up to the eleventh day of January, 1855.*

Witness being cross-examined by counsel of complainant.

*Quest.* Did the sheriff of Cumberland county serve an injunction on you against the Merchants Bank at Bridgeton?

[Objected to as being incompetent and irrelevant.]

*Ans.* He did; I understood it to be an injunction commanding me to cease the business of the bank; the first paper the sheriff served, I don't know whether it was an injunction or not, was served in February, 1854; I understood it to be something like a notice to show cause; after the  
10 sheriff served that paper on me, I stopped proceedings for about two months; we had a board of directors of that bank. [All in reference to the board of directors objected to.] It consisted of Ephraim E. Shepherd, Alfred D. Maule, and myself. These directors, as a general thing, attended at the bank two days in the week for the purpose of attending to the discount of notes, if notes were presented; the president of the bank I understood to be Francis Bradt—the notes were issued by him; I think I should know his signature if I should see it.—Being shown *Exhibit No. 1* on  
20 part of complainant—I should think the signature to that paper to be his, judging from the handwriting in the bills; I never saw him write his name. The bank ceased discounting the latter part of November, 1854, after a notice from the attorney general, served by James Stiles. [All in regard to notice objected to.] There was no business done after that notice, to my recollection; I received a notice from Dr. Townsend or Dr. Allen, I can't say which, that I was appointed agent to redeem the bills of the bank; I supposed Dr. Townsend was the principal, but I do not  
30 know of my own knowledge. Dr. Allen left the funds with me to redeem the bills; I think he represented himself as the agent of Dr. Townsend; I believe he still acts as the agent of Dr. Townsend; he came to Bridgeton some few weeks ago to know if I would come up as a witness in this cause. I received, while I was agent of that bank, money on deposit—several hundred dollars—I can't tell how much here; I don't think I can tell how many notes I discounted as agent of that bank, not less than fifty—how many more I can't say—there were more; none of the notes, except  
40 one, were sent from New York; I cannot tell the amount of

that note; it was discounted, and the funds were paid to a man by the name of Hays, I think, at Bridgeton; he was not a resident of this state, as I know of, though he may have been.

*Quest.* Did he say where he came from?

[Objected to.]

*Ans.* He said he lived in New York. He brought money to me for the bank when he came in; I do not think he took any money away; he deposited the avails of the note.

To question by counsel of defendants—After the expiration of the two months I have named, the bank resumed business. 10

A. E. HUGHES.

Sworn and subscribed before me, this 5th day of November, A. D. 1856.

V. DALRIMPLE, *M. C.*

Exhibits 9, 10, and 11, on part of complainant, were then offered in evidence by the attorney general, marked as such by me, and objected to as incompetent testimony by defendants' counsel. 20

V. DALRIMPLE, *M. C.*

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RULE TO AMEND BILL.

It is ordered, on motion of R. P. Thompson, solicitor of the complainants, that the said complainants have leave for twenty days to amend the bill of complaint in the above cause, by making the Merchants Bank at Bridgeton a defendant in said suit, and also by an allegation of the amount of the bills or notes of the said Merchants Bank that are now unredeemed, and which have been placed in the hands of said complainant for redemption, and certificates for which 30 said notes have been given by said treasurer to the several persons entitled thereto.

February 11th, 1857.

B. WILLIAMSON, *C.*

## AMENDED BILL.

The complainant further showeth unto your Excellency that he has been informed, and believes it to be true, that the Merchants Bank at Bridgeton, in the state of New Jersey, is interested in the premises, and ought to be made a party to this bill, and he therefore respectfully prays that the said Merchants Bank at Bridgeton may be required to appear in this court, and file their answer to the bill and proceedings therein.

And the complainant further showeth unto your Excellency that he hath been informed, and believes it to be true, that a large amount of the bills issued at the instance of the said the Merchants Bank are now outstanding and are unpaid, and that some thirty thousand of such bills have been presented for payment to the complainant, as treasurer of the state of New Jersey, who hath not any funds with which to pay the same, and that the same are liable to be paid by resort to the indenture of mortgage herein before in this cause particularly set forth, wherefore the complainant prays that he may have such other and further relief as the case may require.

R. P. THOMPSON,  
*Solicitor of complainant.*

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*The several answer of the Merchants Bank at Bridgeton, defendants, to the above amended bill of complaint.*

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

That it may be true that there is a large amount of bills, issued at the instance of the said the Merchants Bank at Bridgeton, outstanding and unpaid, and that there may have been presented to the said complainant, treasurer of the state of New Jersey, some thirty thousand dollars of said bills, but these defendants have no knowledge of such last mentioned fact, and leave the said complainant to make such proof thereof as to him may seem proper; and further answering say, that whether the said treasurer had any funds or not with which to pay the same, these defendants are not  
10 aware.

And these defendants further answering say, that after an examination of other proceedings in the above cause (blindly referred to in the said amended bill of the complainant) they are led to believe that the said complainant seeks, by his proceedings, to foreclose the equity of redemption of all the defendants in the said bonds and mortgages referred to in his said amended bill; and these defendants respectfully insist before this honorable court that such proceedings are manifestly illegal, improper, and contrary to the express  
20 written law of the state of New Jersey; and these defendants ask the same relief as if they had demurred to the said amended bill.

And these defendants further answering say, that the said bonds and mortgages were assigned to the said treasurer in pursuance of the 6th section of an act to authorize the business of banking, passed by the Senate and General Assembly of the state of New Jersey, on the 27th of February, 1859, to secure the bills or notes of the said the Merchants Bank, and for no other purpose.  
30

And they further show unto your Honor, that the said treasurer holds the said bonds and mortgages subject to the provisions of the said act, which plainly directs him in the performance of his duties under the same, and said acts give the said complainant no authority to exhibit his bill in this honorable court to foreclose the said mortgages, and the only authority of the said complainant is to sell in public market the said bonds and mortgages; and these defendants ask the same relief as if they had demurred to the said amended  
40 bill.

And these defendants further answering say, that by the provisions of the tenth section of said act is provided a method whereby it may become manifest whether the securities given under the provisions of the act have become forfeited, and that it becomes necessary that the makers of such notes (or bills, as described in said amended bill,) should on lawful demand, between the hours of ten and three o'clock, at the place where such note or notes is or are made payable, fail or refuse to redeem such note or notes in the lawful money of the United States before the said treasurer can proceed in any way to collect the moneys due upon the said securities; and these defendants say that payment of the said bills was never demanded at the banking house of these defendants or at their place of business.

And these defendants deny that the said Merchants Bank at Bridgeton have at any time, on lawful demand, between the hours of ten and three o'clock, at the place where the bills or notes of said bank are made payable, failed or refused to redeem such note or notes in the lawful money of the United States.

And these defendants further say, that they are informed by their officers and agents, and believe that no note or notes of the Merchants Bank aforesaid have ever been presented for payment in the manner above prescribed which have not been paid as directed by law.

And these defendants further answering say, that if there are any bills of the said bank outstanding and unpaid, the same should have been presented at the place where such notes were made payable in the manner by law prescribed, and that it was illegal and improper for any person or persons to present to the said treasurer any note or notes of the said bank before such notes should have been protested in the manner suggested in the said tenth section of said act.

And these defendants further answering say, that they do not know whether the said treasurer has funds or not wherewith to pay the said notes which have been presented to him for payment, but say that whilst they have no objection to the payment of such notes by the said treasurer, or any other person, that they never requested him, or any other person, to pay the same, or intimated, in any way, to the

said treasurer, or any other person, that such a proceeding would be acceptable to the said the Merchants Bank.

And these defendants further say, that they are advised by counsel, and verily believe, that no lawful proceedings have ever been taken, in any way, to show that the association under the provisions of the said act, known as the Merchants Bank at Bridgeton, were insolvent, or that they had or have, in any way or manner, violated or disregarded the provisions of the said act, or the supplements thereto.

And they further say, that if any such proceedings were ever had or taken, they were and are irregular, insufficient, and contrary to the constitution and laws of this state. 10

And these defendants further answering charge and insist, that the said complainant has proceeded without authority or color of law to foreclose the said bonds and mortgages; that he is a mere ministerial officer, bound in the performance of his duties by the directions of all acts appertaining to the same, which are or may be constitutionally passed by the legislature of the state of New Jersey.

That he has nowhere alleged, as these defendants are informed, in his original bill of complainant, or in the bill amendatory thereof, nor as these defendants full well know, in the amended bill, where these defendants are made parties, any of the matters or things necessary to show his authority or power in these proceedings. 20

And these defendants expressly charge and insist, that the said complainant, in any aspect of the case, has only power and authority to sell the said bonds and mortgages in conformity to the directions of said act and the supplements thereto, and that he has no authority to proceed by bill of foreclosure against the said defendants, and that, for this reason, the said bill should be dismissed. 30

And these defendants further answering say, that they are not aware whether the said complainant intends that they should answer the original bill.

That the said amended bill appears, on the face thereof, to be separate and distinct from the original bill, and these defendants are nowhere called upon to answer the original bill, or the charges therein contained, and therefore pray the same relief as if they had demurred to the said amended bill. 40

That the said amended bill has not been exhibited according to the course of practice of this honorable court, nor in compliance with the rules of this honorable court.

And these defendants further say, that there is no matter, cause, or thing, in the said defendant's amended bill of complaint contained, material or necessary for these defendants to make answer unto, and not herein and hereby well and sufficiently answered, confessed, traversed, and avoided or denied, is true, to the knowledge or belief of these defendants,  
 10 all of which matters and things these defendants are ready and willing to aver, maintain, and prove, as this honorable court shall direct, and humbly pray to be hence dismissed with their reasonable costs and charges in this behalf most wrongfully sustained.

And these defendants would also pray this honorable court that the affidavit hereto annexed may be taken and considered a part and portion of this their answer.

J. D. MILLER,  
*Solicitor and of counsel with the Merchants Bank  
 at Bridgeton, defendants.*

20

State of New Jersey, Hudson county, ss.—John Allen, being duly sworn according to law, upon his oath deposeth and saith, that he is and has been vice president of the Merchants Bank at Bridgeton; that he believes the seal of the corporation is now with the president of said bank, Henry H. David, in Europe; that this deponent has made diligent search for, and is unable to find the same; and that the matters, facts, and things in the foregoing answer mentioned and set forth, so far as the same relate to the acts and deeds of  
 30 the said Merchants Bank at Bridgeton, are true of his knowledge and belief, and so far as the same relates to the acts and deeds of any other person or persons, this deponent believes them to be true.

JOHN ALLEN.

Sworn and subscribed at Jersey City, May 7th, 1857, before me.

A. S. JACKSON, *M. C.*

Proof of rule ; filed June 1st, 1857.

Order substituting solicitor ; filed July 1st, 1857.

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INTERLOCUTORY DECREE.

This cause coming on to be heard at a regular term of said court, held at Trenton, and the same being opened to the court by Wm. L. Dayton, solicitor and of counsel with the complainant, the said cause having been regularly set down for hearing, and it appearing to the satisfaction of the court that notice of argument had been regularly served upon Richard McClelland, solicitor of Samuel P. Townsend and 10 John McGuigan, and upon J. D. Miller, who was alleged to have appeared for the Merchants Bank at Bridgeton, and no person appearing for either of said defendants, and it appearing that process of subpœna for the appearance of the said Samuel P. Townsend and Nancy his wife and John McGuigan has been duly issued and returned by the sheriff of the county of Hudson, to whom the same was delivered served upon the said John McGuigan, and that the two other defendants, Samuel P. Townsend and Nancy his wife were returned not found, with an affidavit that they resided 20 out of the state of New Jersey, to wit, in the state of New York, as the said sheriff was informed and believes, and it further appearing that process of subpœna for the appearance of said the Merchants Bank at Bridgeton has been duly issued and returned by the sheriff of the county of Cumberland, to whom the same was delivered not found, the said bank being located by law within said county of Cumberland, and it further appearing to the satisfaction of said court that an order of publication or notice for the said absent defendant to appear, plead, answer, or demur to the complain- 30 ant's bill within the time therein limited, was thereupon had and taken according to law, and it now satisfactorily appearing to the court that the same has been duly advertised, as therein and by law is required, and that the said defendants,

Nancy Townsend, wife of the said Samuel P. Townsend, and the said the Merchants Bank at Bridgeton have not, nor has either of them, appeared, pleaded, answered, or demurred to the complainant's bill, according to law and the rules and practice of the court, and within the time limited in and by said order—it is thereupon, on their sixteenth day of December, A. D. eighteen hundred and fifty-seven, ordered, adjudged, and decreed that the said bill of complaint be taken as confessed against said Nancy Townsend and the Mer-

10 chants Bank at Bridgeton; and the said bill of complaint, with its amendments, and the answers of the said Samuel P. Townsend and John McGuigan, and the proofs and exhibits having been read, and the arguments of counsel thereupon heard and considered, and it appearing to the satisfaction of the court that the deed held by John McGuigan for the premises therein specified is subsequent to the several mortgages held by the complainant, and that the said complainant is entitled to relief and to a sale of the whole or so much of the mortgaged premises in the said bill

20 mentioned as may be necessary to satisfy and redeem all the bills or notes delivered by the complainant, as treasurer of said state, to the Merchants Bank at Bridgeton put in circulation as money (not exceeding the amount due on said mortgages, &c.) and which said bills or notes, to a large amount, have been presented to said treasurer for payment, and which now remain in his hands unpaid for want of funds to pay the same—it is further ordered, adjudged, and decreed, that it be referred to Barker Gummere, esq.,

30 one of the masters and examiners of this court, to ascertain and report the amount due to said complainant, treasurer as aforesaid, for principal and interest on said mortgages described in said bill of complaint, and also the amount of notes or bills delivered to the said the Merchants Bank at Bridgeton aforesaid, and put in circulation as money, and the amount or proportion thereof which has come, or may come, into the hands of the treasurer of said state for redemption prior to the date of said report, and all other claims or demands, if any, against said fund, and likewise whether

40 complainant, treasurer as aforesaid, for the payment or re-

demption of said bills or notes, or other demands, and what, and also to ascertain and report the order in which said several tracts of land mentioned in said mortgages shall be sold for the payment and satisfaction of said unredeemed notes or bills and other demands, if any, and whether the whole, or a part only, of said lands shall be sold for such purpose, and if a part only, what part, and likewise any other necessary matter or thing connected therewith and material to the case, that the proofs and exhibits heretofore taken and on file be received as evidence before him, and 10 that he make report with all convenient speed; and all further equity is reserved until the coming in of said report.

B. WILLIAMSON, C.

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NOTICE OF APPEAL.

The defendants, Samuel P. Townsend and the Merchants Bank at Bridgeton, hereby appeal from so much of the interlocutory decree made in this court and in the above stated cause, as in effect adjudges that the Merchants Bank at Bridgeton have failed to redeem the notes circulated by the said bank in the lawful money of the United States after 20 presentment at the said bank, or the place where the same were made payable, on lawful demand between the hours of ten and three o'clock, and that the said notes were duly protested for nonpayment, without any allegation in the said bill to that effect, or any proof thereof.

And to so much of the said decree as adjudges that the said complainant has the right to foreclose the said mortgages.

And to so much of the said decree as adjudges that the complainant has the right to the relief prayed for in his said 30 bill of complaint.

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

RICH'D D. McCLELLAND,  
*Solicitor and of counsel with the above defendants.*

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

RICH'D D. McCLELLAND,  
*Of counsel with above defendants, Samuel P. Townsend  
and the Merchants Bank at Bridgeton.*

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PETITION OF APPEAL.

COURT OF ERRORS AND APPEALS.

Between

|    |                                                                                                                                                                                    |   |                         |
|----|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---|-------------------------|
| 10 | SAMUEL P. TOWNSEND and the MERCHANTS<br>BANK AT BRIDGETON, appellants,<br><p style="text-align: center;"><i>and</i></p> RESCARRICK M. SMITH, treasurer of New<br>Jersey, appellee, | } | <i>On bill, &amp;c.</i> |
|----|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---|-------------------------|

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

The humble petition of Samuel P. Townsend and the Merchants Bank at Bridgeton, appellants in the above cause, respectfully shows, that your petitioners find themselves aggrieved by an interlocutory decree in the Court of  
 20 Chancery by his Honor Benjamin Williamson, Chancellor of New Jersey, bearing date the sixteenth day of December, eighteen hundred and fifty-seven, wherein Rescarrick M. Smith, treasurer of the state of New Jersey, was complainant, and Samuel P. Townsend and Nancy his wife, John McGuigan, and the Merchants Bank at Bridgeton were defendants, in this respect.

In that the said decree assumes that the said Merchants Bank at Bridgeton is insolvent, without proof and without any judicial decree to that effect.

30 And in that the said decree assumes that the said the Merchants Bank at Bridgeton have failed, or refused to redeem the notes circulated by the said bank in the lawful money of the United States, after presentment at the said

bank, or the place where the same were made payable, on lawful demand between the hours of ten and three o'clock, and that the said notes were duly protested for nonpayment, without any allegation in the said bill to that effect, or any proof thereof.

And in that the said decree adjudges that the said complainant has the right to foreclose the said mortgages.

And in that the said decree adjudges that the complainant has the right to the relief prayed for in the said bill of complaint. 10

Your petitioners therefore pray that the said decree of the said Chancellor may be, in the particulars aforesaid, reversed, set aside, and for nothing holden, and that your petitioners may have such relief in the premises as to this honorable court shall seem meet.

Dated January 20th, 1858.

RICH'D McCLELLAND,  
*Solicitor and of counsel with above appellants.*

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## EXHIBITS.

## EXHIBIT No. 1.

This indenture, made this first day of January, in the year of our Lord one thousand eight hundred and fifty-two, between Samuel P. Townsend and Nancy his wife, of the city of New York, in the county of New York, and state of New York, of the first part, and the Merchants Bank, an association organized under and in pursuance of an act of the legislature of the state of New Jersey entitled, "An act to authorize the business of banking," approved February 27th, 1850, and the supplement thereto, approved March 14th, 1851, the place of business of which association is 10 Bridgeton, in the county of Cumberland, and state of New Jersey, of the second part, witnesseth, that the said parties of the first part, for and in consideration of the sum of five thousand dollars, money of the United States of America, to them in hand well and truly paid by the said party of the second part, at and before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, and the said party of the first part therewith fully satisfied, contented, and paid, have given, granted, bargained, sold, aliened, enfeoffed, conveyed, and confirmed, and by these 20 presents do give, grant, bargain, sell, alien, enfeoff, convey, and confirm, to the said party of the second part, and to their successors and assigns for ever, all those tracts or parcels of land and premises, herein after particularly described, situate, lying, and being in the third and fourth wards of Jersey City, in the county of Hudson, and state of New Jersey, and which, on a map of property belonging to Selah Hill, Samuel P. Townsend, and others, made by A. Clerk and R. C. Bacot, city surveyors, dated June 14th, 1849, and filed in the office of the clerk of the said county of Hudson, are 30

known and distinguished as those certain thirty-four (34) lots, pieces, or parcels of land and premises numbered from two hundred and twenty-nine (229) to two hundred and sixty-two (262), both inclusive, known as block number ten (10). Also all those thirty-four (34) lots, pieces, or parcels of land and premises, numbered from four hundred and twenty-five (425) to four hundred and fifty-eight (458), both inclusive, known as block number sixteen (16); and also all those thirty-four lots, pieces, or parcels of land and premises, numbered from five hundred and eighty-seven (587) to six hundred and twenty, both inclusive, known as block number twenty-one (21), being a part of the tracts of land and premises conveyed by Selah Hill and wife to the said Samuel P. Townsend, by deeds dated, respectively, April fourteenth, (14), eighteen hundred and forty-nine, and recorded in Liber thirteen of Deeds, and July eighteenth, eighteen hundred and forty-nine, and recorded in Liber fourteen of Deeds for said county; also all that other certain lot, piece, or parcel of land, and premises, with the two-story basement and attic brick-house thereon, situate, lying, and being in Jersey City (late Harsimus), in the county of Hudson, and state of New Jersey aforesaid, containing and described as follows: commencing at a point in the southerly side or line of Brooks street (late South Fourth street), distant seventy-three (73) feet eight inches easterly from the southeasterly corner of Grove and Brooks street, and running thence southerly, parallel with Grove street, fifty feet, thence easterly, parallel with Brooks street, eighteen feet five inches; thence northerly, and again parallel with Grove street, fifty feet, to the southerly line of Brooks street; thence westerly, along the southerly line of Brooks street, eighteen feet five inches, to the place or point of commencing, said lot being part of the property conveyed to the party of the first part by Lorin Brooks and wife, by deed dated 31st of July, 1848, and recorded in the clerk's office of the county of Hudson aforesaid in Liber 21 of Deeds, together with all and singular the profits, privileges, and advantages, with the appurtenances, to the same belonging or in anywise appertaining. Also, all the estate, right, title, interest, property, claim, and demand whatsoever of the said parties of the first part of, in, and

to the same, and of, in, and to every part and parcel thereof: to have and to hold all and singular the above described tracts or parcels of land and premises, with the appurtenances, unto the said parties of the second part, their successors and assigns, to the only proper use, benefit, and behoof of the said parties of the second part, their successors and assigns for ever; provided always, and it is agreed by and between the parties to these presents, that if the said parties of the first part, their heirs, executors, or administrators, do and shall well and truly pay, or cause to be paid, to the said 10 parties of the second part, their certain attorney or attorneys, their successors or assigns, the sum of five thousand dollars, lawful money of the United States of America, on the first day of January, which will be in the year of our Lord one thousand eight hundred and fifty-three, with the interest thereon from the date of this mortgage at and after the rate of six per centum per annum, payable semi-annually, according to the condition of a bond of the said Samuel P. Townsend, bearing even date with these presents, in the penal sum of ten thousand dollars, as by the said bond ac- 20 companying this mortgage, by reference thereto will appear, without any deduction or defalcation for taxes, assessments, or any impositions whatsoever: that then and from thenceforth these presents and said obligation, and everything herein and therein contained, shall cease and be void, anything herein and therein contained to the contrary in anywise notwithstanding; and the said Samuel P. Townsend, for himself, his heirs, executors, and administrators, doth covenant and grant to and with the said parties of the second part, their successors and assigns, that the said par- 30 ties of the second part, their successors and assigns, shall and may from time to time, and at all times after default shall be made in the performance of the proviso or condition herein contained, peaceably and quietly enter into, have, hold, use, occupy, possess, and enjoy all and singular the above granted and bargained premises, with the appurtenances, without the let, suit, trouble, hinderance or denial of the said parties of the first part, their heirs or assigns, or any other person or persons whatsoever.

In witness whereof, the said parties of the first part have 40

hereunto set their hands and seals the day and year first above written.

SAMUEL P. TOWNSEND, [L. S.]  
NANCY TOWNSEND, [L. S.]

The word "heirs" four times erased, and the words "executors and administrators" once erased, and "successors" interlined before execution.

Signed, sealed, and delivered in the presence of

ASHBEL C. GREEN.

State of New York, New York city and county, ss.—Be  
10 it remembered, that on this 15th day of January, in the year one thousand eight hundred and fifty-two, before me, a commissioner for New Jersey residing in New York, personally appeared Samuel P. Townsend and Nancy his wife, who, I am satisfied, are the grantors in the within deed of conveyance named; and I having first made known to them the contents thereof, they did acknowledge that they signed, sealed, and delivered the same as their voluntary act and deed, for the uses and purposes therein expressed.

And the said Nancy, being by me privately examined  
20 separate and apart from her said husband, did further acknowledge, that she signed, sealed, and delivered the same freely as her voluntary act and deed, without any fear, threats, or compulsion of or from her said husband.

ASHBEL C. GREEN, *Com'r.*

No. 11 Nassau st., N. Y.

Know all men by these presents, that I, Samuel P. Townsend, of the city, county, and state of New York, am held and firmly bound unto the Merchants Bank, whose place of business is Bridgeton, in the county of Cumberland, in the state of New Jersey, in the sum of ten thousand dollars,  
30 lawful money of the United States of America, to be paid to the said the Merchants Bank, or to their certain attorney, successors, or assigns, for which payment well and truly to be made I bind myself, my heirs, executors, and administrators firmly by these presents.—Sealed with my seal, dated the first day of January, in the year of our Lord one thousand eight hundred and fifty-two.

The condition of this obligation is such, that if the above bounden Samuel P. Townsend, his heirs, executors, administrators, or any of them, shall and do well and truly pay, or cause to be paid, unto the above mentioned the Merchants Bank, or to their certain attorney, successors, or assigns, the just and full sum of five thousand dollars, lawful money aforesaid, on the first of January, which will be in the year of our Lord one thousand eight hundred and fifty-three, with lawful interest for the same at and after the rate of six per centum per annum from the date hereof, payable semi- 10 annually, without any fraud or other delay, then this obligation to be void, or else remain in full force and virtue.

SAMUEL P. TOWNSEND, [L. s.]

The words "executors, administrators" twice erased, and "successors" interlined before execution.

Sealed and delivered in the presence of

ASHBEL C. GREEN.

Know all men by these presents, that the Merchants Bank, an association organized under the general banking laws of the state of New Jersey, whose place of business is Bridge- 20 ton, in the county of Cumberland, in said state, of the first part, in consideration of the sum of five thousand dollars, lawful money of the United States, to them in hand paid by Rescarrick M. Smith, treasurer of the state of New Jersey, of the second part, at or before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, have granted, bargained, sold, assigned, transferred, and set over, and by these presents do grant, bargain, sell, assign, transfer, and set over, unto the said party of the second part, a certain indenture of mortgage, bearing date 30 the first day of January, in the year one thousand eight hundred and fifty-two, made by Samuel P. Townsend and Nancy his wife, of the city, county, and state of New York, to the said parties of the first part, to secure the payment of the sum of five thousand dollars, and interest thereon, and recorded in the office of the clerk of the county of Hudson, in the state of New Jersey, in Liber 8 of Mortgages, pages

236, and 237, and 238, the seventeenth day of January, A. D. 1852, together with the bond or obligation therein described, and the money due and to grow due thereon, with the interest: to have and to hold the same unto the said party of the second part, his successors in office and assigns, for ever, subject only to the proviso in the said indenture of mortgage mentioned: and the said parties of the first part do hereby make, constitute, and appoint the said party of the second part their true and lawful attorney, irrevocable  
 10 in their name or otherwise, but at their proper costs and charges, to have, use, and take all lawful ways and means for the recovery of the said money and interest; and in case of payment, to discharge the same as fully as they might or could do if these presents were not made.

In witness whereof, the said parties of the first part have caused their corporate seal to be hereunto affixed, and these presents to be signed by their president, the twenty-second day of January, in the year one thousand eight hundred and fifty-two.

20

FRANCIS BRADT, *Pres't*, [L. s.]

*Note.*—The words “parties of the first part” interlined, and the third line from the bottom obliterated before execution hereof, and the words “Rescarrick M.” written on an erasure before the execution hereof.

Sealed and delivered in the presence of

State of New York, ss.—On this 22d day of January, 1852, before me, a commissioner for New Jersey residing in New York, personally appeared Francis Bradt, president of the Merchants Bank, known to me to be the president of said bank; and the said Francis, having been by me made  
 30 acquainted with the contents of the within deed of assignment, and being by me duly sworn, did depose and say, that the seal affixed to the within assignment is the common seal of the said company, and was affixed thereto by the authority of said company, and that he, said Bradt, subscribed his name to said assignment by like authority.

HENRY M. ALEXANDER.

Then follow Exhibits No's 2, 3, 4, and 5, being mortgages, bonds, and assignments, of like form.

## EXHIBIT No. 6.

At a meeting of the directors of the Merchants Bank of Bridgeton, held January 22d, 1852, it was resolved as follows, viz :

*Resolved*, That the seal now presented, and impression which is below, be and the same is hereby adopted as the corporate seal of this association.

*Resolved*, That the five mortgages made by Samuel P. Townsend and wife on lands in Jersey City, in the county of Hudson, state of New Jersey, dated January 1st, 1852, and endorsed with the letters A to E, both inclusive, be assigned to Rescarrick M. Smith, state treasurer, and that the assignments be executed under the corporate seal, and that the president sign the same. 10

I certify that the above is a copy of the minutes of a meeting of the board of directors of the Merchants Bank of Bridgeton, held January 22d, 1852.

F. BRADT, *President*.

State of New York, city and county of New York, ss.—  
On this 22d day of January, in the year 1852, before me, H. M. Alexander, a commissioner under and by virtue of 20 the laws of New Jersey for the proof and acknowledgment of deeds, residing in New York, personally appeared Francis Bradt, president of the Merchants Bank, known to me to be the president of said bank; and the said Francis Bradt having been by me made acquainted with the contents of the within certified copy of minutes, and being by me duly sworn, did depose and say, that the seal affixed to the within certificate is the common seal of the said company, and was affixed thereto by authority of the said company, and that he, the said Bradt, subscribed his name to said assign- 30 ment by like authority.

HENRY M. ALEXANDER,  
*Commissioner aforesaid.*  
11 Nassau street, N. Y.

## EXHIBIT No. 7.

New York, Jan. 13, 1854.

Friend Smith,

Dear sir,—The bank commissioners are stirring the Bridgeton office. I thought we had complied with the law, and believe we have; but it appears they are not altogether satisfied. You have done so much for me, I am ashamed to ask other favors, but I wish you would see them, and at least delay the matter, for I expect to sell the property, and pay off the mortgages, and take up the circulation of the  
 10 bank soon. To come down on it now, under the circumstances, would injure me, and benefit no one, and materially injure every bank in the state of New Jersey, for there is no doubt they would report the *bank broke*; and the bills will sell at a discount, probably. Thus, you see, it would be a bad business all around.

Yours truly, in F. L. &amp; T.

J. P. TOWNSEND.

R. M. Smith, esq., Treasurer of state N. Jersey.

P. S. We have complied with the law, as we supposed,  
 20 and are making out additional papers, which we think will satisfy them. Please to say this much to Mr. Allison and others.

## EXHIBIT No. 8.

New York, Dec. 11th, 1854.

R. M. Smith, esq.

Dear sir,—I deeply regret the failure of the Merchants Bank of Bridgeton, and I would not, if I could, have prevented it, although it did not belong to me. I paid the last year some \$3000 the last year to keep it going, and \$1200  
 30 the last two months; but Mr. Foster would not carry it any longer, and it had to go by the board.

You have done me a great many favors, and I am ashamed to ask another of you—but must. I wish you to

be as lenient as possible in regard to the mortgages; I am doing my best to take them up in full, and give you the money for them, and shall be able to do so, if it can be delayed 60 or 90 days; but if it were drove right up I do not see how it could be realized. If you can give me a little time, you will add one more to the many and great favors you have shown me, and the bill holders will be benefited. Please help me in this matter as much as you can, and as much as your duty as public officer will allow. I am getting my house nearly finished, and shall send you cards for the 10 opening night for yourself and friends.

Yours truly, with great respect, &c., in F. L. T.

S. P. TOWNSEND.

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EXHIBIT N<sup>o</sup>. 9.

Upon opening this cause to the court by R. P. Thompson, attorney general, and upon hearing the affidavits, proofs, and allegations which have been offered to the court, and upon due inquiry into the matters or causes of complaint set forth in the petition filed in this court in this cause, it having been made to appear that the said the Merchants Bank at Bridge- 20 ton have not had a regular *bona fide* banking-house or office in some public situation at the town of Bridgeton, and have not carried on the business of banking in a *bona fide* manner at such place, agreeably to the eighteenth section of the act entitled, "An act to authorize the business of banking," approved February 27th, 1850, have not discounted bills, notes, and other evidences of debts in a legal and *bona fide* manner, have not received deposits, and have not had a board of directors for said association—it is, on this tenth day of February, in the year of our Lord one thousand 30 eight hundred and fifty-four, at a Court of Chancery at the city of Trenton, ordered and decreed, that an injunction do forthwith issue to restrain the said association from exercising any of the privileges or franchises granted by the act above specified, and the several supplements thereto, and from collecting or receiving any debts, or from paying out,

selling, assigning, or transferring any of the estate, moneys, funds, lands, tenements, or effects of the said association, until the court shall otherwise order.

B. WILLIAMSON, C.

I, William M. Babbitt, clerk of the Court of Chancery of the state of New Jersey, do hereby certify, that the foregoing is a true copy of the order for injunction in the cause wherein the state of New Jersey was complainant, and the Merchants Bank at Bridgeton is defendant, now on the files  
 10 of my office.—In testimony whereof, I have hereunto set my hand and affixed the seal of said court, at Trenton, the thirteenth day of October, in the year of our Lord one thousand eight hundred and fifty-six.

W. M. BABBITT, *Clk.*

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EXHIBIT N o. 11.

To the "Merchants Bank at Bridgeton," its president, cashier, clerk, directors, agents, and all its officers, and to all other persons whom it may concern.

You will take notice, that the injunction granted by the  
 20 Chancellor of New Jersey, on the tenth day of February last past, against "the Merchants Bank at Bridgeton," therein and thereby commanding them to "forthwith cease from exercising any of the privileges or franchises granted by the act "to authorize the business of banking," is in full force against the said bank; and you are required forthwith to obey the said injunction, and stop all further proceedings in and about the said Merchants Bank, as I shall apply to the Chancellor for an attachment for contempt for disobedience of said injunction.

30 By order of the bank com'rs.

R. P. THOMPSON,  
*Att'y Gen'l N. J.*

Dated Nov. 25th, 1854.

New Jersey, Cumberland county, ss.—James Stiles, of full age, being duly sworn on his oath says, that on the twenty-seventh day of November, A. D. 1854, he served a notice, of which the within is a true copy, personally on Artis E. Hughes, the agent of the Merchants Bank at Bridgeton.

JAMES STILES.

Sworn and subscribed before me, this 27th day of November, A. D. 1854.

CHAS. E. ELMER, M. C.

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